



## COMPARATIVE LEGAL RESEARCH

IMPLEMENTATION OF THE STOCKHOLM  
PROGRAMME ROADMAP  
IN TERROR-RELATED CASES

**COMPARATIVE LEGAL RESEARCH**  
**IMPLEMENTATION OF THE STOCKHOLM**  
**PROGRAMME ROADMAP IN TERROR-**  
**RELATED CASES**

This report highlights the need for developing and implementing effective mechanisms for addressing the root causes of radicalisation, in order to prevent its violent manifestations. It has been developed within the initiative [FAIRNESS: Implementation of the Stockholm's Roadmap in Cases of Terrorism and Radicalisation](#), funded by the European Union's Justice Program (2014-2020).

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# 1. INTRODUCTION

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Preserving fundamental freedoms and, by extension criminal procedural rights, is paramount to the establishment and maintenance of a democratic order. Setting baseline procedures for dealing with those suspected or accused of crimes is essential to the effective functioning of a fair and equal justice system that is based upon the principles of rule of law. The chief purpose of criminal procedural rights guarantees is to ensure that those suspected or accused of crimes benefit from basic legal protection and are presumed innocent throughout criminal proceedings. This is essential for shielding citizens from retribution and vigilante justice, as well as protecting them from abuses of power from the government. The 2009 Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings that is part of the Stockholm Programme seeks to reinforce the existing EU fundamental rights legal standards by safeguarding citizens, enhancing public confidence, and promoting trust among judicial authorities in Member States.<sup>1</sup>

To elucidate the importance of ensuring effective protection of criminal procedural rights in the context of counter-terrorism, this report, first, provides an overview of the concepts of terrorism and radicalisation, as well as related ideas such as extremism and countering violent extremism. Attention is given both to the relevant academic discourse and EU policy context. Second, the report reviews terror-related cases to illustrate key aspects pertaining to the complexity of upholding criminal procedural rights safeguards and the need for striking a balance between national security considerations and the importance of protecting fundamental rights. And third, the report highlights the need for developing and implementing effective mechanisms for addressing the root causes of radicalisation, in order to prevent its violent manifestations.

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<sup>1</sup> Council of the European Union, [Resolution of the Council on a Roadmap for Strengthening Procedural Rights of Suspected or Accused Persons in Criminal Proceedings](#), 2009.



## 2. SCOPE OF THE REPORT

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The reality of applying criminal procedural rights standards is far from straightforward, particularly when it comes to the investigation of serious criminal offences with significant public impact. Crimes of terrorism are a case in point, not least because such crimes often entail the deliberate use of violence against civilians. Given the randomness and gruesome nature of terrorist acts, in the aftermath of a terrorist attack there is little sympathy towards the attacker and, depending on the factors surrounding the crime, both politicians and the public may fall victims to strong negative emotions and attempt to seek harsher justice, or punishment than in other crimes. Furthermore, in the immediate aftermath of an attack or in case of an arrest that occurs while an attack is ongoing, law enforcement agencies may come under tremendous pressure to act quickly and extract information from a suspect in order to uncover the full scope of an attack. Whilst such information may be useful in establishing whether an attack is a lone-actor event, or part of a wider conspiracy presenting a persistent danger, the means that are used to elicit it are far from insignificant. It suffices to note the severe criticism under which intelligence services (especially American and British) came in the midst of the global ‘war on terror’ and the revelations of employing ‘enhanced interrogation techniques’ and ‘extraordinary renditions’ as part of the efforts to curb Al Qaeda’s activities and prevent terrorist attacks.<sup>2</sup>

A related thorny issue concerns the adoption of terror-related legislation which, for example, may allow law enforcement to take extrajudicial measures, including detaining, tracking, or questioning individuals on the grounds of extraordinary circumstances, such as an attack in progress or an imminent terrorist threat.<sup>3</sup> However, the application of such laws is not always straightforward, as the distinction between an actual threat and what only appears to be a threat in reality may be blurred. In addition to errors occurring in good faith, there is also the risk that counter-terrorism legislation may be used to suppress civil dissent or silence political opposition.<sup>4</sup>

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<sup>2</sup> Karen Greenberg and Joshua Dratel, *The Torture Papers: The Road to Abu Ghraib*, Cambridge University Press (2012); Mark Danner, *Torture and Truth: America, Abu Ghraib, and the War on Terror*, New York Review of Books (2004); Alan Dershowitz, *Why Terrorism Works: Understanding the Threat, Responding to the Challenge*; R. R. Donnelley & Sons Co. (2002); Michael Ignatieff, *The Lesser Evil: Political Ethics in an Age of Terror (Gifford Lectures)*, Princeton University Press (2005). On the general history of the use of torture and its prohibition in Europe, see John Langbein, *Torture and the Law of Proof: Europe and England in the Ancien Regime*, University of Chicago Press (1977).

<sup>3</sup> James Nickel, “[Due Process Rights and Terrorist Emergencies](#),” *European Journal of Legal Studies*, vol. 1: 1 (2007).

<sup>4</sup> Office of the United Nations High Commissioner for Human Rights, [Human Rights, Terrorism and Counter-Terrorism](#) (Geneva: United Nations, 2008).

## 2. Scope of the Report

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One further aspect that merits attention in the context of counter-terrorism is the phenomenon of radicalisation which often precedes engagement in violent attacks. It is worth noting that radicalisation may not always have a violent dimension and whilst terrorists tend to be radicalised individuals, not all radicalised individuals eventually become terrorists. Hence, whereas radicalisation and terrorism are regarded as closely linked phenomena, in legal terms these two concepts have a different status. Terrorism is by definition illicit. By contrast, generally radicalisation *per se* is not treated as a crime. This distinction has important implications for the ways in which the risks of terrorism and radicalisation are addressed, not least in the context of EU policy. Ensuring that this distinction is properly observed is fundamental to addressing the root causes of radicalisation and countering terrorism through the implementation of balanced approaches and measures that are proportionate to the threat and in line with the existing human rights standards, including criminal procedural rights safeguards.

With regard to the right to a fair trial and due process in the context of counter-terrorism, the United Nations Counter-Terrorism Implementation Task Force (CTITF) has noted that:

9. “The right to a fair trial is one of the fundamental guarantees of human rights and the rule of law, aimed at ensuring the proper administration of justice. It comprises various interrelated attributes and is often linked to the enjoyment of other rights, such as the right to life and the prohibition against torture and other forms of cruel, inhuman or degrading treatment or punishment. All persons must have equal rights of access to the courts and tribunals, including access to remedies and reparations, which is relevant not only to persons subject to criminal and non-criminal proceedings but also to the victims of terrorism. Justice must be administered in a way that achieves fairness for all, regardless of the identity of the parties to the proceedings or the nature of the proceedings themselves. Criminal charges, or a person’s rights and obligations in a ‘suit at law’, must be determined by a competent, independent and impartial tribunal established by law. Justice must be administered openly and in accordance with specific guarantees applicable to the determination of criminal charges, and parallel guarantees in the determination of non-criminal matters that may be applicable as a result of the overarching need to ensure fairness and equality of arms.”<sup>5</sup>

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<sup>5</sup> United Nations Counter-Terrorism Implementation Task Force, *Basic Human Rights Reference Guide: Right to a Fair Trial and Due Process in the Context of Countering Terrorism* (New York: United Nations, 2014).

The CTITF has identified and recommended 12 guiding principles and guidelines concerning the right to a fair trial and due process in the context of countering terrorism that are designed to assist legislators, decision-makers, judges, lawyers, prosecutors, and law enforcement officials (Box 1). These principles are grounded in the established international human rights legal standards enshrined in the International Covenant on Civil and Political Rights (ICCPR), as well as other relevant international legally binding instruments.<sup>6</sup>

**Box 1: CTITF Guiding Principles on the Right of a Fair Trial and Due Process in the Context of Counter-Terrorism**

1. Regardless of nationality, statelessness, or other status, all individuals must have effective access to justice.
2. Criminal charges, or a person's rights and obligations in a suit at law, must be determined by a competent, independent and impartial tribunal established by law. Trial by military or special tribunals must comply with human rights standards in all respects, including legal guarantees for the independent and impartial functioning of such tribunals.
3. The right to a fair trial involves the right to a public hearing. Any restrictions on the public nature of a trial, including for the protection of national security, must be both necessary and proportionate, as assessed on a case-by-case basis. Any such restrictions should be accompanied by adequate mechanisms for observation or review to guarantee the fairness of the hearing.
4. Everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to the law.
5. Anyone charged with a criminal offence cannot to be compelled to testify against herself or himself, or to confess guilt.
6. The right to a fair hearing, in both criminal and non-criminal proceedings, involves the right to a trial 'without delay' or 'within a reasonable time'. The right to a timely hearing includes the right to a timely judgment.
7. Everyone charged with a criminal offence, including a terrorist offence, has the right to be tried in his or her presence. Trials in absentia should occur only in exceptional circumstances and only if all due steps have been taken to inform the accused of the proceedings sufficiently in advance.

<sup>6</sup> United Nations Counter-Terrorism Implementation Task Force, *Basic Human Rights Reference Guide: Right to a Fair Trial and Due Process in the Context of Countering Terrorism* (New York: United Nations, 2014). See also Mara Fallini et al. *Comparative Legal Research: Mapping the Legal and Policy Landscape for Upholding Criminal Procedural Rights in the Context of Counter-Terrorism*, Research Report produced as part of FAIRNESS: Implementation of the Stockholm's Roadmap in Cases of Terrorism and Radicalisation, 29 February 2020.

8. All persons have the right to representation by competent and independent legal counsel of their choosing, or to self-representation. The right to representation by legal counsel applies to all stages of a criminal process, including the pre-trial phase. Any restrictions on the right to communicate privately and confidentially with legal counsel must be for legitimate purposes, must be proportional, and may never undermine the overall right to a fair hearing.

9. In criminal proceedings and other proceedings initiated by the State, every person shall have the right to adequate time and facilities to prepare his or her case. In criminal proceedings the prosecution must disclose any relevant material in its possession, or to which it may gain access, including exculpatory material. Restrictions on the disclosure of information may be justified in certain cases and subject to conditions that sufficiently guarantee the right of the person to respond to the case.

10. Every person shall have the right to call and examine witnesses, including expert witnesses. The use of anonymous witnesses must be restricted to cases where this is necessary to prevent intimidation of witnesses or to protect their privacy or security and must in all cases be accompanied by sufficient safeguards to ensure a fair trial.

11. Any person convicted of a terrorist offence shall have the right to a genuine review of the conviction and/or sentence by a higher tribunal established by law.

12. Violation of fair trial rights must result in the provision of effective remedies to the person whose rights have been violated. Compensation must be provided where a conviction has resulted from a miscarriage of justice.

Source: Based on UN CTITF 2014.<sup>7</sup>

The Convention on the Rights of the Child (CRC) which entered into force in 1990 specifically requires States to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law (Art. 40 (3)).<sup>8</sup> Individuals that are underage but over the State's minimum age of criminal responsibility when suspected or accused of criminal offences are dealt with within the juvenile justice system of the respective State, regardless of the nature of the criminal offence. This includes terrorist offences.<sup>9</sup>

<sup>7</sup> United Nations Counter-Terrorism Implementation Task Force, *Basic Human Rights Reference Guide: Right to a Fair Trial and Due Process in the Context of Countering Terrorism* (New York: United Nations, 2014).

<sup>8</sup> *Convention on the Rights of the Child*, 1990; United Nations Interregional Crime and Justice Research Institute (UNICRI), *Children and Counter-Terrorism*, UNICRI (2016).

<sup>9</sup> United Nations Interregional Crime and Justice Research Institute (UNICRI), *Children and Counter-Terrorism*, UNICRI (2016).

At EU level, the Roadmap for Strengthening Procedural Rights of Suspected or Accused Persons in Criminal Proceedings that is part of the 2009 Stockholm Programme reinforces and reasserts the importance of criminal procedural rights as a way to ensure “consistent application of applicable standards and to raise existing standards.”<sup>10</sup> In particular, the Roadmap comprises six measures as follows:

- Measure A: Translation and Interpretation
- Measure B: Information on Rights and Information about the Charges
- Measure C: Legal Advice and Legal Aid
- Measure D: Communication with Relatives, Employers and Consular Authorities
- Measure E: Special Safeguards for Suspected or Accused Persons who are Vulnerable
- Measure F: A Green Paper on Pre-Trial Detention.

The effective application of the 2009 Stockholm Programme Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings in the context of counter-terrorism requires the full and effective implementation of the relevant international human rights standards, including the CTITF guidelines and CRC provisions. By upholding the rule of law States can delegitimise terrorist rhetoric and counter and discredit violent tactics. By contrast, infringements on criminal procedural rights may result in undermining the authority and actions of the government, which in turn can give credence to the very extremist ideologies and rhetoric they seek to counter.<sup>11</sup>

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<sup>10</sup> Council of the European Union, [Resolution of the Council on a Roadmap for Strengthening Procedural Rights of Suspected or Accused Persons in Criminal Proceedings](#), 2009.

<sup>11</sup> David Welsh, “[Procedural Justice Post-9/11: The Effects of Procedurally Unfair Treatment of Detainees on Perceptions of Global Legitimacy](#),” *University of New Hampshire Law Review*, vol. 9:2 (2011).



