

PROTECTING CHILDREN'S RIGHTS AND KEEPING SOCIETY SAFE: How to Strengthen Justice Systems for Children in Europe in the Counter-Terrorism Context?



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**PROTECTING CHILDREN'S RIGHTS
AND KEEPING SOCIETY SAFE:
How to Strengthen Justice Systems for Children
in Europe in the Counter-Terrorism Context?**



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Acronyms

CUTA	Coordination Unit for Threat Analysis (Belgium))
CRC	UN Convention on the Rights of the Child
DPJJ	Judicial Juvenile Protection Services (France)
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECJJ	European Council for Juvenile Justice
EU	European Union
GCTF	Global Counterterrorism Forum
ICCT	International Centre for Counter-Terrorism
IJJO	International Juvenile Justice Observatory
IS	so-called 'Islamic State'
MACR	Minimum Age of Criminal Responsibility
NCTV	National Coordinator for Security and Counterterrorism (the Netherlands)
RAN	Radicalisation Awareness Network
SIPI	Intercultural Participation and Integration Foundation (the Netherlands)
SoNeKoS	Social Network Conferences (Austria)
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council

Glossary

Administrative measures: Restrictive measures aimed at preventing terrorism within the territory of a state, decided upon and ordered by the executive (or with its close involvement), and subject to limited judicial review.

International Centre for Counter-Terrorism, Administrative Measures against Foreign Fighters: In Search of Limits and Safeguards

Child: A child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

UN Convention on the Rights of the Child, Article 1

De-radicalisation programmes: Programmes that are generally directed towards individuals who have become radical with the aim of re-integrating them into society or at least dissuading them from violence.

UN (2008), First Report of the Working Group on Radicalisation and Extremism that Lead to Terrorism: Inventory of State Programme

Diversion: The conditional channelling of children in conflict with the law away from judicial proceedings through the development and implementation of procedures, structures and programmes that enable many - possibly most - to be dealt with by non-judicial bodies, thereby avoiding the negative effects of formal judicial proceedings and a criminal record.

Toolkit on Diversion and Alternatives to Detention, UNICEF (2010)

Foreign fighters: Non-citizens of conflict states who join insurgencies during civil conflict.

Radicalisation Awareness Network Declaration of Good Practices for Engagement with Foreign Fighters for Prevention, Outreach, Rehabilitation and Reintegration

Radicalisation: A dynamic process whereby an individual may increasingly accept and support violent extremism. The reasons behind this process can be ideological, political, religious, social, economic or personal.

Council of Europe Guidelines for prison and probation services regarding radicalisation and violent extremism, CM/Del/Dec (2016)1249/10.2, 2 March 2016

Terrorism: There is no universally accepted definition of terrorism. Guidance rooted in international law is found in the definition given by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism:

Terrorism means an action or attempted action where:

1. The action: (a) Constituted the intentional taking of hostages; or (b) Is intended to cause death or serious bodily injury to one or more members of the general population or segments of it; or (c) Involved lethal or serious physical violence against one or more members of the general population or segments of it; and
2. The action is done or attempted with the intention of: (a) Provoking a state of terror

in the general public or a segment of it; or (b) Compelling a Government or international organization to do or abstain from doing something; and

3. The action corresponds to: (a) The definition of a serious offence in national law, enacted for the purpose of complying with international conventions and protocols relating to terrorism or with resolutions of the Security Council relating to terrorism; or (b) All elements of a serious crime defined by national law.

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, 'Ten areas of best practices in countering terrorism', A/HRC/16/51, 22 December 2010

Terrorist-related offences: Terrorism-related offences include: conspiracy, solicitation, and other preparatory acts of terrorism, such as acts to facilitate the commission of a terrorist offense, credit card fraud to fund travel to an area of conflict for terrorist purposes, or support of a terrorist group; attempts to commit and aid or abet terrorist acts; and terrorist financing.

GCTF's Rabat Memorandum on Good Practices for Effective Counter terrorism Practice in the Criminal Justice Sector

Violent extremism: Promoting, supporting or committing acts which may lead to terrorism and which are aimed at defending an ideology advocating racial, national, ethnic or religious supremacy or opposing core democratic principles and values.

Council of Europe Guidelines for prison and probation services regarding radicalisation and violent extremism, CM/Del/Dec (2016)1249/10.2, 2 March 2016

Youth: There is no internationally agreed definition of youth although the UN defines it as individuals between 15 and 24 years old.

Secretary-General report to the General Assembly on International Youth Year (A/36/215, para. 8 of the annex), 1981

Executive summary

This White Paper examines the treatment of children¹ who are alleged as, accused of or recognized as having committed a terrorism-related offence. It was developed in response to a growing interest amongst European Union (EU) Member States in how to address children suspected of involvement in terrorist-related crime in a way that ensures both public safety and the rights of the child.