### 3. THE CONCEPTS OF TERRORISM AND RADICALISATION

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This section seeks to elucidate the difference between the concepts of terrorism and radicalisation and position them within the context of the EU security policy. It provides an overview of relevant academic debates and key EU strategic security documents.

#### 3.1. Academic Discourse

Both terrorism and radicalisation have been studied extensively across different disciplines. Studies have covered a wide range of topics, spanning the nuances of the definitions, how and why individuals are drawn to terrorism, or even to extremist ideologies, and what role gender plays in the process of radicalisation.<sup>12</sup> Additionally, there has been multiple studies looking at what effective counter-terrorism and radicalisation prevention entail. Whilst consensus on some of these issues is gradually emerging, many answers remain elusive.

In general, terrorism can be understood as acts of violence that are ideologically or politically motivated but which also include a ‘theatrical’ component intended to convey a message beyond just those directly impacted or targeted by the attack.<sup>13</sup> This act of communication is important, as by staging their attacks at public places and in ways that would reach the widest audience terrorists aim to draw attention to themselves and to their cause. The message and the ‘audience’ of these attacks vary based on the actual terrorist incident, ranging from xenophobic attacks on immigrants which seek to create an environment of hostility and fear to attacks meant to destabilise society by targeting critical infrastructure that is vital to everyday life such as transportation systems.

Part of the problem with defining terrorism revolves around whether it should be treated as a phenomenon that is distinct from other crimes or forms of violence. The field of terrorism studies focuses on examining the root causes of terrorism, the motivations of terrorist perpetrators, as well as the organisation and structure of different terrorist organisations and networks. As such, this field offers invaluable insights into the operational potential of different terrorist groups, including their choice of tactics for recruitment, plotting and carrying out terrorist attacks. Terrorism studies further

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<sup>12</sup> Anita Orav, Rosamund Shreeves, and Anja Radjenovic, *Radicalisation and Counter-Radicalisation: A Gender Perspective* (European Parliamentary Research Service, 2018).

<sup>13</sup> Alex Schmid, *The Routledge Handbook of Terrorism Research*, (Routledge, 2011).

### 3. *The Concepts of Terrorism and Radicalisation*

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help shed light on the perceptions of terrorism and how these perceptions are conditioned by the prevalent political, socio-economic, and historical context.<sup>14</sup>

Analysing the ways in which the understanding of terrorism has changed over time is closely tied up the evolution of social norms and standards. As this evolution has had both peaceful and violent manifestations, it is possible to speculate whether acts of terrorism can be deemed justified, especially if such acts have sought to undermine and overthrow what was perceived as oppressive regimes and give power to the powerless.<sup>15</sup> For example, both John Brown and Nelson Mandela were arrested due to their, at the time, extremist ideas of equality by their respective governments and convicted of crimes related to terrorism. However, following this line of thought, some commentators have suggested that had the Red Brigades' revolutionary ambitions in Italy been fulfilled the terrorist group might presently be viewed less as far-left terrorists and more as patriotic revolutionaries who ushered in a more just society to Italy.<sup>16</sup> The trouble with the latter form of historical relativism is that it runs the risk of granting legitimacy to some of the most egregious and gruesome crimes committed throughout history.<sup>17</sup>

An additional problem in defining terrorism relates to the question of whether state-sponsored terrorism should be considered along with non-state terrorist acts.<sup>18</sup> The post-1945 international system rests on the premise that states hold a legitimate monopoly on the use of force and international law sets out clear parameters under what conditions states can lawfully use force. International Humanitarian Law (IHL) defines the rules that apply during an armed conflict. These rules concern both international and intra-state hostilities. There are specific provisions covering the protection of civilians during an armed conflict. Large-scale atrocities such as genocides and ethnic cleansing are punishable as crimes against humanity. The global 'war on terror' has had a significant impact on the established international norms applicable during in an armed conflict, as evident in the emergence of the concept 'unlawful combatants' as a justification for questionable practices such as targeted assassinations, tor-

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<sup>14</sup> Boaz Ganor, "[Defining Terrorism: Is One Man's Terrorist Another Man's Freedom Fighter?](#)" *Police Practice and Research*, vol. 3: 4 (2010).

<sup>15</sup> Tarik Kochi, *The Other's War: Recognition and the Violence of Ethics* (Birkbeck Law Press, 2009).

<sup>16</sup> Richard Drake, *Apostles and Agitators: Italy's Marxist Revolutionary Tradition* (Harvard University Press, 2009).

<sup>17</sup> Christopher Rudolph, "[Power and Principle from Nuremberg to the Hague](#)" in *Power and Principle, The Politics of International Criminal Courts* (Cornell University Press, 2017).

<sup>18</sup> Colin Wight, "Can States Be Terrorists?" in *Contemporary Debates on Terrorism*, ed. Richard Jackson and Daniela Pisoiu (London: Routledge, 2018).

ture, and prolonged detention.<sup>19</sup> But state-sponsored terrorism also has another dimension related to the provision of support for terrorist groups, including the use of terrorist proxies for pursuing political and socio-economic objectives. For example, United Nations Security Council (UNSC) Resolution 1368 adopted in 2001 immediately after the 9/11 attacks called upon on “all States to work together urgently to bring to justice the perpetrators, organizers and sponsors of these terrorist attacks” stressing “that those responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of these acts will be held accountable.”<sup>20</sup> Subsequent UNSC Resolutions including Resolution 1373 have further sought to strengthen the existing international and national mechanisms for curbing the provision of support for terrorism, including by denying “safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens” and preventing “those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens”.<sup>21</sup>

The difference between state and non-state terrorism, also referred to as insurgent terrorism is important both in policy terms and for understanding and elucidating the nuances and drivers of terrorism. It suffices to note that the factors that may enable a government to commit a mass genocide or embark on a war of adventure differ significantly from the push and pull factors leading to a terrorist attack on a metro station or a synagogue. Adding to this is the challenge of discerning if a crime is actually motivated by political or ideological goals or, rather precipitated by other factors such as mental illness, a domestic dispute, or aggressive criminality.<sup>22</sup> This is especially the case in the West where saying “Allah Akbar” or “inshallah” – two common Arabic phrases, during a crime or following arrest is enough for many, in the media and public, to quickly conclude that the person must be a terrorist.<sup>23</sup>

Much like terrorism, radicalisation and extremism are difficult concepts and terms to define. At a very basic level, extremist beliefs are understood as profound convictions

<sup>19</sup> Helen Duffy, *The War on Terror and the Framework of International Law* (Cambridge University Press, 2009); Shlomy Zachary, “[Between the Geneva Conventions: Where Does the Unlawful Combatant Belong?](#)”, *Israel Law Review*, vol. 38:1-2 (2014), pp. 378-417; Michael Hoffman, “[Terrorists Are Unlawful Belligerents, Not Unlawful Combatants: A Distinction with Implications for the Future of International Humanitarian Law](#)”, *Case Western Reserve Journal of International Law*, vol. 34:2 (2002), pp. 227-230.

<sup>20</sup> [United Nations Security Council Resolution 1368](#) (2001).

<sup>21</sup> [United Nations Security Council Resolution 1373](#) (2001).

<sup>22</sup> On this point, see, for example, Richard Jackson et al. (eds.) *Critical Terrorism Studies: A New Research Agenda*, Routledge (2009).

<sup>23</sup> Faye Brown, “[Macron Says France ‘under Attack’ as Police Foil Fourth Attack](#),” *Metro*, 29 October 2020; Eric Nagourney, “[‘Allahu Akbar’: An Everyday Phrase, Tarnished by Attacks](#),” *The New York Times*, 2 November 2017.

### 3. The Concepts of Terrorism and Radicalisation

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advocating the supremacy of a certain group (racial, religious, political, economic, social etc.), or ideology and radicalisation refers to the process of developing extremist beliefs, emotions, and behaviours.<sup>24</sup> Examples include religious fundamentalism, racism, and far-right and far-left political ideologies. A common feature among those sharing extremist views is the desire to “create a homogenous society based on rigid, dogmatic ideological tenets” which can be based on a multitude of ideologies, be it political, religious or ethno-nationalist.<sup>25</sup> Conversely, radicalisation is the actual process of mind set-hardening and movement from moderate views towards ones which are extreme and depict a one-sided image of reality that virtually precludes the relevance of alternative opinions:<sup>26</sup>

Radicalisation of many kinds may be associated with a syndrome of beliefs about the current situation and its history: We are a special or chosen group (superiority) who have been unfairly treated and betrayed (injustice), no one else cares about us or will help us (distrust), and the situation is dire – our group and our cause are in danger of extinction (vulnerability).<sup>27</sup>

Not all individuals who radicalise resort to violence, as the number of terrorist attacks is dwarfed by the number of individuals who support extremist ideologies.<sup>28</sup> In other words, it is possible for one to hold extremist or radical views “but not necessarily in a violent or even problematic manner”.<sup>29</sup> This is in part due to the fact that far from being a state, radicalisation is best understood as a process. There have been a number of studies which have sought to map out the pathways to or the stages of radicalisation. Among these is the ‘staircase model’ proposed by

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<sup>24</sup> J.M. Berger, *Extremism*, MIT Press (2018); Simona Trip et al. “[Psychological Mechanisms Involved in Radicalization and Extremism. A Rational Emotive Behavioral Conceptualization](#),” *Frontiers in Psychology*, 10:437, 6 March 2019.

<sup>25</sup> Alex P. Schmid, *Radicalisation, De-Radicalisation, Counter-Radicalisation: A Conceptual Discussion and Literature Review* (The Hague: The International Centre for Counter-Terrorism, 2013).

<sup>26</sup> Jamie Bartlett and Carl Miller, “[The Edge of Violence: Towards Telling the Difference between Violent and Non-Violent Radicalization](#),” *Terrorism and Political Violence*, vol. 24: 1 (2012).

<sup>27</sup> Clark McCauley and Sophia Moskalenko, “[Mechanisms of Political Radicalization: Pathways Toward Terrorism](#),” *Terrorism and Political Violence*, vol. 20:3 (2008), pp. 415-433.

<sup>28</sup> J. M. Berger, *Extremism* (Cambridge: MIT Press, 2018); Timothy Williams, “[Ideological and Behavioural Radicalisation into Terrorism – an Alternative Sequencing](#),” *Journal for Deradicalization*, no. 19 (2019); Schmid, *Radicalisation, De-Radicalisation, Counter-Radicalisation: A Conceptual Discussion and Literature Review* (The Hague: The International Centre for Counter-Terrorism, 2013).

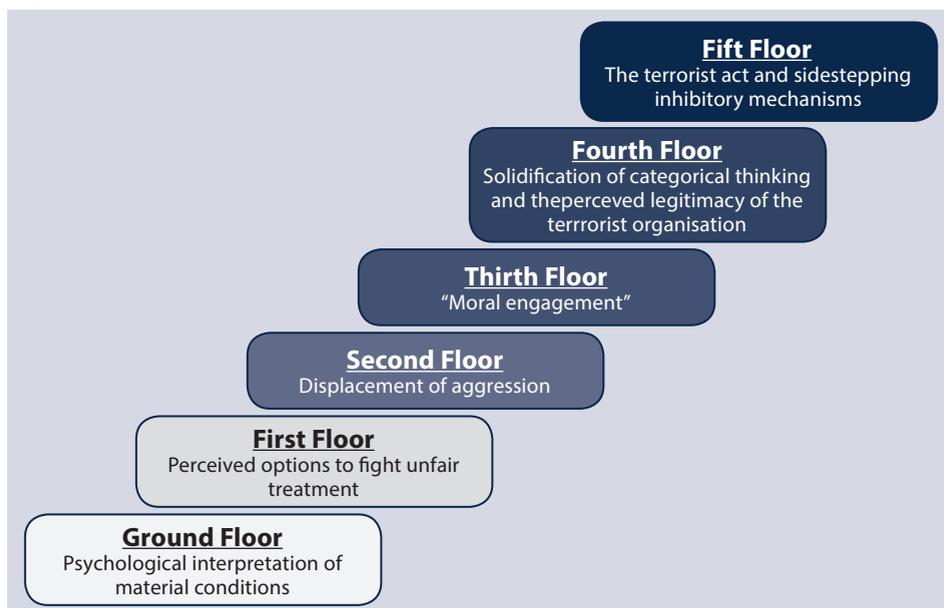
<sup>29</sup> Jamie Bartlett and Carl Miller, “[The Edge of Violence: Towards Telling the Difference between Violent and Non-Violent Radicalization](#),” *Terrorism and Political Violence*, vol. 24:1 (2012).

Moghaddam<sup>30</sup> which seeks to elucidate the psychology of radicalisation as a multiple-level process, with individuals becoming more engaged in extremism as they move up an imagined staircase. In this model, the staircase is used as a symbolic structure to map the paths, and decisions an individual takes as they move from a non-violent 'ground floor' gradually accepting violence and aggression as legitimate means of pursuing one's objectives and finally engaging in terrorism on the fifth and final floor. This is underpinned by the assumption that there is a segment of people on a ground floor who feel they are treated unjustly within society and may seek increasingly radical paths to address grievances. This starts with a first floor where individuals explore different options to address perceived injustices; however, individuals move up to the next level when they only find blame in the 'others' (e.g. an ethnic group or nation) for their problems. On the second and third floors individuals move beyond just blaming 'others', showing a willingness to carry out physical violence, and justifying this violence as the only means to a righteous end. Once on the fourth floor individuals become even more ingrained in the fight against the 'other', joining terrorist cells or organisations with likeminded goals and violent plans before reaching the fifth floor where an individual is willing and able to carry out terrorist violence (Figure 1).

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<sup>30</sup> Fathali M. Moghaddam, "[The Staircase to Terrorism: A Psychological Exploration](#)," *American Psychologist*, vol. 60:2 (2005), pp. 161-169. For a critical appraisal of the model proposed by Moghaddam, see Ragnhild B Lygre et al. "[Terrorism as a Process: A Critical Review of Moghaddam's 'Staircase to Terrorism'](#)," *Scandinavian Journal of Psychology*, vol. 52:6 (2011), pp. 609-616.

Figure 1: The Staircase to Terrorism Model



Source: Developed by the authors based on Fathali M. Moghaddam, 2005.<sup>31</sup>

Another framework of understanding the process of radicalisation is the two-pyramid model proposed by McCauley and Moskaleiko<sup>32</sup> which tracks both opinion or action, to differentiate belief from behaviour. This model examines the political radicalisation of an individual and their gradual transformation from an inert state to becoming an activist, a radical, and eventually terrorist, in the action pyramid, and from being neutral to becoming a sympathiser and justifier to having a sense of a personal moral obligation to use violence, in the opinion pyramid (Figure 2). The two-pyramid model emphasises that the radicalisation pathway is non-linear and individuals can move up and down at any time, a view held by other scholars in the field of radicalisation studies such as Berger<sup>33</sup> and Horgan.<sup>34</sup>

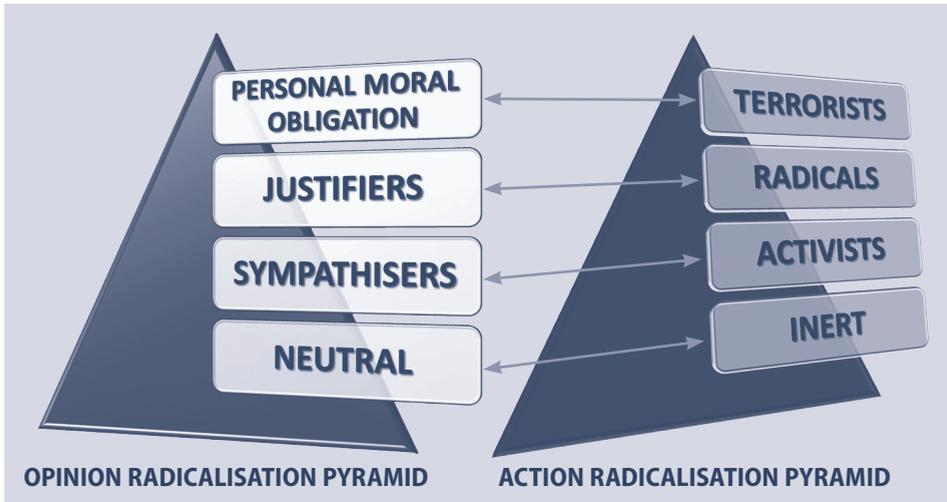
<sup>31</sup> Fathali M. Moghaddam, "The Staircase to Terrorism: A Psychological Exploration," *American Psychologist*, vol. 60:2 (2005), pp. 161-169.

<sup>32</sup> Clark McCauley and Sophia Moskaleiko, "Understanding Political Radicalization: The Two-Pyramids Model," *American Psychologist*, vol. 72:3 (2017), pp. 205-216.

<sup>33</sup> J. M. Berger, *Extremism* (Cambridge: MIT Press, 2018).

<sup>34</sup> John Horgan, *Walking Away from Terrorism* (New York: Routledge, 2009); J. M. Berger, *Extremism* (Cambridge: MIT Press, 2018).

Figure 2: Two-Pyramid Model



Source: Developed by the authors based on Clark McCauley and Sophia Moskalkenko, 2014.<sup>35</sup>

Both the 'staircase' and the 'two-pyramid' models illustrate that it is possible for extremists to remain content espousing extremist rhetoric without resorting to violence.<sup>36</sup> Still, even if extremist rhetoric never turns into violent action, such rhetoric remains problematic as it may exacerbate existing grievances and provide a breeding ground for violent radicalization.<sup>37</sup> The case of Anders Breivik is indicative in this regard as he was radicalised in large part by reading far-right content that he could access online.<sup>38</sup> It is therefore important that extremism in all its forms and manifestations is effectively tackled.<sup>39</sup>

<sup>35</sup> Clark McCauley and Sophia Moskalkenko, "Toward a Profile of Lone Wolf Terrorists: What Moves an Individual from Radical Opinion to Radical Action," *Terrorism and Political Violence*, vol. 26:3 (2014).

<sup>36</sup> John Horgan, *The Psychology of Terrorism* (Routledge, 2014); Sarah Victoria Marsden, "Reintegrating Radicals: A Strengths-Based Approach to 'Deradicalisation,'" in *Victims and Perpetrators of Terrorism: Exploring Identities, Roles and Narratives*, ed. Orla Lynch and Javier Argomaniz (London: Routledge, 2017).

<sup>37</sup> Tore Bjørgo, "Counter-Terrorism as Crime Prevention: A Holistic Approach," *Behavioural Sciences of Terrorism and Political Aggression*, vol. 8:1 (2016) pp. 25-44.

<sup>38</sup> Kurt Braddock, *Weaponized Words: The Strategic Role of Persuasion in Violent Radicalization and Counter-Radicalization* (Cambridge: Cambridge University Press, 2020); Jacob Aasland Ravndal, "Anders Behring Breivik's Use of the Internet and Social Media," *Zeitschrift für Deradikalisierung und demokratische Kultur*, vol. 2 (2013).

<sup>39</sup> Alex P. Schmid, *Violent and Non-Violent Extremism: Two Sides of the Same Coin?* (The Hague: The International Centre for Counter-Terrorism, 2014).

### 3. The Concepts of Terrorism and Radicalisation

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Just as the study of terrorism, the issue of why individuals take up an extremist ideology has attracted considerable academic interest.<sup>40</sup> Radicalisation occurs in a variety of ways and for a variety of reasons; its causes are multi-faceted. For example, some individuals may seek the glory and fame presented to them in flashy propaganda or an idealised past, while others simply seek a social group or are pressured into radicalism through their social network.<sup>41</sup> Others see extremist ideology and its proponents as an avenue to channel their anger and frustration from the perceived, or real, injustices, discrimination and marginalisation they see around them to a greater cause.<sup>42</sup> Studies have looked at a wide range of different characteristics, traits, or social factors which may contribute to an individual's interest or involvement in violent extremism and push individuals towards radicalisation.<sup>43</sup> Ultimately, most scholars agree that there is no single profile of a terrorist or pathway towards terrorism<sup>44</sup> and that most terrorists are not abnormal, but instead are both stable and rational.<sup>45</sup>

The wide-spread use of the internet over the past few decades has accelerated the spread of extremist ideologies and narratives and transformed the way in which indi-

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<sup>40</sup> Michael A. Jensen, Anita Atwell Seate, and Patrick A. James, "[Radicalization to Violence: A Pathway Approach to Studying Extremism](#)," *Terrorism and Political Violence*, vol. 32:5 (2018), pp. 1067-1090; Arie W. Kruglanski et al., "[The Psychology of Radicalization and Deradicalization: How Significance Quest Impacts Violent Extremism](#)," *Political Psychology*, vol. 35:1 (2014), pp.69-93; Stefan Malthaner and Lasse Lindekilde, "Analyzing Pathways of Lone-Actor Radicalization: A Relational Approach," in Michael Stohl et. al (eds.) *Constructions of Terrorism: An Interdisciplinary Approach to Research and Policy* (University of California Press, 2017); Michelle Dugas and Arie W. Kruglanski, "[The Quest for Significance Model of Radicalization: Implications for the Management of Terrorist Detainees](#)," *Behavioral Sciences and the Law*, vol. 32:2 (2014) pp. 423–439 .

<sup>41</sup> Christer Mattsson and Thomas Johansson, "[Leaving Hate Behind – Neo-Nazis, Significant Others and Disengagement](#)," *Journal for Deradicalization*, vol. 18 (2019).

<sup>42</sup> Cynthia Miller-Idriss, "Youth and the Radical Right," in *The Oxford Handbook of the Radical Right*, ed. Jens Rydgren (Oxford University Press, 2018).

<sup>43</sup> Jerrold Post, *The Mind of the Terrorist* (St. Martin's Griffin, 2008); Clark McCauley and Sophia Moskalenko, "[Toward a Profile of Lone Wolf Terrorists: What Moves an Individual from Radical Opinion to Radical Action](#)," *Terrorism and Political Violence*, vol. 26:1 (2014), pp. 69-85; Jessica Stern, "Radicalization to Extremism and Mobilization to Violence: What Have We Learned and What Can We Do About It?," *The ANNALS of the American Academy of Political and Social Science*, vol. 668:1 (2016), pp. 102-117.

<sup>44</sup> J. M. Berger, *Extremism* (Cambridge: MIT Press, 2018); Bruce Hoffman, *Inside Terrorism* (New York: Columbia University Press, 2006); John Horgan, *Psychology of Terrorism* (London: Routledge, 2005); Colleen E. Mills et al., "[Social Learning and Social Control in the Off- and Online Pathways to Hate Crime and Terrorist Violence](#)," *Studies in Conflict & Terrorism* (2019); Max Taylor and John Horgan, "[A Conceptual Framework for Addressing Psychological Process in the Development of the Terrorist](#)," *Terrorism and Political Violence*, vol. 18:4 (2006), pp. 585-601.

<sup>45</sup> Andrew Silke, *Terrorism: All That Matters* (London: John Murray, 2014).

viduals interested in such ideologies can communicate with each other.<sup>46</sup> No longer is it necessary for individuals interested in white supremacy and far-right ideologies to attend a neo-Nazi rally to converse and socialise with likeminded people. Instead, they are able to join a myriad of online spaces (e.g. websites, social media forums) propagating far-right ideologies.<sup>47</sup>

To elucidate the phenomenon of online radicalisation and how the internet may serve as an enabling technology for the proliferation and absorption of extremist narratives, it is helpful to draw upon the typology of psychological factors advanced by Silke.<sup>48</sup> Silke argues that three main factors contribute to the process of online radicalisation: (1) deindividuation; (2) the imagined community; and (3) mortality salience. Deindividuation is understood as the state where inner restraints are lost; perceived anonymity on the internet is considered a key prerequisite for this state, as studies show that individuals who believe their identity is not known are likely to behave in an aggressive manner.<sup>49</sup> The online space can also make an extremist cause appear much more popular and widely supported than it is in reality.<sup>50</sup> Fake accounts and blurred identities can create a notion that certain chat rooms and discussion forums are widely populated hosting a vibrant community of activists who are ready to endorse any violent action that individuals carry out on their behalf.<sup>51</sup> Whilst the overall number of actual users may be low, the instilled sense of togetherness that such online spaces create, whereby individuals are united by shared ideas and vision of the world can serve as a powerful sanctuary from and even substitute for reality.

The third factor, mortality salience is linked to increased sense of identification and pride in one's own country, religion, gender, race, etc.<sup>52</sup> Studies show that there is a positive correlation between the mortality salience effect and the likelihood that indi-

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<sup>46</sup> Daniel Koehler, "The Radical Online: Individual Radicalization Processes and the Role of the Internet," *Journal for Deradicalization*, no. 1 (2014).

<sup>47</sup> The Soufan Center, *White Supremacy Extremism: The Transnational Rise of the Violent White Supremacist Movement* (New York, NY: The Soufan Center, 2019).

<sup>48</sup> Andrew Silke, "The Internet and Terrorist Radicalisation: The Psychological Dimension" in Hans-Liudger Dienel (eds.), *Terrorism and the Internet*, IOS Press, 2010, pp. 27-39.

<sup>49</sup> Andrew Silke, "The Internet and Terrorist Radicalisation: The Psychological Dimension," in Hans-Liudger Dienel (eds.), *Terrorism and the Internet*, IOS Press, 2010, pp. 27-39.

<sup>50</sup> Andrew Silke, "The Internet and Terrorist Radicalisation: The Psychological Dimension," in Hans-Liudger Dienel (eds.), *Terrorism and the Internet*, IOS Press, 2010, pp. 27-39.

<sup>51</sup> Andrew Silke, "The Internet and Terrorist Radicalisation: The Psychological Dimension," in Hans-Liudger Dienel (eds.), *Terrorism and the Internet*, IOS Press, 2010, pp. 27-39.

<sup>52</sup> Andrew Silke, "The Internet and Terrorist Radicalisation: The Psychological Dimension," in Hans-Liudger Dienel (eds.), *Terrorism and the Internet*, IOS Press, 2010, pp. 27-39.

viduals exposed to this effect may adopt violent extremism.<sup>53</sup> For example, recent research conducted in the Netherlands has indicated that mortality salience has led to less favourable attitudes about Muslims and multiculturalism among participants with high (rather than low) national identification and low (rather than high) self-esteem.<sup>54</sup> The same research has also indicated that mortality salience has led participants with high national identification and low self-esteem to increase their support for traditional festivities with purported racist elements.<sup>55</sup>

## 3.2. EU Policy Context

There is no universally accepted definition of terrorism and the meaning of the concept has been diluted through its use in popular nomenclature.<sup>56</sup> As a result, the definition widely varies across states and scholarship. With regard to acts of terror, The UN Security Council has noted that:

criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.<sup>57</sup>

The EU has defined terrorism as intentional acts (offences under national law) which aim to: seriously intimidate a population; unduly compel a government or international organisation to perform or abstain from any act; or seriously destabilise or

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<sup>53</sup> Vergani, Matteo, *Mortality salience and violent extremism: terror management theory and understanding radicalisation in Australia*, Monash University, 2017 (Thesis).