The actual numbers of children in Europe who are alleged as, accused of or recognized as having committed a terrorism-related offence is extremely small and such cases most often involve criminal activity in the preliminary phase of a terrorist attack or that is supportive of terrorism.² Another affected group of children include those considered to be at risk of involvement with terrorist or violent extremist groups who are subject to certain administrative measures as a consequence. Such counter-terrorism measures include the removal of identity documents, covert surveillance and restriction on travel.

Children have also been encouraged to travel from their home to other States to participate in or support terrorist acts, including in the context of armed conflict. Others have been born abroad and educated as fighters. Again, the actual numbers are low but the issue of child returnees from these countries back to Europe remains problematic with some countries pursuing prosecution for offences relating to travel abroad to join terrorist groups and others focusing more on the protection of children who may have been victims of trafficking and certainly have been exposed to high levels of violence.³

Many EU Member States had no, or very little, counter-terrorism legislation and policies in place until after the 9/11 attacks in the United States in 2001,⁴ but this proved to be a key turning point that prompted a wave of new legislative measures. Terrorist attacks across the EU since 2001 have led to security becoming one of EU citizens' key concerns.⁵ There is no doubt that terrorism has instilled fear and continues to pose a serious threat. However, the rapidly evolving national counter-terrorism strategies that have been developed do not always effectively and directly address the situation for children who are alleged as, accused of or recognized as having committed a terrorism-related offence. Even in EU Member States which have well-established, ambitious and specialised justice systems for children, these new counter-terrorism laws and policies have created ambiguity and gaps in how children accused of terrorist-related offences are treated.

1 Children are defined in this report in line with the UN Convention on the Rights of the Child, article 1 as all those who are under 18 years of age.

2 See IJJO; *Children, the justice system, violent extremism and terrorism: An overview of law, policy and practice in six European countries*. Brussels: International Juvenile Justice Observatory, 2018. Available at: <https://www.oijj.org/en/strengtheningjjs-outputs>. Hereafter 'Regional Overview'.

3 See RADICALISATION AWARENESS NETWORK. *Child returnees from conflict zones. RAN Issue paper*. The Netherlands: RAN Centre of Excellence, 2016. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/issue_paper_child_returnees_from_conflict_zones_112016_en.pdf

4 GUTHEIL, M. et al. *EU and Member States' policies and laws on persons suspected of terrorism-related crimes*. Brussels: Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2017. Available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596832/IPOL_STU\(2017\)596832_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596832/IPOL_STU(2017)596832_EN.pdf)

5 82% of people surveyed wanted the EU to take more action on the fight against terrorism. See NANCY, J. *Europeans in 2016: Perceptions and expectations, the fight against terrorism and radicalisation, Special Eurobarometer of the European Parliament*. Brussels: Public Opinion Monitoring Unit, Directorate-General for Communication, European Parliament, April 2016. Available at: http://www.europarl.europa.eu/pdf/eurobarometre/2016/attentes/eb85_1_synthesis_perceptions_wishes_terrorism_en.pdf

This White Paper is part of a two year-long project entitled *Strengthening Juvenile Justice Systems in the counter-terrorism context: capacity-building and peer learning among stakeholders* led by the International Juvenile Justice Observatory in nine European countries.⁶ It is based upon data and information from three study tours in Belgium, the Netherlands and Germany⁷, consultations with members of the European Council for Juvenile Justice (ECJJ)⁸, an extensive desk review, input from practitioners in Greece, Italy, Latvia and Portugal and research findings from seven European countries - Austria, Belgium, Croatia, France, Germany, Hungary and the Netherlands⁹ - which examined the situation of children in a counter-terrorism context and described some promising practices that are being used to strengthen criminal justice systems for children.

The White Paper examines law, policy and practice relating to the treatment of children who are alleged as, accused of or recognised as having committed a terrorism-related offence. As well as making some specific recommendations for strengthening justice systems for children set out below, it reaches four over-arching conclusions:

- It is a primary duty for states to protect society from the severe threats and dangers that are associated with the activities of terrorist or violent extremist groups. At the same time as keeping society safe, states have a duty to respect, protect and fulfil the rights of children who are alleged as, accused of, or recognised as having committed a terrorist offence.¹⁰ A climate of heightened panic brought about by the fear of terrorist activity can lead to children who are alleged as, accused of or recognized as having committed a terrorism-related offence being treated primarily as exceptionally problematic offenders rather than as children.
- The consequence is an incremental chipping away at the use of specialised juvenile justice systems for children. This is seen, for example, in the expansion of the use of “special investigative powers” over children, in using lower minimum ages of criminal responsibility for terrorist (and other serious) offences than for ‘ordinary’ criminal offences, in extending the periods of time children can be held in pre-charge and pre-trial detention for terrorist-related offences and in the

6 The EU project: *Strengthening Juvenile Justice Systems in the counter-terrorism context: capacity - building and peer learning among stakeholders* is led by the International Juvenile Justice Observatory in nine European countries. For more information about the project, see the project website: <https://www.oijj.org/en/strengtheningjjs-introduction>

7 For more information about the Study Tours, see the project website: <https://www.oijj.org/en/strengthening-jjs-news>

8 Launched by the International Juvenile Justice Observatory in 2009, the European Council for Juvenile Justice (ECJJ) is a network of juvenile justice institutions and experts coming from twenty-eight Member States of the European Union. It acts as a pool of experts providing knowledgeable inputs in the field of juvenile justice whether to assist the IJJO in developing inspiring initiatives and researches or to contribute to the work of European institutions such as the European Commission or the Council of Europe. For more information see <https://www.oijj.org/en/presentation>.