<sup>54</sup> Mandy Tjew-A-Sin and Sander Leon Koole, "[Terror Management in a Multicultural Society: Effects of Mortality Salience on Attitudes to Multiculturalism Are Moderated by National Identification and Self-Esteem Among Native Dutch People](#)," *Frontiers in Psychology*, vol. 9, 15 May 2018.

<sup>55</sup> Mandy Tjew-A-Sin and Sander Leon Koole, "[Terror Management in a Multicultural Society: Effects of Mortality Salience on Attitudes to Multiculturalism Are Moderated by National Identification and Self-Esteem Among Native Dutch People](#)," *Frontiers in Psychology*, vol. 9, 15 May 2018.

<sup>56</sup> Gary LaFree, "[Is Antifa a Terrorist Group?](#)," *Society* 55 (2018), pp. 248–252; Jörg Matthes et al., "[Who Differentiates between Muslims and Islamist Terrorists in Terrorism News Coverage? An Actor-Based Approach](#)," *Journalism Studies*, vol. 21:15 (2020), pp. 2135–2153.

<sup>57</sup> United Nations Security Council, [Security Council Resolution 1566](#) (2004).

destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation.<sup>58</sup> This definition is set out in EU Directive 2017/541 on combatting terrorism which extends the scope of the application of the criminal law by Member States to terrorism related threats and activity within the EU.<sup>59</sup> The Directive covers an extensive range of terrorist offences, including crimes related to terrorist acts, financing, providing and receiving terrorist training, public provocation of terrorism, travel for the purpose of terrorism, as well as aiding and abetting, inciting, attempting, or facilitating these offences.<sup>60</sup>

According to the *EU Terrorism Situation and Trend Report*, in 2019 a total of 119 completed, failed, and foiled terrorist attacks were reported by 13 EU Member States.<sup>61</sup> In 2020, the number completed, failed, and foiled terrorist attacks was 57.<sup>62</sup> Table 1 provides a summary overview of the types of these attacks. The type of a total of 6 terror-related attacks was not specified.

**Table 1: Number and Types of Reported Terrorist Attacks in the EU – 2019 and 2020**

Attack Type	Definition	Number	
		2019	2020
Ethno-Nationalist and Separatist	Ethno-nationalist and separatist terrorist groups are motivated by nationalism, ethnicity and/ or religion. Separatist groups seek to carve out a state for themselves from a larger country or annexe territory from one country to that of another. Left- or right-wing ideological elements are not uncommon in these types of groups. The Irish Republican Army (IRA), the Basque ETA, and the Kurdish PKK organisations fall into this category.	57	14

<sup>58</sup> European Commission, [Directive \(EU\) 2017/541 of the European Parliament and of the Council of 15 March 2017 on Combating Terrorism and Replacing Council Framework Decision 2002/475/JHA and Amending Council Decision 2005/671/JHA](#).

<sup>59</sup> International Commission of Jurists, [Counter-Terrorism and Human Rights in the Courts: Guidance for Judges, Prosecutors, and Lawyers on Application of EU Directive 2017/541 on Combatting Terrorism](#), ICJ, November 2020.

<sup>60</sup> International Commission of Jurists, [Counter-Terrorism and Human Rights in the Courts: Guidance for Judges, Prosecutors, and Lawyers on Application of EU Directive 2017/541 on Combatting Terrorism](#), ICJ, November 2020.

<sup>61</sup> EUROPOL, [European Union Terrorism Situation and Trend Report \(TE-SAT\)](#) (2020).

<sup>62</sup> EUROPOL, [European Union Terrorism Situation and Trend Report \(TE-SAT\)](#) (2021).

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<p>Left-Wing and Anarchist Terrorism</p>	<p>Left-wing terrorist groups are pursuing via violent means to trigger the revolution against the political, social and economic system of a state, in order to introduce socialism and eventually establish a communist and a classless society. Their ideology is often Marxist-Leninist. Examples of left-wing terrorist groups are the Italian Brigade Rosse ('Red Brigades') and the Greek Revolutionary Organisation 17 November. Anarchist terrorism, is an umbrella term, is used to describe violent acts committed by groups (or to a lesser extent by individuals) affiliated with different anarchist ideologies. They promote a revolutionary, anti-capitalist and anti-authoritarian agenda. Examples of anarchist terrorist groups are the Italian Federazione Anarchica Informale ('Informal Anarchist Federation') or the Greek Synomosia Pynon tis Fotias ('Conspiracy of Cells of Fire').</p>	<p>26</p>	<p>25</p>
<p>Jihadist</p>	<p>Jihadism is defined as a violent sub-current of Salafism, a revivalist Sunni Muslim movement that rejects democracy and elected parliaments, arguing that human legislation is at variance with God's status as the sole lawgiver. Jihadists aim to create an Islamic state governed exclusively by Islamic law (shari'a), as interpreted by them. Major representatives of jihadist groups are the al-Qaeda network and the so-called Islamic State. Contrary to other Salafist currents, which are mostly quietist, jihadists legitimise the use of violence with a reference to the classical Islamic doctrines on jihad, a term which literally means 'striving' or 'exertion', but in Islamic law is treated as religiously sanctioned warfare. They use the historical comparison with the Christian crusades of the Middle Ages to describe current situations: Sunni Islam is believed to be under attack from a global non-Muslim alliance, comprising Christians, Jews and other religions such as Buddhists and Hindus but also secularists. Governments of the Muslim world allied with these 'enemies of Islam', for example through membership of the United Nations (UN), are declared non-Muslims – an act known as takfir – and, therefore, legitimate targets. Some jihadists include in their spectrum of perceived enemies Shi'is, Sufis and other Muslim minorities. In sum, the term jihadism refers to a violent ideology exploiting traditional Islamic concepts.</p>	<p>21</p>	<p>14</p>

Right-Wing	Right-wing terrorism refers to the use of terrorist violence by right-wing extremists. Variants of right-wing extremism are neo-Nazism, neo-fascism and ultra-nationalist formations. Right-wing terrorism seeks to change the entire political, social and economic system on a right-wing extremist model. A core concept in right-wing extremism is supremacism or the idea that a certain group of people sharing a common element (nation, race, culture, etc.) is superior to all other people. Seeing themselves in a supreme position, the particular group considers it to be their natural right to dominate the rest of the population. In addition, right-wing extremist ideologies feed on a variety of hateful sub-cultures, commonly fighting back against diversity in society and equal rights of minorities. Racist behaviour, authoritarianism, xenophobia, misogyny and hostility to lesbian, gay, bisexual, transgender and queer (LGBTQ) communities and immigration are commonly found attitudes in right-wing extremists.	6	14
Single-Issue Violent Extremist	Single-issue extremist and terrorist groups use criminal means to change a specific policy or practice, as opposed to replacing the entire political, social and economic system in a society. The groups within this category are concerned, for example, with animal rights, environmental protection or anti-abortion campaigns. Examples of groups in this category are the Earth Liberation Front (ELF) and the Animal Liberation Front (ALF).	3	No data

Source: Based on EUROPOL 2020;<sup>63</sup> EUROPOL 2021.<sup>64</sup>

Preventing and countering all forms of violent extremism is a central element of the EU security policy. At a very basic level, this includes promoting the implementation of integrated mechanisms and approaches for the early identification of terror-related risks, including by ensuring effective operational capacity for risk assessment, risk monitoring, data and intelligence sharing, as well as investigating and prosecuting terrorist acts and conspiracies.<sup>65</sup> Countering the spread of illicit content online is also

<sup>63</sup> EUROPOL, *European Union Terrorism Situation and Trend Report (TE-SAT)* (2020).

<sup>64</sup> EUROPOL, *European Union Terrorism Situation and Trend Report (TE-SAT)* (2021).

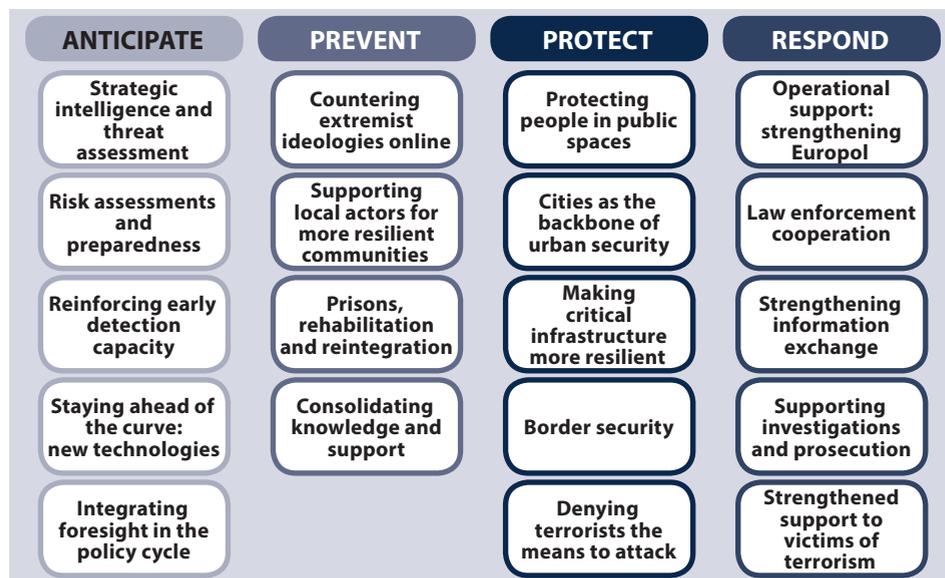
<sup>65</sup> European Commission, *Communication from the Commission on the EU Security Union Strategy*, COM(2020) 605, 24 July 2020.

### 3. The Concepts of Terrorism and Radicalisation

a key priority.<sup>66</sup> The EU Counter-Terrorism Agenda that was adopted in December 2020 is underpinned by four pillars (Figure 3). These include:

- Anticipating existing and emerging threats in Europe.
- Preventing attacks from occurring, by addressing and better countering radicalisation and extremist ideologies before they take root.
- Protecting the public by reducing vulnerabilities, be it in border management, or the security of public spaces, or critical infrastructures that are essential for the functioning of societies and the economy.
- Responding to attacks when they occur to bring perpetrators to justice and to guarantee that victims get the support and protection they need.<sup>67</sup>

Figure 3: EU Counter-Terrorism Agenda – Priority Areas



Source: Developed by the authors based on EC 2020.<sup>68</sup>

<sup>66</sup> European Commission, [Communication from the Commission on the EU Security Union Strategy](#), COM(2020) 605, 24 July 2020.

<sup>67</sup> European Commission, [Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: A Counter-Terrorism Agenda for the EU: Anticipate, Prevent, Protect, Respond](#), COM(2020) 795, 9 December 2020.

<sup>68</sup> European Commission, [Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: A Counter-Terrorism Agenda for the EU: Anticipate, Prevent, Protect, Respond](#), COM(2020) 795, 9 December 2020.

## 4. CRIMINAL PROCEDURAL RIGHTS IN TERROR-RELATED CASES

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The heightened risk of terrorism over the past two decades in the aftermath of 9/11 and the rise of ISIS has led to the tightening of security in different spheres of social activity. Airport security, public spaces protection, stop-and-search policies, and surveillance are indicative in this regard. Given the randomness, impact, and potential severity of terrorist attacks, their prevention and countering put tremendous pressure on law enforcement and intelligence services which, under certain circumstance may even result in the adoption of questionable practices.<sup>69</sup> In some occasions, the risk of terrorism may even be exploited for disproportionately limiting civil liberties.<sup>70</sup>

While some problematic cases of overreach, such as police brutality or even torture, have received a fair amount of media and political attention, whilst other cases have received a more muted response from the public and politicians. This partially stems from the latter cases being less media worthy and the fact that it may not be considered popular to protect or advocate for the rights of suspected terrorists or radicals. Furthermore, since terrorist attacks are not only physically and emotionally scarring for a community or a state, a politician portrayed as curtailing law enforcement counterterrorism efforts could be perceived as weak on crime and security.<sup>71</sup> Thus, in the political calculus, allowing law enforcement to operate with a heavier hand when it comes to preventing terrorism may seem an appealing option.<sup>72</sup>

According to Europol, in 2019 EU Member States reported that 1 004 terrorist arrests were carried out with nearly half of these (436) on suspicion of jihadist terrorism (Table 2).<sup>73</sup> This trend has remained unchanged in 2020, whereby 245 of the total 449 arrests were on suspicion of jihadist terrorism.<sup>74</sup> The number of convictions and acquittals for jihadist terrorism in 2019 and 2020 was also the highest – 362 and 314 respectively – in comparison to other types of terrorism. The observed trend in terrorist arrests is not

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<sup>69</sup> John Yoo, *Memorandum for William J. Haynes II, General Counsel of the Department of Defense Re: Military Interrogation of Alien Unlawful Combatants Held Outside the United States* (2003).

<sup>70</sup> Michael Clarke, “Widening the Net: China’s Anti-Terror Laws and Human Rights in the Xinjiang Uyghur Autonomous Region,” *The International Journal of Human Rights*, vol. 14:4 (2010), pp. 542-558; Council of Europe, “Misuse of Anti-Terror Legislation Threatens Freedom of Expression,” Human Rights Comment, 4 December 2018.

<sup>71</sup> Engy Abdelkader, “A Comparative Analysis of European Islamophobia: France, UK, Germany, Netherlands, and Sweden,” *Journal of Islamic and Near Eastern Law*, vol. 16:1 (2017).

<sup>72</sup> Bernd Reiter, “Framing Non-Whites and Producing Second-Class Citizens in France and Portugal,” *Journal of Ethnic and Migration Studies*, vol. 38:7 (2012), pp. 1067-1084.

<sup>73</sup> EUROPOL, *European Union Terrorism Situation and Trend Report (TE-SAT)* (2020).

<sup>74</sup> EUROPOL, *European Union Terrorism Situation and Trend Report (TE-SAT)* (2021).

#### 4. Criminal Procedural Rights in Terror-Related Cases

entirely consistent with the types of terrorist attacks that have taken place across the EU in the period 2017-2020. In 2020, Member States reported 25 left-wing, 14 separatist and 14 jihadist attacks. Out of the 119 completed, foiled, and failed terrorist attacks that were reported by Member States in 2019, 57 attacks were categorised as ethno-nationalist and separatist and 21 attacks were categorised as jihadist. Similarly, in 2017 and 2018 Member States reported 137 and 83 ethno-nationalist attacks and 33 and 24 jihadist attacks, respectively. By contrast, of the 5 358 terrorist arrests that have been carried out in 2015-2019, 3 057 were on suspicion of jihadist terrorism.<sup>75</sup>

**Table 2: Trends in Terrorist Arrests in the EU in 2019 and 2020**

	Jihadist		Sepa- ratist		Left- Wing		Right- Wing		Single- Issue		Not- spe- cified		Total	
	2019	2020	2019	2020	2019	2020	2019	2020	2019	2020	2019	2020	2019	2020
<b>Attacks</b>	21	14	57	14	26	25	6	4	3	-	6	-	119	57
<b>Arrests</b>	436	254	48	39	111	52	21	34	2	1	386	69	1004	449
<b>Convictions and Acquittals</b>	362	314	98	41	48	48	5	11	-	-	7	8	520	422

Source: Based on EUROPOL, 2020;<sup>76</sup> EUROPOL, 2021.<sup>77</sup>

Hard-line immigration policies that have been introduced after 9/11 and more recently, following the rise of ISIS in Iraq and Syria have exacerbated negative views of migrants and minorities, and in particular Muslims.<sup>78</sup> These views are showcased in a 2016 survey of ten EU countries which indicated that 59% of people thought that the influx of refugees has increased the chances of terrorist attacks, while 43% have generally unfavourable views of Muslims in their society.<sup>79</sup> It should be mentioned that this link is not always entirely unfounded, as a few large-scale or high-profile attacks across Europe have been carried out by foreigners – a fact which is intensely scrutinised and exploited by the media and politicians for a variety of reasons.<sup>80</sup> As a result,

<sup>75</sup> EUROPOL, *European Union Terrorism Situation and Trend Report (TE-SAT)* (2020).

<sup>76</sup> EUROPOL, *European Union Terrorism Situation and Trend Report (TE-SAT)* (2020).

<sup>77</sup> EUROPOL, *European Union Terrorism Situation and Trend Report (TE-SAT)* (2021).

<sup>78</sup> Barbara Franz, "Europe's Muslim Youth: An Inquiry into the Politics of Discrimination, Relative Deprivation, and Identity Formation," *Mediterranean Quarterly*, vol. 18:1 (2007), pp. 89-112.

<sup>79</sup> Bruce Stokes, "The Immigration Crisis Is Tearing Europe Apart," *Foreign Policy*, updated 22 July 2016.

<sup>80</sup> Vincenzo Bove and Tobias Böhmelt, "Does Immigration Induce Terrorism?," *The Journal of Politics*, vol. 78:2 (2016).

“fears about terrorism [have] become linked to contemporary folk devils” of immigrants and foreigners.<sup>81</sup>

Negative views of foreigners may influence the ways in which law enforcement address the terrorist threat, the use of ethnic profiling being a case in point.<sup>82</sup> This is evident, for example, from the frequency at which law enforcement across Europe focus on the religiosity of Muslim detainees, asking how often they go to mosques and pray, and if they follow Ramadan.<sup>83</sup> Likewise, another study found that of the Muslims who were stopped by the police across Europe, 47% believed the stop-and-search was due to the fact that they were wearing traditional or religious garb.<sup>84</sup> In Italy, for instance, from 2001 to 2006 there were 200 arrests on terrorism charges of individuals identifying themselves as culturally or religiously Muslim but only two individuals were ever charged with terrorism-related crimes, which indicates an assumption of guilt on the basis of ethnic background or religion.<sup>85</sup> Additionally, as many of those arrests stem only from circumstantial evidence that would otherwise not lead to an arrest of another individual from a different background or religion, there is an assumption that Muslims may be innately terrorists or dangerous and need to prove otherwise to law enforcement.

This has resulted in a minority group, which already faces discrimination and violence, being mistreated even further by law enforcement and becoming increasingly isolated and alienated from society.<sup>86</sup> This trend is likely to be exacerbated even further in the immediate aftermath of a terrorist attack which is carried out by an individual of the same ethnic minority or religious profile – and thus providing fodder for radical rhetoric and greater marginalisation.<sup>87</sup> The mistreatment by law enforcement can include relatively minor inconvenience such as police stops or identity checks, where one-third of Muslims believe they were stopped based on their background – though

<sup>81</sup> Gabe Mythen and Sandra Walklate, “[Terrorism, Risk and International Security: The Perils of Asking ‘What If?’](#),” *Security Dialogue*, vol. 39:2/3 (2008): 229.

<sup>82</sup> Open Society Justice Initiative, [Ethnic Profiling in the European Union: Pervasive, Ineffective, and Discriminatory](#) (New York: Open Society Institute, 2009).

<sup>83</sup> Open Society Justice Initiative, [Ethnic Profiling in the European Union: Pervasive, Ineffective, and Discriminatory](#) (New York: Open Society Institute, 2009).

<sup>84</sup> European Union Agency for Fundamental Rights, [Second European Union Minorities and Discrimination Survey](#) (Luxembourg: Publications Office of the European Union, 2017).

<sup>85</sup> Open Society Justice Initiative, [Ethnic Profiling in the European Union: Pervasive, Ineffective, and Discriminatory](#) (New York: Open Society Institute, 2009).

<sup>86</sup> Tufyal Choudhury and Helen Fenwick, [The Impact of Counter-Terrorism Measures on Muslim Communities](#), Equality and Human Rights Commission Research report 72 (Manchester 2011).

<sup>87</sup> Open Society Justice Initiative, [Ethnic Profiling in the European Union: Pervasive, Ineffective, and Discriminatory](#) (New York: Open Society Institute, 2009).

only 16% said they were treated disrespectfully.<sup>88</sup> However, it may also include more egregious misuse of power or abuse of authority – including infringing on basic individual criminal procedural rights.

Upholding criminal procedural rights in the context of counter-terrorism constitutes a particular challenge which strikes at the heart of the freedom-security debate. A critical aspect of this debate is the need for striking a balance between measures that may appear politically advantageous but overall are less effective in countering the terrorism threat, and tried and tested measures for dealing with terrorism which in the short-term might appear less popular. The sub-sections below discuss the implementation of the measures that make up the Roadmap for Strengthening Procedural Rights of Suspected or Accused Persons in Criminal Proceedings (part of the 2009 Stockholm Programme) using indicative legal cases.<sup>89</sup> In addressing each of the measures identified in the Roadmap, the corresponding provisions of relevant EU directives are considered. The case-law that is reviewed covers both EU Member States and non-EU countries. It is intended to illustrate and elucidate different aspects related to the application of criminal procedural safeguards in the context of counter-terrorism.

### 4.1. Upholding the Presumption of Innocence

Article 6 (2) of the European Convention on Human Rights (ECHR) stipulates that “everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”<sup>90</sup> This is essential for ensuring that those charged with criminal offences are granted fair trial. The obligation to uphold the presumption of innocence of those charged with criminal offences is also codified in Article 48 (1) of the Charter of Fundamental Rights of the European Union.<sup>91</sup>

EU Directive 2016/343 lays down common minimum rules concerning certain aspects of the presumption of innocence in criminal proceedings and the right to be present at the trial in criminal proceedings.<sup>92</sup> The Directive applies to natural persons at all stages of the criminal proceedings. It guarantees, *inter alia*, the right of suspects and

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<sup>88</sup> European Union Agency for Fundamental Rights, *Second European Union Minorities and Discrimination Survey* (Luxembourg: Publications Office of the European Union, 2017).

<sup>89</sup> Council of the European Union, *Resolution of the Council of 30 November 2009 on a Roadmap for Strengthening Procedural Rights of Suspected or Accused Persons in Criminal Proceedings*.

<sup>90</sup> *European Convention on Human Rights* (1950).

<sup>91</sup> *Charter of Fundamental Rights of the European Union*, 2012/C 326/2, 26 October 2012.

<sup>92</sup> European Commission, *Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings*.

accused persons to remain silent in relation to the criminal offence that they are suspected or accused of having committed, as well as their right not to incriminate themselves.<sup>93</sup> What is more, Article 7 (5) of the Directive specifically states that the exercise by suspects and accused persons of the right to remain silent or of the right not to incriminate oneself shall not be used against them and shall not be considered to be evidence that they have committed the criminal offence concerned.<sup>94</sup>

Historically, there have been a number of cases related to an individual's presumption of innocence right having been violated in the context of terror-related cases, be it through premature arrest, unlawful detention, or search and seizure.<sup>95</sup> Amongst these cases are those in which the legal system has flipped the standards putting undue pressure on the accused to prove their innocence and treating them as if they are guilty until they do so. This can play out a number of ways, for example, when law enforcement officers question Muslims about their religiosity, many may feel as if they need to present themselves as non-practising Muslims and thus non-threatening. In other cases, one's right to remain silent has been used to assume a level of guilt from the individual by law enforcement, though this assumption is not always explicit. In other instances (Box 2) individuals have been compelled to account for their whereabouts to prove their innocence, with law enforcement and the court asserting that innocent people would have nothing to hide and thus would have no reason to hide their movements on a particular day.<sup>96</sup> In other cases, the act of remaining silent was considered a crime by itself based on the assumption that it was necessary for the government to compel suspects to speak on the grounds of public safety and, by not doing so, one is committing a criminal offense.<sup>97</sup> However, in one such case the court found that "public interest concerns cannot justify measures which extinguish the very essence of defence rights" and upheld one's right to silence and the closely related presumption of innocence.<sup>98</sup> However, it should be noted that while silence itself cannot be used as the sole factor for a conviction, choosing to remain silent also

<sup>93</sup> European Commission, [Directive \(EU\) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings](#).

<sup>94</sup> European Commission, [Directive \(EU\) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings](#).

<sup>95</sup> Elies Van Sliedregt, "A Contemporary Reflection on the Presumption of Innocence," *Revue internationale de droit penal*, vol. 80 (2009), pp. 247-267.

<sup>96</sup> [Heaney & McGuinness V. Ireland \(App No. 34720/97\)](#) (2000).

<sup>97</sup> [Quinn V. Ireland \(Application No. 36887/97\)](#) (2001).

<sup>98</sup> European Court of Human Rights, [National Security and European Case-Law](#) (Council of Europe/European Court of Human Rights, 2013).

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cannot be ignored as an indicator of suspicion or guilt if there are other external circumstances that suggest guilt or criminal involvement.<sup>99</sup>

#### **Box 2: Presumption of innocence – *Quinn v. Ireland*<sup>100</sup>**

In 1996 a police car escorting a van was rammed and surrounded by armed men who then shot the officers inside, seriously injuring one and instantly killing the other. The police quickly surmised that the IRA was involved and arrested 63 people for questioning, including Paul Quinn, an Irish national. The arrest came almost 6 weeks after the crime and was under section 30 of the Offences Against the State Act 1939 which allowed officers to arrest individuals suspected of being a member of the IRA. After his arrest, upon questioning Quinn said he had been in London when he had heard of the crime but refused to give further information on his location on advice of his lawyer. As a result of this refusal, he was charged with three counts of refusing to provide information of his movement to officers. Quinn appealed his sentence and conviction, first, to the Circuit Court which rejected his conviction appeal, and then to the European Court of Human Rights where Quinn argued that his rights to remain silent and to be presumed innocent had been violated when he was put in prison “for maintaining his defence rights”. The government argued that compelling suspects to speak was necessary for public safety. The ECtHR rebuffed this argument saying that public safety concerns cannot override an individual’s right to silence and privilege against self-incrimination and furthermore, due to the close link between these rights and the presumption of innocence, Article 6 (2) of the ECHR was violated.