9 The partners who conducted the research for this project are: the Ludwig Boltzmann Institute for Human Rights, Austria; the Federal Public Service of Justice, Belgium; the Ministry of Justice, DPJJ, France; the Ministry of Justice of Bremen, Germany; the Faculty of Education and Rehabilitation Sciences at the University of Zagreb, Croatia; Stichting 180 and Defence for Children, Netherlands; the Latvian Centre for Human Rights, Latvia; and the University of Miskolc, Hungary.

10 For more discussion on the relationship between national security and the rights of the child see UNODC *Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System*. Vienna: Library Section, United Nations Office, 2017. Available at: https://www.unodc.org/documents/justice-and-prison-reform/Child-Victims/Handbook_on_Children_Recruited_and_Exploited_by_Terrorist_and_Violent_Extremist_Groups_the_Role_of_the_Justice_System.E.pdf

transfer of children from a specialised juvenile justice system to the adult system for trial and/or sentencing.

- Counter-terrorism objectives are best upheld by having specialised justice systems for children in place that focus on: fair and proportionate investigative measures; diverting children away from formal justice systems when appropriate; upholding fair trial rights; detaining children only as a measure of last resort and for the shortest possible period of time; sentencing children in a way that is proportionate and takes in to account their individual circumstances; and rehabilitating children and reintegrating them back in to their community so they can go on to live constructive lives.
- Children allegedly engaged in terrorist-related offences have also often been victims themselves of recruitment and exploitation by terrorist and violent extremist groups. This raises many issues around the extent to which they can be held criminally responsible for any offending behaviour and the extent to which their victimisation should be taken in to account at different stages of criminal proceedings.¹¹ It also raises concerns about how best to respond to any abuse or violence they have been exposed to and how to mitigate any related stigmatisation and marginalisation within their communities and families.

The treatment this group of children receive at the hands of justice, protection and other authorities charged with their care and with holding them accountable for their actions, is indicative of the overall health and effectiveness of the justice and child protection systems for children within EU Member States. Although the scope and character of the phenomenon is likely to change, the fear and reality of terrorism in Europe is unlikely to disappear in the short or medium term. Many EU Member States have specialised juvenile justice systems and child protection frameworks that are largely compliant with international and regional standards for children. It is vitally important that these systems are strengthened with adequate training and awareness and specific individualised responses to provide the solutions needed to the problems posed by children involved in terrorist-related offending.

Furthermore, EU Member States should recognise and address the specific impacts of their counter-terrorism measures on the rights of the child in light of their obligations under the UN Convention on the Rights of the Child (CRC), broader international human rights law and commitments under European law.

The White paper sets out a number of specific recommendations for EU Member states, EU institutions and practitioners working on these issues to ensure that international and regional standards on justice for children are fully complied with. These recommendations are set out below:

- 1. International standards on justice for children must be respected.**
 - All responses to children who are alleged as, accused of, or recognised as having committed a terrorism-related offence must be firmly grounded in international and regional human rights law and standards, which are universally applicable principles and hold true for all children, regardless of the severity or nature of the offence in question.

¹¹ *Ibid*

- A specialised justice system for children should be used as the primary jurisdiction and authority when children are suspects or accused persons in criminal proceedings concerning terrorist-related offences.
 - A specialised justice system for children should help the child assume a constructive role in society and address their offending behaviour effectively and swiftly in a manner that is appropriate to their age, maturity and development.
2. **The rights of children returning from conflict areas must be upheld.**
 - While recognising the complex relationship between victimization and offending behaviour, children returning from conflict areas must be treated in a way that acknowledges that they are primarily victims and that they need support with their physical and mental recovery and psycho-social reintegration. They should only be prosecuted as a measure of last resort.
 3. **Caution should be exercised in selecting terrorist-related charges.**
 - Children should not be prosecuted solely for association with a terrorist or violent extremist group when they have been recruited and exploited by that group.
 - Children should not be disproportionately or unnecessarily criminalised for expressing opinions, often online, that are viewed as glorifying or inciting terrorism.
 4. **The minimum age of criminal responsibility should be applied consistently.**
 - The minimum age of criminal responsibility should be applied consistently to all children in conflict with the law regardless of the nature or severity of the offence.
 - Consideration should be given to extending procedural safeguards and protections to young adults.
 5. **Diversion should be a valid option for terrorist-related offences.**
 - As far as possible, children who are alleged as, accused of or recognized as having committed a terrorism-related offence should be dealt with by way of diversion and outside of the formal criminal justice system. This is not least because entry into the criminal justice system creates additional risks of secondary victimisation and of re-recruitment by terrorist and violent extremist groups.
 - Existing diversionary measures should be reviewed to see how they are being applied in terrorist-related cases involving children across EU Member States to gain a better understanding of how they can be used most effectively.
 - Justice professionals (judges, lawyers, prosecutors etc.) need to be better trained, equipped and confident to use diversionary measures in terrorist-related cases.
 6. **Children are vulnerable during investigation and arrest and their rights must be upheld.**
 - Investigating terrorist-related offences is challenging, complex and often pressured work. During investigations, law enforcement officials must make every effort to protect children from violence and harm, uphold the principle of the best interests of the child, and promote the child's rehabilitation and reintegration.
 - Children held in pre-charge detention must be provided with protections and safeguards including access to a lawyer and transfer to a court within 24 hours.
 7. **Children charged with terrorist-related offences have the right to a fair trial.**
 - Terrorist-related cases involving children as defendants should not be transferred to the adult criminal system.