Source: *Quinn v. Ireland*.<sup>101</sup>

### 4.2. Right to Translation and Interpretation

Article 6 (3) of the ECHR stipulates that everyone charged with a criminal offence has the right to be informed promptly, in a language which they understand and in detail, of the nature and cause of the accusation against them.<sup>102</sup> Everyone charged with a criminal offence is also entitled to have the free assistance of an interpreter if they cannot understand or speak the language used in court. Article 5 (2) of the Convention further guarantees that everyone who is arrested has the right to be informed promptly, in a language which they understand, of the reasons for their arrest and of

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<sup>99</sup> *Hamill V. The United Kingdom (Application No. 21656/93)* (1997).

<sup>100</sup> *Quinn V. Ireland (Application No. 36887/97)* (2001).

<sup>101</sup> *Quinn V. Ireland (Application No. 36887/97)* (2001). See also *Heaney and McGuinness v. Ireland (Application 34720/97)* (2000); European Court of Human Rights, “*Terrorism and the European Convention on Human Rights*,” *Factsheet – Terrorism and ECHR*, April 2001.

<sup>102</sup> *European Convention on Human Rights* (1950).

any charge against them.<sup>103</sup> The right to translation and interpretation throughout criminal proceedings is therefore enshrined in these provisions.

Article 47 of the Charter of Fundamental Rights of the European Union guarantees the right to an effective remedy and a fair trial.<sup>104</sup> Under this Article, everyone shall have the possibility of being advised, defended, and represented in court. Article 48 (2) further guarantees that the rights of defence of anyone who has been charged are respected.<sup>105</sup> Taken together, these two Articles lay out the legal basis for ensuring that those charged with criminal offences are provided with free interpretation and translation services in case they do not understand the official language used in court. Such services are intended to ensure that those charged with criminal offences are in a position to fully exercise their right to effective legal defence.

Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings lays down rules concerning the right to interpretation and translation in criminal proceedings and proceedings for the execution of a European arrest warrant.<sup>106</sup> This right applies to persons from the time that they are made aware by the competent authorities that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings. The Directive seeks to ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided with interpretation before investigative and judicial authorities, including during police questioning, all court hearings, and any necessary interim hearings.<sup>107</sup> Member States are obliged to have in place mechanisms for ascertaining whether suspected and accused persons require interpretation services, as well as for providing interpretation of adequate quality during criminal proceedings. Suspected or accused persons who do not understand the language of the criminal proceedings concerned also need to be provided with a writ-

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<sup>103</sup> [European Convention on Human Rights \(1950\)](#).

<sup>104</sup> European Union, [Charter of Fundamental Rights of the European Union](#), 2012/C 326/02, 26 October 2012.

<sup>105</sup> European Union, [Charter of Fundamental Rights of the European Union](#), 2012/C 326/02, 26 October 2012.

<sup>106</sup> European Commission, [Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings](#).

<sup>107</sup> European Commission, [Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings](#).

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ten translation of all documents which are essential to ensure that they are able to exercise their right of defence and to safeguard the fairness of the proceedings.<sup>108</sup>

Given the trans-national nature of terrorism, it is plausible that individuals who are involved in terror-related offences in the territory of a particular country may not be nationals of this country, or well versed in the language used in that country. In case such individuals are arrested or charged with offences, they would require interpretation and translation services, in order to ensure that their right to defence is safeguarded. Moreover, such individuals would also require interpretation during police questioning and providing adequate interpretation services can facilitate intelligence gathering. By contrast, a failure to provide adequate interpretation services may result in the suspected or accused individuals unintentionally incriminating themselves due to a poor command of the local language (Box 3).

#### **Box 3: Translation and Interpretation – *Baytar v. Turkey***<sup>109</sup>

On 30 April 2001 Ms Gülüstan Baytar, a Turkish national paid a visit to her brother, who was being held in Muş Prison in connection with a case involving the PKK. Whilst at the prison, Ms Baytar was detained after a note written by a member of the PKK was found on her. She was questioned in Turkish on the following day and stated that she had found the note by chance at the bus stop and had picked it up out of curiosity. Five months later, the State Security Court acquitted her after it found her version of events to be credible. In December 2001, Ms Baytar again visited her brother in prison and was arrested after a 16-page document, written on onion-skin paper and protected by adhesive tape, had been found in her possession during the search. This document contained instructions with regard to the PKK's strategy inside prisons. She was questioned the following day, in Turkish, by two gendarmes and stated that she had found the document accidentally in the waiting room and picked it up. During the hearing before a judge – this time in the presence of an interpreter – Ms Baytar submitted that the statement which she had just given to the gendarmes referred to the events of 30 April 2001. She was placed in pre-trial detention and criminal proceedings were brought before the State Security Court for membership of and support and assistance to an illegal armed organisation.

<sup>108</sup> European Commission, [Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings](#).

<sup>109</sup> European Court of Human Rights, [“Assistance by an interpreter must be guaranteed from the investigation stage onwards,” Press release, ECHR 298, 14 October 2014](#). See also [Baytar v. Turkey](#) (Application no. 45440/04) 2014.

In May 2002, Ms Baytar was sentenced to imprisonment of three years and nine months; however, the judgement was quashed on procedural grounds and in April 2018 the State Supreme Court ordered her immediate release. In 2004, Ms Baytar lodged a complaint with European Court of Human Rights (ECtHR) about the lack of interpretation when she was questioned whilst in police custody. The Court reiterated that defendants who do not have a command of the language used in court have the right to the free assistance of an interpreter and that the assistance of an interpreter must be guaranteed from the investigation stage onwards. Ms Baytar's insufficient command of the Turkish language meant that the services of an interpreter were required. The Court considered that without the possibility of having the questions put to her interpreted, Ms Baytar was not in a position to develop an accurate idea of the alleged offences and fully appreciate the consequences of waiving her right to keep silent and the right to legal assistance.

Source: *Baytar v. Turkey*.<sup>110</sup>

### 4.3. Right to Information

Article 5 (1c) of the ECHR allows the lawful arrest or detention of a person effected for the purpose of bringing them before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent their committing an offence or fleeing after having done so.<sup>111</sup> At the same time, Article 5 (2) guarantees that everyone who is arrested has to be informed promptly of the reasons for their arrest and of any charge against them. Article 6 (3) stipulates that everyone charged with a criminal offence has to be provided with information – promptly and in detail – regarding the nature and cause of the accusation against them.<sup>112</sup> The Convention thus provides a legal basis for preventing arbitrary arrests and ensuring that those suspected and accused of criminal offences understand the grounds upon which they are detained.

Article 47 of the Charter of Fundamental Rights of the European Union guarantees the right to an effective remedy and a fair trial.<sup>113</sup> Under this Article, everyone shall have the possibility of being advised, defended, and represented in court. Article 48 (2) further guarantees that the rights of defence of anyone who has been charged are

<sup>110</sup> European Court of Human Rights, "[Assistance by an interpreter must be guaranteed from the investigation stage onwards](#)," *Press release*, ECHR 298, 14 October 2014. See also *Baytar v. Turkey* (Application no. 45440/04), 2014.

<sup>111</sup> [European Convention on Human Rights](#), 1950.

<sup>112</sup> [European Convention on Human Rights](#), 1950.

<sup>113</sup> European Union, [Charter of Fundamental Rights of the European Union](#), 2012/C 326/02, 26 October 2012.

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respected.<sup>114</sup> Taken together, these two Articles lay out the legal basis for ensuring that those charged with criminal offences are provided with information regarding the offence that they are suspected or accused of having committed.

Directive 2012/13/EU on the right to information in criminal proceedings lays down rules concerning the right to information of suspects or accused persons, relating to their rights in criminal proceedings and to the accusation against them, as well as rules concerning the right to information of persons subject to a European Arrest Warrant.<sup>115</sup> These rules apply from the time persons are made aware by the competent authorities that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings. The Directive seeks to ensure that that suspects or accused persons are provided with information about the criminal act they are suspected or accused of having committed and that such information is provided promptly and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the defence.<sup>116</sup> Under this Directive, Member States shall ensure that suspects or accused persons who are arrested or detained are informed of the reasons for their arrest or detention, including the criminal act they are suspected or accused of having committed; and that any documents related to the specific case in the possession of the competent authorities which are essential to challenging effectively, in accordance with national law, the lawfulness of the arrest or detention, are made available to arrested persons or to their lawyers.<sup>117</sup>

Providing individuals that are suspected or accused of having committed terror-related offences with information regarding their arrest or the charges that are brought against them may raise certain procedural challenges, as such information may be considered sensitive due to national security considerations. However, Directive 2012/13/EU stipulates that a decision to refuse access to certain materials is taken by a judicial authority or is at least subject to judicial review.<sup>118</sup> In any event, it is important that those suspected or accused of terror-related offences are arrested and charged on reasonable grounds (Box 4).

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<sup>114</sup> European Union, [Charter of Fundamental Rights of the European Union](#), 2012/C 326/02, 26 October 2012.

<sup>115</sup> European Commission, [Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings](#).

<sup>116</sup> European Commission, [Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings](#).

<sup>117</sup> European Commission, [Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings](#).

<sup>118</sup> European Commission, [Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings](#).

**Box 4: Right to Information – *El-Masri v. “The former Yugoslav Republic of Macedonia”***<sup>119</sup>

Mr Khaled El-Masri, a German national of Lebanese origin arrived in the former Yugoslav Republic of Macedonia (now North Macedonia) by bus on 31 December 2003. At the border crossing, he was arrested by the local police and taken to a hotel in the capital, Skopje where he was kept locked in a room for 23 days and questioned in English despite his limited knowledge of the language about his alleged ties with terrorist organisations. His requests to contact the German embassy were refused. On 23 January 2004, Mr El-Masri handcuffed and blindfolded, was taken to Skopje Airport, where he was severely beaten by disguised men. Shackled and hooded, he was then flown to Afghanistan where he was kept in custody until the end of May 2004. He was then flown back to Albania and then to Germany. The case of Mr El-Masri has been described as an example of rendition.

Mr El-Masri lodged an application with the European Court of Human Rights in 2009. He complained, inter alia, about being detained unlawfully without any arrest warrant issued and subject to ill-human and degrading treatment. The Court found that the Government of “the former Yugoslav Republic of Macedonia” was responsible for violating Mr El-Masri’s rights under Article 5 of the European Convention on Human Rights during the entire period of his captivity. There had been no court order for his detention, as required under national law, and no custody records of his confinement in the hotel, a detention place outside any judicial framework.

Source: *El-Masri v. “The former Yugoslav Republic of Macedonia”*<sup>120</sup>

<sup>119</sup> European Court of Human Rights, “Macedonian Government responsible for torture, ill-treatment and secret rendition of a man suspected of terrorist ties,” *Press Release*, ECHR 453, 13 December 2012; European Court of Human Rights, “[Terrorism and the European Convention on Human Rights](#),” *Factsheet – Terrorism and ECHR*, April 2021. See also *El-Masri v. the former Yugoslav Republic of Macedonia (Application no. 39630/09)* (2012).

<sup>120</sup> European Court of Human Rights, “Macedonian Government responsible for torture, ill-treatment and secret rendition of a man suspected of terrorist ties,” *Press Release*, ECHR 453, 13 December 2012; European Court of Human Rights, “[Terrorism and the European Convention on Human Rights](#),” *Factsheet – Terrorism and ECHR*, April 2021. See also *El-Masri v. the former Yugoslav Republic of Macedonia (Application no. 39630/09)* (2012).

#### 4.4. Right to Legal Advice and Legal Aid and Right to Communicate with Relatives, Employers and Consular Authorities

Article 3 of the ECHR stipulates that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.<sup>121</sup> This includes the prohibition of the practice of so called ‘extraordinary renditions’, whereby individuals suspected or accused of criminal offences – terror-related or other types – are sent to third countries where the rules regarding the treatment of prisoners are less strict.

Article 6 (3) of the Convention guarantees the rights of everyone charged with a criminal offence to have adequate time and facilities for the preparation of their defence and to defend themselves in person or through legal assistance of their own choosing; or to be provided with free legal assistance if they do not have sufficient means to pay for it when the interests of justice so require.<sup>122</sup>

The right to legal defence and legal assistance is guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union which holds that everyone shall have the possibility of being advised, defended and represented and that legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.<sup>123</sup> Article 4 of the Charter addresses the prohibition of torture and inhuman or degrading treatment or punishment. In addition, Article 19 (2) addresses the prohibition of extraordinary renditions stating that no one may be removed, expelled or extradited to a State where there is a serious risk that they would be subjected to the death penalty, torture or other inhuman or degrading treatment, or punishment.<sup>124</sup>

Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty applies to suspects or accused persons in criminal proceedings from the time when they are made aware by the competent authorities that they are suspected or accused of having committed a criminal offence, and irre-

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<sup>121</sup> [European Convention on Human Rights \(1950\)](#).

<sup>122</sup> [European Convention on Human Rights \(1950\)](#).

<sup>123</sup> European Union, [Charter of Fundamental Rights of the European Union](#), 2012/C 326/02, 26 October 2012.

<sup>124</sup> European Union, [Charter of Fundamental Rights of the European Union](#), 2012/C 326/02, 26 October 2012.

spective of whether they are deprived of liberty.<sup>125</sup> It also applies to persons other than suspects or accused persons who, in the course of questioning by the police or by another law enforcement authority, become suspects or accused persons. The Directive contains provisions which aim to ensure that those suspected or accused of having committed criminal offences have timely and effective access to a lawyer.<sup>126</sup> Suspected or accused individuals who are deprived of liberty also have the right to have a third person – a relative, employer, or consular services in case the proceedings involve a non-national – informed about the deprivation of liberty without delay.<sup>127</sup>

Directive (EU) 2016/1919 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings lays down common minimum rules concerning the right to legal aid – the provision of public funding for the assistance of a lawyer which enables the exercise of the right of access to a lawyer.<sup>128</sup> Under this Directive, Member States shall ensure that legal aid is granted without undue delay, and at the latest before questioning by the police, by another law enforcement authority or by a judicial authority, or before investigative or evidence-gathering acts are carried out.

The legal safeguards regarding the right for legal assistance or access to a lawyer shortly after arrest or detainment shield suspects from being pressured into speaking or providing information – which may unduly incriminate the suspect. This is especially important in case the legal system or law enforcement purposely delays or denies access to an individual in an effort to coerce or exert pressure on the suspect (Box 5). Such violations and delays can range from a few minutes, a few hours or even days, and can impact a person's ability to defend themselves in court by depriving

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<sup>125</sup> European Commission, [Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.](#)

<sup>126</sup> European Commission, [Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.](#)

<sup>127</sup> European Commission, [Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.](#)

<sup>128</sup> European Commission, [Directive \(EU\) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings.](#)

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them of adequate legal counsel at all times when questioned by law enforcement.<sup>129</sup> In this vein, ensuring that a lawyer is present protects both law enforcement authorities and the individual from accusations of, or actual, coerced confessions either through torture or other means.<sup>130</sup>

##### **Box 5: Incommunicado Police Custody – *Beortegui Martinez v. Spain*<sup>131</sup>**

The applicant, Xabier Beortegui Martinez, is a Spanish national who was born in 1980 and lives in Pamplona (Spain). On the night of 17 to 18 January 2011 Mr Beortegui Martinez was arrested at home by police officers in the context of a judicial investigation into a suspected offence of membership of EKIN, an organisation attached to the terrorist group ETA. His home was searched. During the journey by car to Madrid, Mr Beortegui Martinez, who was handcuffed, was allegedly subjected to threats, insults, and physical assaults by the four Guardia Civil officers accompanying him. On his arrival in Madrid he was taken to the Guardia Civil headquarters and placed in incommunicado police custody. He was not provided with access to an officially appointed lawyer until 1 am on 21 January 2011. Later that day, he was provided with a pre-written statement that he was allegedly supposed to memorise and present before an investigation judge before being released. The European Court of Human Rights (ECtHR) noted that Mr Beortegui Martinez had been held incommunicado in police custody for three days, during which time he had been unable to inform a person of his choice about his detention, or to be assisted by a lawyer of his own choosing, as provided by the rules applicable to incommunicado detention in police custody. He had also allegedly been unable to confer with his officially appointed lawyer in private before giving his statement while in custody. Having regard to the lack of a thorough and effective investigation into Mr Beortegui Martinez's arguable claims that he had been ill-treated while held incommunicado in police custody, the Court found that there had been a violation of Article 3 in its aspect relating to the investigation.

Source: *Beortegui Martinez v. Spain*.<sup>132</sup>

The provision of legal assistance can especially be an issue during or shortly after an attack, when the scope and scale of the violence is unknown and rapid responses to any potential additional threats may be required (Box 6). Such a scenario played out in the UK where law enforcement forces denied legal assistance to three 7/7 bombings

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<sup>129</sup> Elspeth Guild and Didier Bigo, *Anti & Counter-Terrorism and Human Rights in Europe* (London: Queen Mary University of London School of Law, 2018).

<sup>130</sup> *El Haski V. Belgium (Application No. 649/08)* (2012).

<sup>131</sup> *Beortegui Martinez v. Spain (Application no. 36286/14)*, (2016); European Court of Human Rights, "[Terrorism and the European Convention on Human Rights](#)," *Factsheet – Terrorism and the ECHR*, April 2021.

<sup>132</sup> *Beortegui Martinez v. Spain (Application no. 36286/14)* (2016).

suspects on the basis that further attacks were imminent and involving lawyers at this stage of the investigation could hinder the prevention of these attacks.<sup>133</sup>

**Box 6: Right to Legal Assistance – *Ibrahim and Others v. the United Kingdom***<sup>134</sup>

Four bombs were detonated, though failed to explode, on three underground trains and a bus in central London two weeks after the 7/7 suicide bombings. In the aftermath of these attacks four individuals were arrested, including Muktar Said Ibrahim. Upon arrest, safety interviews for the suspects were conducted in the absence of lawyers. Additionally, requests for lawyers were denied on the basis that there were reasonable suspicions that this “would lead to the alerting of other persons suspected of committing a terrorist offence but not yet arrested, which would make it more difficult to prevent an act of terrorism”. In court, the suspects argued that the bombs were never made to hurt people but instead were part of a stunt. The prosecutors pointed out had this been true, the suspects would have mentioned this during the safety interviews. Rejecting this claim, Ibrahim and others argued that the statements made during these interviews were invalid because they were made in the absence of a lawyer. The judge in the case agreed that the suspects had been incorrectly denied access to a lawyer, however the “infringement of their rights was of low significance”. On appeal to the ECtHR, the court rejected the suspects’ appeal and found that there were compelling reasons for Ibrahim and the two other applicants not to have had “access to a lawyer, given the exceptional circumstances in the aftermath of repeated terror attacks” and that there was enough relevant evidence to support a guilty verdict.

Source: *Ibrahim and Others v. the United Kingdom*.<sup>135</sup>

#### 4.5. Rights of Minors in Terror-Related Criminal Proceedings

Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings applies to children who are suspects or accused persons in criminal proceedings until the final determination of the question whether the suspect or accused person has committed a criminal offence.<sup>136</sup> The Directive also applies to children who were not initially suspects or accused persons

<sup>133</sup> *Ibrahim and Others v. The United Kingdom (Applications No. 50541/08, 50571/08, 50573/08 and 40351/09)* (2016).

<sup>134</sup> *Ibrahim and Others v. The United Kingdom (Applications Nos. 50541/08, 50571/08, 50573/08 and 40351/09)* (2016).

<sup>135</sup> *Ibrahim and Others v. The United Kingdom (Applications Nos. 50541/08, 50571/08, 50573/08 and 40351/09)* (2016).

<sup>136</sup> European Commission, [Directive \(EU\) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings](#).

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but become suspects or accused persons in the course of questioning by the police or by another law enforcement authority. Under this Directive, Member States are required to ensure that children are informed about their criminal procedural rights, including the right to have the holder of parental responsibility informed, the right to be assisted by a lawyer, the right to legal aid, and the right to protection of privacy whereby court hearings are held in the absence of the public and the media are encouraged to take safe-regulatory measures to ensure that this right is guaranteed.<sup>137</sup> Member States are further required to ensure that the deprivation of liberty of a child at any stage of the proceedings is limited to the shortest appropriate period of time. Deprivation of liberty, in particular detention, is to be imposed on children only as a measure of last resort and, where possible, the competent authorities have to use measures alternative to detention (alternative measures).<sup>138</sup> In case children are detained, they are to be held separately from adults, unless it is considered to be in the child's best interests not to do so.<sup>139</sup>

The right to legal assistance through a lawyer or by dint of legal aid in criminal proceedings is especially important for minors, as they may be more susceptible to coercion or threats than adults, and may not have as good familiarity with their rights. Legal assistance is necessary so that a minor can receive adequate assurances that all their rights are being fulfilled. Examples include a lawyer advocating for the wellbeing of minors who are suspected or accused of having committed criminal offences, or a lawyer acting on the behalf of a minor to ensure that the minor is treated in accordance with the special protections afforded to minors. Leaving minors without legal assistance makes them particularly vulnerable and risks compromising the integrity of the criminal proceedings. For one thing, if interrogated in the absence of a lawyer, a minor may feel compelled to make false confessions (Box 7).<sup>140</sup> This not only can result in negative consequences for the minor, such as being charged with offences that they have not committed but may also distort the investigation process and divert the attention of competent authorities from the actual perpetrators.

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<sup>137</sup> European Commission, [Directive \(EU\) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings](#).

<sup>138</sup> European Commission, [Directive \(EU\) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings](#).

<sup>139</sup> European Commission, [Directive \(EU\) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings](#).

<sup>140</sup> [Salduz V. Turkey \(Application 36391/02\)](#) (2008).

**Box 7: Rights of Minors in Criminal Proceedings – *Salduz v. Turkey***<sup>141</sup>

Yusuf Salduz, a Turkish national and minor at the time was arrested on suspicion of having participated in an illegal demonstration in support of the imprisoned leader of the PKK (the Kurdistan Workers' Party, an illegal organisation) on 29 May 2001. He was also accused of hanging an illegal banner from a bridge. On the following day, the police took a statement from Mr Salduz, without a lawyer being present, in which he admitted having taken part in the demonstration and having written the words on the banner. He subsequently denied the content of his police statement, alleging that it had been extracted from him under duress. In December 2001, the State Security Court convicted the applicant for aiding and abetting the PKK and sentenced him to four years and six months' imprisonment. His sentence was later reduced to two and a half years' imprisonment as he had been under 18 at the time of the offence. Mr Salduz's appeal to the Court of Cassation was dismissed in June 2002.

Mr Salduz lodged an application with the European Court of Human Rights in August 2002. Mr Salduz complained that he had been denied access to a lawyer while in police custody and had not obtained, at the final stage of the proceedings before the Court of Cassation, a copy of the written opinion of the Principal Public Prosecutor at that court. The Court considered that, even though the applicant had had the opportunity to challenge the evidence against him at his trial and subsequently on appeal, the absence of a lawyer during his period in police custody had irretrievably affected his defence rights.

Source: *Salduz v. Turkey*.<sup>142</sup>

#### 4.6. Pre-Trial Detention

Article 5 (3) of the ECHR stipulates that everyone arrested or detained on reasonable suspicion of having committed an offence shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial.<sup>143</sup> Those suspected or accused of criminal offences have to right to take proceedings by which the lawfulness of their detention can be established, as well as the right to compensation in case they are found to be a victim of an arbitrary detention or arrest.<sup>144</sup>

<sup>141</sup> *Salduz V. Turkey* (Application 36391/02) (2008). See also European Court of Human Rights, "Terrorism and the European Convention on Human Rights," *Factsheet – Terrorism and the ECHR*, April 2021.

<sup>142</sup> *Salduz V. Turkey*, (Application 36391/02), 2008. See also European Court of Human Rights, "Terrorism and the European Convention on Human Rights," *Factsheet – Terrorism and the ECHR*, April 2021.

<sup>143</sup> *European Convention on Human Rights* (1950).

<sup>144</sup> *European Convention on Human Rights* (1950).

#### 4. Criminal Procedural Rights in Terror-Related Cases

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The 'Green Paper on the Application of EU Criminal Justice Legislation' in the field of detention addresses the issue of pre-trial detention which covers the period until the sentence is final.<sup>145</sup> Pre-trial detention is a measure of an exceptional nature that is applied only when all other measures are judged to be insufficient. This limits the circumstances under which pre-trial detention is authorised and establishes specific criteria and procedures for its use, such as a court decision that suspects or accused pose a substantial risk of flight, a threat to the safety of the community, victims or witnesses, or a risk of hindering investigations.<sup>146</sup> The Green Paper notes that the time a person spends in pre-trial detention varies across Member States. It further points out that non-nationals are often at a disadvantage in obtaining bail because they have fewer ties with the jurisdiction and, as a result, are seen as a greater flight risk than national defendants.<sup>147</sup>

The use of pre-trial detention in the context of terrorism has received considerable attention in the years after 9/11, particularly as a result of the practice of arbitrary detention of terror suspects. Upon arrest, individuals can be detained for a certain amount of time (averaging 48 hours) after which they either have to be charged with a criminal offence, or released. Detaining individuals indefinitely without formally bringing charges against them in court is considered arbitrary or unlawful detention. Examples of arbitrary detention include cases of foreigners suspected of being involved in terrorism who were deported after a lengthy detention period<sup>148</sup> or even of an individual who was taken from Italy to Egypt, where the man was detained and tortured.<sup>149</sup> Relatedly, some detentions can be considered questionable for political reasons or motives, such as the detention of an individual in the UK who was carrying classified intelligence files as part of the Snowden leaks and was detained under the Terrorism Act. Following his detention, he was released after the legal nine-hour limit was reached – and after his electronics were all confiscated. On appeal, the ECtHR found that while the detention was technically legal it was used on a journalist and as

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<sup>145</sup> European Commission, *Green Paper: Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention*, COM(2011) 327, 14 June 2011.

<sup>146</sup> European Commission, *Green Paper: Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention*, COM(2011) 327, 14 June 2011.

<sup>147</sup> European Commission, *Green Paper: Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention*, COM(2011) 327, 14 June 2011.

<sup>148</sup> *Sher & Ors V. UK (Application No. 5201/11)* (2015).

<sup>149</sup> Leo Sisti, "In Cleric's Abduction in Italy, the Cia All but Left a Calling Card," *International Consortium of Investigative Journalists*, 24 May 2007.

such, it was incompatible with the provisions on freedom of expression in the ECHR.<sup>150</sup> In some cases, the length of pre-trial detention could be problematic, particularly as it raises procedural issues regarding the handling of the case by the court (Box 8).