- Children's right to a fair trial should be ensured and, in particular, cases should be heard without delay and using procedures that ensure their right to be heard, their safety and their right to privacy.
 - Children should have access to a lawyer throughout trial proceedings.
- 8. Pre-trial detention as a measure of last resort.**
- Pre-trial detention should not be a default option for children awaiting trial for a terrorist-related offence.
 - More research is needed to assess the effectiveness of non-custodial alternatives in ensuring public safety.
 - If a child is in pre-trial detention, an individualised plan should be developed and implemented to guarantee their health, physical and mental development and reintegration.
- 9. Sentencing should be proportionate and individualised.**
- Sentencing should always be proportionate to the circumstances of the child and of the offence and this is best achieved in a specialised court for children.
 - Non-custodial sanctions must be available as an option for terrorist-related cases and legal professionals should be confident to request and use them.
 - The public should be sensitised on the effectiveness of non-custodial sanctions in strengthening public safety and reducing the risk of re-offending.
- 10. Rehabilitation and reintegration must be a primary objective.**
- The explicit objective of depriving children convicted of terrorist-related offences of their liberty should be to contribute to their rehabilitation and to ensure their reintegration back into society on completion of their sentence.
 - Children should not be automatically separated from other children in a facility according to the type of offence they have been charged with or convicted of, but on the basis of individualised risk assessments regarding the type of care needed and any specific risks around the use of violence.
 - Rehabilitation programmes focused on disengagement from violence should be sensitive to the possibility of counter-productive consequences of labelling and stigmatising a child and reinforcing their identity as a 'terrorist'. The impact of these programmes needs to be carefully monitored and evaluated.
 - Girls deprived of their liberty deserve to have special attention given to their specific needs.
 - Staff working in facilities should be selected based on their integrity, humanity and professional capacity to deal with children.
- 11. Exercise restraint when applying administrative measures to children.**
- Administrative measures should only be imposed on children following procedures that take in to account the necessity of acting in their best interests.
 - Children must be able to have meaningful and effective remedy and to challenge the imposition of these administrative measures.
- 12. Multi-agency collaboration and training is essential and should be strengthened.**
- In view of the complexity of cases where children are involved in terrorist-related offending, a multi-agency approach is needed that includes collaboration and cooperation between different stakeholders such as police, counter-terrorism

experts, prosecution authorities, courts, probation, detention facilities, families, schools and welfare services.

- Whilst there is no ideal model, experience shows that it can help to have: clear guidance on information-sharing to improve the flow of data and information about individual children; specific roles and responsibilities assigned to each agency; a case manager to lead and coordinate the process; partnerships that are built at the local level; and a strong relationship with civil society organisations.
- Professionals should receive specialised training that builds on their existing knowledge of child rights and child development and enhances their capacity to work with this group of children

1. Introduction to the White Paper

Many EU Member States had no or very little counter-terrorism legislation in place until the 9/11 attacks in the United States in 2001.¹² This proved to be a key turning point and prompted a wave of new legislative measures responding to the perceived rising threat. A central pillar of the EU counter-terrorism response has been criminal prosecution and over the years, many EU Member States have extended the powers of law enforcement officials and increased the scope of terrorist-related offences.¹³ However, these relatively new and evolving national counter-terrorism strategies do not always explicitly address the situation for children. Even in EU Member States which have justice systems that are ambitiously child-friendly, these new laws and policies have created ambiguity and gaps in how children are protected and treated.

The actual numbers of children concerned are extremely small. Nonetheless, a small number of children have been directly involved in terrorist activity in European countries. Children have also been encouraged to travel from their home to other countries in order to participate in or support terrorist acts, including in the context of armed conflict. The International Centre for the Study of Radicalisation estimates that 12 per cent of the international citizens (not all from Europe) who became affiliated with so-called Islamic State (IS) in Iraq and Syria between April 2013 and June 2018 were children.¹⁴ Again the actual numbers are small but the issue of child returnees to Europe remains problematic with some countries pursuing prosecution for offences relating to travel abroad to join terrorist groups and others focusing more on the protection of children who may have been victims of trafficking and certainly have been exposed to high levels of violence.¹⁵ Another group who are affected by counter-terrorism measures include children considered to be at risk of involvement with terrorist or violent extremist groups who may be subject to certain administrative measures as a consequence. Such measures can include court orders for child protection, removal of identity documents and covert surveillance and monitoring.