**Box 8: Pre-Trial Detention – *Berasategi v. France, Esparza Luri v. France, Guimon Ep. Esparza v. France, Sagarzazu v. France and Soria Valderrama v. France***<sup>151</sup>

In these five cases, four of the applicants – Ismael Berasategi, Felix Ignacio Esparza Luri, Jose Candido Sagarzazu and Inocente Soria Valderrama – are Spanish nationals and one – Laurence Guimon Ezparza – is French. They are all members of the Spanish Basque organisation Euskadi Ta Askatasuna (“ETA”) and are being held in different prisons in France and Spain. The investigation lasted several years and the applicants’ pre-trial detention was extended several times during this period. The first trial hearing took place on 9 December 2008 and the applicants were convicted by the Paris Assize Court on 17 December 2008.

In 2009, the applicants complained that they have been held in excessive pre-trial detention and lodge an application with the European Court of Human Rights. The Court noted that on the face of it, pre-trial detention of between four and six years appeared to be unreasonable and there had to be particularly compelling reasons for it. The Court noted that throughout the investigation the risk that the applicants might fail to appear in court if released prior to the trial, had remained both relevant and sufficient. However, the Court also acknowledged that there was a nearly two-year period of inactivity attributable to judicial authorities, during which the pre-trial detention was extended as a result of the court workload. Since it is the responsibility of States to organise their judicial systems in ways that ensure that criminal procedural rights are observed, the Court considered that the judicial authorities had not acted with all the requisite promptness and that the pre-trial detention was of excessive length.

Source: *Berasategi v. France, Esparza Luri v. France, Guimon Ep. Esparza v. France, Sagarzazu v. France and Soria Valderrama v. France*.<sup>152</sup>

<sup>150</sup> Owen Bowcott, “[Terrorism Act Incompatible with Human Rights, Court Rules in David Miranda Case](#)” *The Guardian*, 19 January 2016.

<sup>151</sup> European Court of Human Rights, “Excessive length of pre-trial detention of ETA terrorists breached the Convention,” *Press Release*, ECHR (032), 26 January 2012; European Court of Human Rights, “[Terrorism and the European Convention on Human Rights](#),” *Factsheet – Terrorism and the ECHR*, April 2021. See also *Berasategi v. France* (application no. 29095/09) (2012); *Esparza Luri v. France* (no. 29119/09) (2012), *Guimon Esparza v. France* (no. 29116/09) (2012), *Sagarzazu v. France* (no. 29109/09) (2012) and *Soria Valderrama v. France* (no. 29101/09) (2012).

<sup>152</sup> European Court of Human Rights, “Excessive length of pre-trial detention of ETA terrorists breached the Convention,” *Press Release*, ECHR (032), 26 January 2012; European Court of Human Rights, “[Terrorism and the European Convention on Human Rights](#),” *Factsheet – Terrorism and the ECHR*, April 2021. See also *Berasategi v. France* (application no. 29095/09) (2012); *Esparza Luri v. France* (no. 29119/09) (2012), *Guimon Esparza v. France* (no. 29116/09), (2012); *Sagarzazu v. France* (no. 29109/09) (2012) and *Soria Valderrama v. France* (no. 29101/09) (2012).



## 5. CONCLUSION: A NEED FOR REFRAMING RADICALISATION PREVENTION

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Creating a cohesive EU means ensuring all citizens receive the same rights regardless of where they are and who they are. This includes the need for safeguarding individuals against misuse or abuse of power within both law enforcement and the judicial system. As the analysis in the preceding section indicates, it is essential that the criminal procedural rights of those suspected or accused of terror-related crimes are upheld. Terrorism is a crime and needs to be treated as such. Terrorist offenders – just as other criminal offenders involved in serious crime – are entitled to basic legal safeguards that are intended to ensure that they receive fair trial and are sentenced in accordance with the law.

In contrast to terrorism, radicalisation does not constitute a crime. However, as radicalisation and terrorism are linked, the prevention of radicalisation constitutes an indispensable element of an effective counter-terrorism strategy.<sup>153</sup> Preventing radicalisation has two dimensions – one focusing on curbing the spread of extremist narratives and the other focusing on dealing with the underlying causes of radicalisation – and both deserve attention.

The first dimension encompasses approaches and activities that seek to make extremist ideologies more difficult to engage with. This includes targeting groups considered at-risk and attempting to ensure they are not, or do not become enamoured with extremist ideologies. Measures for countering the spread of extremist ideas and narratives online also fall into this category. Online tactics which subvert or deter would-be interested parties into radical ideologies include programmes that redirect people searching for certain keywords associated with extremism towards organisations or information that can help dissuade them from pursuing hateful ideologies.<sup>154</sup> Other measures have simply removed information and blacklisted individuals or groups from operating on social media websites or limited access to webhosting services – with varying results.<sup>155</sup> These and other similar unobtrusive programs have shown to have some success in preventing the proliferation of extremist narratives.<sup>156</sup>

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<sup>153</sup> Alex P. Schmid, *Violent and Non-Violent Extremism: Two Sides of the Same Coin?* (The Hague: The International Centre for Counter-Terrorism, 2014).

<sup>154</sup> Moonshot CVE, *From Passive Search to Active Conversation: An Evaluation of the Facebook Redirect Programme* (Moonshot CVE, 2020).

<sup>155</sup> Ludovica Di Giorgi and Vidhya Ramalingam, "Taking White Nationalists Off the Internet Won't Solve Right-Wing Terrorism," *The Spinoff*, 21 March 2019.

<sup>156</sup> "Redirect Method" Yields Valuable Insights for Countering Online Extremism," *Anti-Defamation League*, 16 January 2020.

## 5. Conclusion: A Need for Reframing Radicalisation Prevention

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However, the main problem with the strategies of this dimension is the fact that they could have serious implications for human rights, for example, by disproportionately targeting or stigmatising specific social groups. The *Prevent Strategy* that was adopted in the UK in 2011 has three main objectives: (1) to respond to the ideological challenge of terrorism and the threat posed by those who promote it; (2) to prevent people from being drawn into terrorism and ensure that they are given appropriate advice and support; and (3) to work with sectors and institutions where there are risks of radicalisation which need to be addressed.<sup>157</sup> Some commentators have voiced concerns that the *Prevent Strategy* institutionalises a system which requires teachers, doctors, social workers and others to report if they recognise radical “tendencies” in an individual to law enforcement bodies.<sup>158</sup> Such tendencies can range from mild interest, such as repeating extremist rhetoric to more severe cases in which a person is outright proclaiming support for terrorism. Others have pointed out that the *Strategy* unfairly targets Muslims as they may be seen as threats based on their religion alone – with police asking those referred if they attend mosque and pray and how they perceive other religions.<sup>159</sup> In this way, it is possible to presuppose that someone is a radical based solely on their religion: labelling individuals a threat essentially creates a new realm of pre-crime in which Muslims are guilty on the basis of their faith alone.<sup>160</sup> With this kind of prevention technique, the state is not only policing thought but presuming guilt of future crimes based on religion alone. Setting aside concerns of privacy and infringements of fundamental rights, the effectiveness of the *Prevent Strategy* has been questioned for years.<sup>161</sup>

Similarly, in the USA, a FBI-backed website called “Don’t Be a Puppet” was criticised and eventually scrapped for adopting a thought – police style of reporting which disproportionately focused on Muslim youth.<sup>162</sup> Conversely, both Denmark and the Netherlands have prevention programs akin to the *Prevent Strategy* in the UK, but these have been met with much more praise, for working better and not stigmatising

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<sup>157</sup> UK Home Department, *Prevent Strategy* (London: Her Majesty’s Government, 2011).

<sup>158</sup> Helen Warrell, “[Inside Prevent, the UK’s Controversial Anti-Terrorism Programme](#),” *Financial Times*, 24 January 2019; Steven Greer and Lindsey Bell, “[Counter-Terrorist Law in British Universities: A Review of the “Prevent” Debate](#),” *Public Law*, January (2018), pp. 84-104.

<sup>159</sup> Open Society Justice Initiative, *Eroding Trust: The UK’s Prevent Counter-Extremism Strategy in Health and Education* (New York, NY: Open Society Foundations, 2016).

<sup>160</sup> Fahid Qurashi, “[The Prevent Strategy and the UK ‘War on Terror’: Embedding Infrastructures of Surveillance in Muslim Communities](#),” *Palgrave Communications*, vol. 4:1 (2018).

<sup>161</sup> Tufyal Choudhury and Helen Fenwick, *The Impact of Counter-Terrorism Measures on Muslim Communities, Equality and Human Rights Commission Research report 72* (2011).

<sup>162</sup> Michelle Boorstein, “[Muslim Activists Alarmed by the FBI’s New Game-Like Counterterrorism Program for Kids](#),” *The Washington Post*, November 2 2015.

Muslims.<sup>163</sup> For example, in the Dutch program rather than reporting potential radicalisation to law enforcement, the Dutch are expected to report to social workers. This has decreased the securitisation of the counter-radicalisation efforts.<sup>164</sup> It should be noted that the balance between stigmatising Muslims and targeting an at-risk population is a fine-line and one which can be crossed at any time should states become overzealous in their radicalisation prevention measures.

In the recent years, countries have come to view stricter border control measures as a way of preventing radicalisation, especially in the last few years as foreign fighters who joined ISIS seek to come back to Europe.<sup>165</sup> The rationale behind this approach is that by denying such individuals repatriation, the spread of radical ideology can be curtailed. This is done through a variety of measures, including: revoking passports, conducting identity checks, and carrying out deportations.<sup>166</sup> However, some of these measures can result in infringement of fundamental rights. For example, in the case of identity checks applied throughout the EU, there is a worry of discriminatory practices, where by those who look like foreigners are stopped more often and perceived by law enforcement as being more suspicious.<sup>167</sup> Likewise, across the EU there are measures in place at airports and other transit sites for law enforcement to detain and search individuals without anything more than a “high degree of suspicion” – a practice which once again raises questions about discrimination and ethnic profiling, as well as power abuse in the form of unlawful detention or denying access to legal assistance.<sup>168</sup>

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<sup>163</sup> Ann-Sophie Hemmingsen, *An Introduction to the Danish Approach to Countering and Preventing Extremism and Radicalization* (Copenhagen: Danish Institute for International Studies, 2015); Brian A. Jackson et al., *Practical Terrorism Prevention: Reexamining U.S. National Approaches to Addressing the Threat of Ideologically Motivated Violence* (RAND Corporation, 2019).

<sup>164</sup> Lorenzo Vidino and James Brandon, *Countering Radicalization in Europe* (London: International Centre for the Study of Radicalisation and Political Violence, 2012).

<sup>165</sup> Tanya Mehra and Christophe Paulussen, *The Repatriation of Foreign Fighters and Their Families: Options, Obligations, Morality and Long-Term Thinking* (The Hague: International Centre for Counter-Terrorism, 2019).

<sup>166</sup> Alastair Reed, Jeanine de Roy van Zuijdewijn, and Edwin Bakker, *Pathways of Foreign Fighters: Policy Options and Their (Un)Intended Consequences* (The Hague: The International Centre for Counter-Terrorism, 2015).

<sup>167</sup> Francesco Ragazzi, *Towards “Policed Multiculturalism”? Counter-Radicalization in France, the Netherlands and the United Kingdom* (Paris: Centre d’Études et de Recherches Internationales, 2014).

<sup>168</sup> Francesco Ragazzi, *Towards “Policed Multiculturalism”? Counter-Radicalization in France, the Netherlands and the United Kingdom* (Paris: Centre d’Études et de Recherches Internationales, 2014).

## 5. Conclusion: A Need for Reframing Radicalisation Prevention

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The second dimension of the process of preventing radicalisation focuses on the need for tackling the dynamics and factors that attract individuals to extremist ideologies and narratives in the first place. Whilst these factors are diverse and may affect individuals differently, efforts need to be invested in promoting and fostering socio-political and economic contexts that enable individuals to develop their talents and potential. Cherishing and celebrating diversity in all its forms and facilitating intercultural dialogue constitute fundamental prerequisites for countering negative stereotypes and enhancing social inclusion. In practical terms, this ideal requires the effective realisation of social, economic, and cultural rights and ensuring that these rights are enjoyed within societies.

Enhancing understanding of the phenomena of radicalisation and extremism is key to the development of programmes for their effective prevention and countering but even more so, for identifying and ultimately addressing their root causes. The methods and measures for preventing and countering radicalisation differ from counterterrorism efforts, insofar as the former extend beyond the scope of the security means adopted by law enforcement agencies, intelligence services, and the military. To be effective, measures and methods for dealing with radicalisation need to be underpinned by wide-ranging approaches and initiatives that address perceived grievances and sources of injustice stemming from intolerance, political or social marginalisation, weak governance, or economic strains.<sup>169</sup>

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<sup>169</sup> Owen Frazer and Christian Nünlist, *The Concept of Countering Violent Extremism* (Zurich: Center for Security Studies, 2015); William Stephens et al. "Preventing Violent Extremism: A Review of the Literature," *Studies in Conflict and Terrorism*, vol. 44:4 (2021), pp. 346-361.

This report reviews terror-related cases to illustrate the importance of striking a balance between national security considerations and the importance of protecting fundamental rights. It highlights the need for developing and implementing effective mechanisms for addressing the root causes of radicalisation, in order to prevent its violent manifestations.



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