The context is challenging. Terrorist attacks across the EU have led to security becoming one of EU citizens' key concerns.¹⁶ There is a risk that a prevailing climate of heightened panic brought about by the fear and reality of terrorist activity leads to children involved with terrorist or violent extremist groups being portrayed as offenders first and as children second. This in turn can lead politicians, the media, justice authorities, local communities and public opinion more broadly to characterise and treat these children as exceptionally problematic, damaged and dangerous. Labelling children as 'terrorist' offenders can become a self-fulfilling prophecy, entrench alienation and marginalisation and do little

12 GUTHEIL, M. et al., 2017, op. cit.

13 *Ibidem*.

14 Cook, J., and Vale, G. *From Daesh to 'Diaspora': Tracing the Women and Minors of Islamic State*. London: International Centre for the Study of Radicalisation, 2018. Available at: <https://icsr.info/wp-content/uploads/2018/07/ICSR-Report-From-Daesh-to-'Diaspora'-Tracing-the-Women-and-Minors-of-Islamic-State.pdf>

15 RADICALISATION AWARENESS NETWORK, 2016, op. cit.

16 See for example the finding that 82% of people surveyed wanted the EU to take more action on the fight against terrorism. "Europeans in 2016: Perceptions and expectations, the fight against terrorism and radicalisation, Special Eurobarometer of the European Parliament, April 2016". Available at: http://www.europarl.europa.eu/pdf/eurobarometre/2016/attentes/eb85_1_synthesis_perceptions_wishes_terrorism_en.pdf

to address the root causes and context in which the offending took place thereby exacerbating the risk of future criminality.¹⁷

States have a duty to protect society from the severe threats and dangers that are associated with the activities of terrorist or violent extremist groups. At the same time as keeping society safe, States have a duty to respect, protect and fulfil the rights of children who have been recruited and exploited by terrorist and violent extremist groups and who are alleged to, accused of, or recognised as having committed a terrorist offence. This means that whatever the circumstances, location, severity or circumstances of the alleged offence, children should always be treated in accordance with the international and regional standards for children regarding justice procedures.¹⁸ The recruitment and exploitation of children by terrorist and violent extremist groups can lead them to being exposed to very high levels of abuse and violence that leave physical and emotional scars and can result in a high risk of stigmatisation and marginalisation within their communities and families.¹⁹ This raises many issues around the extent to which they can be held criminally responsible for any offending behaviour and the extent to which their victimisation should be taken in to account at different stages of criminal proceedings.

This White Paper examines the treatment of children who are suspects or accused persons in criminal proceedings concerning terrorist-related offences. It is based upon data and information from three study tours in Belgium, the Netherlands and Germany²⁰, consultations with members of the European Council for Juvenile Justice (ECJJ), an extensive desk review, input from practitioners in Greece, Italy, Latvia and Portugal and research findings from seven European countries - Austria, Belgium, Croatia, France,

17 For more information on the consequences of labelling see BRAITHWAITE, J. *Crime, Shame and Reintegration*. New York: Cambridge University Press, 1989.

18 The standards include the CRC, adopted 1989, UN Optional Protocol on the Involvement of Children in Armed Conflict adopted 2000, UN Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography adopted 2000, UN Optional Protocol on a Communications Procedure adopted 2011 as well as non-treaty instruments such as the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) adopted in 1985; the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) adopted in 1990; the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) adopted in 1990; and the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) adopted in 2010. These standards have been elaborated further in UN Committee on the Rights of the Child, General comment No. 10, 2007, Children's Rights in Juvenile Justice, The Guidance Note on Justice for Children issued by the UN Secretary General, 2008, UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 2012 and the EU Directive on special safeguards for children, adopted on 11 May 2016 and to be transposed by 11 June 2019, and the Victims' Rights Directive, with Article 24 referring in particular to the rights of children. The Council of Europe has developed many useful legal standards and practical guidelines in the field of child-friendly justice. The most extensive set of standards are contained in the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice. The jurisprudence of the European Court of Human Rights is also relevant especially in the context of procedural safeguards.

19 For further discussion see Chapter Two of UNODC. *Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System*. Vienna: Library Section, United Nations Office, 2017. Available at: https://www.unodc.org/documents/justice-and-prison-reform/Child-Victims/Handbook_on_Children_Recruited_and_Exploited_by_Terrorist_and_Violent_Extremist_Groups_the_Role_of_the_Justice_System.E.pdf

20 For more information about the Study Tours, see the project website: <https://www.oijj.org/en/strengthening-jjs-news>

Germany, Hungary and the Netherlands²¹ - which examined the situation of children in a counter-terrorism context and described some promising practices that are being used to strengthen criminal justice systems for children.

The White Paper begins by setting out the importance of having a specialised justice system for children and then examines the extent to which specialised systems are working in practice with particular reference to the EU Member States engaged in the project. It is not designed to be a fully comprehensive assessment but, based on the project's findings, it highlights 12 key policy areas that demand attention. In light of the identified gaps, it also makes recommendations for EU Member States and institutions and for practitioners working on these issues to ensure that public security is upheld and that international and regional standards on justice for children are fully complied with.

²¹ The partners who conducted the research for this project are: the Ludwig Boltzmann Institute for Human Rights, Austria; the Federal Public Service of Justice, Belgium; the Ministry of Justice, DPJJ, France; the Ministry of Justice of Bremen, Germany; the Faculty of Education and Rehabilitation Sciences at the University of Zagreb, Croatia; Stichting 180 and Defence for Children, Netherlands; the Latvian Centre for Human Rights, Latvia; and the University of Miskolc, Hungary.

2. Recommendations

2.1 The importance of a specialised juvenile justice system

The legal framework

The key human rights treaty-based standards for children in conflict with the law are set out in the UN Convention on the Rights of the Child (CRC) which has been in existence now for over a quarter of a century and is legally binding upon its States Parties. It has been ratified by all countries aside from the United States of America, including all the Member States of the EU. The European Convention on Human Rights (ECHR) also guarantees the right to access to justice and to a fair trial which apply equally to children, although account must be taken of the particular needs of the child. Other relevant human rights standards are enshrined in different types of UN or regional body non-treaty instruments – these complement the human rights treaties, have significant moral force and provide useful and practical guidance.²² The international and regional standards are certainly not new although they have evolved and been elaborated upon over time.²³

The EU has adopted a number of measures regarding the rights of children in contact with the law including Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.²⁴ Furthermore, the Council of Europe has developed many useful legal standards and practical guidelines in the field of child-friendly justice, the most extensive of which are the European Rules for juvenile offenders subject to sanctions or measures (2008) and Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.²⁵

The overarching principle of the CRC regarding children in conflict with the law is that they must be “treated in a manner consistent with the promotion of the child’s sense of dignity and worth, [...] which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.”²⁶ The international standards are clear that justice systems for children should promote the well-being of the child and react proportionately to the nature of the offence taking into account the individual characteristics of the child. Justice and welfare systems should aim

22 See FN 18 above.

23 See for example: UN COMMITTEE ON THE RIGHTS OF THE CHILD (CRC). *General comment No. 10 (2007): Children’s rights in juvenile justice*, 25 April 2007, CRC/C/GC/10; UN. *Guidance Note of the Secretary-General: UN Approach to Justice for Children*, 2008; UNODC. *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*. Vienna: United Nations Office, 2012; COUNCIL OF EUROPE. *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*. Strasbourg: Council of Europe Publishing, 2011.

24 EUROPEAN UNION. 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. *Official Journal of the European Union*, L 132, 21.5.2016, p. 1-20; EUROPEAN COMMISSION. *EU acquis and policy documents on the rights of the child* (version 1.9). Brussels: Directorate-General Justice and Consumers, European Commission, 2017. Available at: http://ec.europa.eu/justice/fundamental-rights/files/acquis_rights_of_child.pdf

25 COUNCIL OF EUROPE. *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*. Strasbourg: Council of Europe Publishing, 2011.

26 UN GENERAL ASSEMBLY, CRC, 20 November 1989, *op. cit.*, Article 40 (1).

to prevent crime, take decisions which are in a child's best interests, treat children fairly and in a manner which is appropriate to their development, address the root causes of offending and rehabilitate and reintegrate children so they can play a constructive role in society in future.

Committee on the Rights of the Child's General Comment No. 10 (2007) on Children's Rights in Juvenile Justice (Para. 10)

"Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children. The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety."

The international legal framework related to counter-terrorism is primarily contained in the 19 universal Anti-Terrorism Conventions and Protocols, which relate to specific acts of terrorism, the United Nations Global Counter-Terrorism Strategy, and United Nations General Assembly and Security Council Resolutions. These instruments oblige States to ensure that any measures taken to combat terrorism comply with all their obligations under international law, in particular human rights law, refugee law and humanitarian law.²⁷ The international and regional standards on justice for children are therefore universally applicable principles that hold true for all children, regardless of the severity or nature of the offence in question. They apply to children charged with or convicted of terrorist offences as much as they do to children charged with or convicted of minor theft.

Why is a specialised justice system for children needed in a counter-terrorism context?

The international and regional standards reflect a view that children's accountability for their criminal behaviour, irrespective of the nature of the offence committed, is not equivalent to that of adults because they "differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law."²⁸ EU Directive 2016/800 introduces a requirement that appropriate measures should be taken to ensure that children are "always treated in a manner which protects their dignity and which is appropriate to their age, maturity and level of understanding, and which takes into account any special needs, including any communication difficulties, that they may have."²⁹

²⁷ UN SECURITY COUNCIL. *Resolution 1624 (2005), Adopted by the Security Council at its 5261st meeting, on 14 September 2005.*

²⁸ UNCRC, GC 10, 25 April 2007, *op. cit.*, para 10.

²⁹ EUROPEAN UNION. 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. *Official Journal of the European Union*, L 132, 21.5.2016, p. 1-20. See also IJJO's publication: LIEFAARD, T., RAP, S., & BOLSCHER, A. *Can anyone hear me? Participation of children in juvenile justice: A manual on how to make European juvenile justice systems child-friendly*. Brussels: International Juvenile Justice Observatory, 2016, pages 33-40. Available at: <https://www.oijj.org/en/improvingjjs-manual>

Recent developments in neuroscience have reinforced the view that childhood and adolescence is characterised by marked neurocognitive development that should be taken into account when reflecting upon a child's accountability for criminal behaviour.³⁰ During adolescence there is an underlying susceptibility to respond to immediate rewards whilst not at the same time fully considering any long-term costs and benefits. This is part of the reason why excessive risk-taking and impulsive behaviour are typical in adolescence, and can often contribute to the commission of offences.

In the context of counter-terrorism this is highly relevant since children may have been recruited and exploited by terrorist or violent extremist groups, often through coercive means, through manipulation or under violent circumstances with little insight or understanding about what has happened to them. In addition, emotional trauma they may have experienced as being part of a terrorist or violent extremist group can in itself lead to children being more prone to respond aggressively in defence and to greater "risk taking".³¹ Children's susceptibility to being recruited and exploited by terrorist groups can be heightened by the search during adolescence for a self-identity which can make them easier to manipulate and persuade than adults.

The research conducted by partners in IJJO's project on *Strengthening Juvenile Justice Systems in the counter-terrorism context: Capacity-building and peer learning among stakeholders* found that there is no common profile or pathway for children who become engaged in terrorist-related activities.³² The motivations behind children's involvement with terrorist or violent extremist groups are a complex mix of responding to active recruitment through social media or through family or friends, being threatened and acting under coercion, seeking a sense of identity from being part of a group, being attracted to a particular ideology and having a desire for adventure.

In Austria, for example, 18 court records and histories were examined concerning children and young people³³ who had been convicted of terrorist offences to find out more about their background and motivations.³⁴ This is a very small sample but it was notable that these children and young people shared at least a few common characteristics: nearly all had relatively low levels of education and many had experienced discrimination and difficult childhoods. While religion played a role for some in the background to their offending, for others, it was "friends" in radical social environments or imams in mosques, who offered them support and perspectives, which in turn gave them, sometimes for the first time, a feeling of being recognised and taken seriously.

30 UNICEF OFFICE OF RESEARCH - INNOCENTI. *The Adolescent Brain: A second window of opportunity*. Florence: UNICEF Office of Research - Innocenti, 2017.

31 WILLIAMS, H. *Neurodevelopmental Maturity and Crime: The Need to Account for Adversity and Brain Injury in the Criminal Justice System* [online]. University of Exeter. Available at: http://psychology.exeter.ac.uk/documents/INFOGRAPHIC_WILLIAMS_Brain_Injury_CRIME.pdf

32 See IJJO, *Children, the justice system, violent extremism and terrorism: An overview of law, policy and practice in six European countries*. Brussels: International Juvenile Justice Observatory, 2018. Available at: <https://www.oijj.org/en/strengtheningjjs-outputs>. Hereafter 'Regional Overview'.

33 It should be noted that the data available in Austria does not always differentiate between those under 18 and those under 21 (defined as young adults) so the analysis here concerns 14 to 21-year olds.

34 See Regional Overview (IJJO, 2018, *op. cit.*)

Components of a specialised juvenile justice system

The CRC encourages the creation of a specialised system for children in conflict with the law which has the objectives of preserving public safety, holding a child accountable for their offending behaviour and promoting their rehabilitation and reintegration back in to society.³⁵ The objective of establishing these specialised laws, authorities, institutions and procedures is to ensure that the justice system helps the child assume a constructive role in society and addresses their offending behaviour effectively and swiftly in a manner that is appropriate to their age, maturity and development.

Whatever the exact nature of the specialised system that an EU Member State has developed, they must establish justice procedures for all child offenders that guarantee their right to a fair trial and that are focused upon rehabilitation and reintegration of the child rather than on punishment or retribution. Children should be provided with additional procedural guarantees which apply from the first moment that a child is apprehended until the end of the process and, if the child is detained, up until the child reaches the age of 18. These procedural safeguards include: timely decision making and procedures, access to lawyers as well as to interpreters, regular contact with family and/or supportive adults, the right to confidentiality and privacy and access to diversionary measures at different stages of the process. These protections and safeguards apply for all children in conflict with the law, including those charged with terrorist-related offences.

The UN Committee on the Rights of the Child recommends establishing child-friendly institutions as an integral part of a specialised system such as specialised units within the police, judiciary, the court system, the prosecution, probation services and for legal representatives. Courts for children should be established either as separate units entirely or as part of existing courts. Where this is not practical, then specialised judicial officers should hear children's cases.³⁶

The Committee on the Rights of the Child states that it "acknowledges that the preservation of public safety is a legitimate aim of the justice system. However, it is of the opinion that this aim is best served by a full respect for and implementation of the leading and overarching principles of juvenile justice as enshrined in CRC."³⁷ A specialised justice system for children therefore has a dual role of achieving its public safety objectives whilst also respecting the rights of the child. This duality of focus is critically important given that the public have very high expectations that justice systems for children must deliver public safety whilst at the same time protecting the rule of law and the rights of the child.

A specialised approach towards children suspected of terrorist-related offences has many advantages, not least that addressing a child's alleged or actual offending, through focussing on their fair trial rights, their rehabilitation and their reintegration, is much more likely to prevent further offending than an approach that focusses on punishment and retribution. This in turn can contribute to strengthened public security in the longer-term.

35 Article 40 (3) of the CRC states: "States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law." UN GENERAL ASSEMBLY, CRC, 20 November 1989, *op. cit.*

36 UNCRRC, GC 10, 25 April 2007, *op. cit.*, paras 92-94.

37 UNCRRC, GC 10, 25 April 2007, *op. cit.*, para 14.

Recommendation

International standards on justice for children must be respected.

- All responses to children who are alleged as, accused of or recognised as having committed a terrorism-related offence must be firmly grounded in international and regional human rights law and standards which are universally applicable principles and hold true for all children, regardless of the severity or nature of the offence in question.
- A specialised justice system for children should be used as the primary jurisdiction and authority when children are suspects or accused persons in criminal proceedings concerning terrorist-related offences.
- A specialised justice system for children should help the child assume a constructive role in society and address their offending behaviour effectively and swiftly in a manner that is appropriate to their age, maturity and development.

The Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context

The Global Counterterrorism Forum (GCTF) is an international forum of 29 countries and the European Union with an overarching mission of reducing the vulnerability of people worldwide to terrorism by preventing, combating, and prosecuting terrorist acts and countering incitement and recruitment to terrorism. In September 2015, the GCTF Ministers endorsed the launch of an Initiative to Address the Life Cycle of Radicalisation to Violence (Life Cycle Initiative). As part of this, Switzerland launched an initiative on juvenile justice in a counterterrorism context to address emerging questions regarding children involved in terrorism, and the different phases of a criminal justice response, which include prevention, investigation, prosecution, sentencing, and reintegration.

The Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context was the result. The aim of the Memorandum is to guide governments and justice professionals in the development of policies, programmes and approaches in terrorism cases involving children and it is a very useful resource summarising key aspects. It states clearly that “a criminal justice response to cases of children should be geared towards the rehabilitation and reintegration of the child into society”³⁸ and sets out the following good practices for governments and justice professionals to consider when dealing with children:

1. Address children alleged to be involved in terrorism-related activities in accordance with international law and in line with international juvenile justice standards.
2. Assess and address the situation of children in a terrorism-related context from a child rights and child development perspective.
3. Address children’s vulnerability to recruitment and/or radicalisation to violence through preventive measures.
4. Develop targeted prevention strategies with a strong focus on the creation of networks to support children at risk.
5. Address children prosecuted for terrorism-related offences primarily through the juvenile justice system.
6. Apply the appropriate international juvenile justice standards to terrorism cases involving children even in cases that are tried in adult courts.
7. Consider and design diversion mechanisms for children charged with terrorism-related offences.
8. Consider, and apply where appropriate, alternatives to arrest, detention, and imprisonment, including during the pre-trial stage and always give preference to the least restrictive means to achieve the aim of the judicial process.
9. Apply the principle of individualisation and proportionality in sentencing.
10. Hold children deprived of their liberty in appropriate facilities; support, protect and prepare them for reintegration.
11. Develop rehabilitation and reintegration programs for children involved in terrorism-related activities to aid their successful return to society.
12. Design and implement specialised programmes for terrorism cases to enhance the capacity of all the professionals involved in the juvenile justice system.
13. Design and implement monitoring and evaluation programs to ensure the effective implementation of international juvenile justice standards.

38 GLOBAL COUNTERTERRORISM FORUM (GCTF). *Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context*, 2015, p.2. Available at: <https://www.thegctf.org/Portals/1/Documents/Toolkit-documents/English-Neuch%C3%A2tel-Memorandum-on-Juvenile-Justice.pdf>

2.2 Protecting the rights of child returnees

Children returning from conflict areas remain a significant long-term challenge. The International Centre for the Study of Radicalisation has estimated that up to 17 per cent of the international citizens (not all from EU Member States) who became affiliated with Islamic State in Iraq and Syria between April 2013 and June 2018 and who have since returned to their country of departure, are children.³⁹ The widely-held assumption is that returning children who are over the minimum age of criminal responsibility (MACR), may have committed offences whilst abroad or as a result of having travelled to join a terrorist group and may also be at risk of further terrorist-related offending.

At the international level, the United Nations Security Council (UNSC) has placed considerable emphasis on combating flows of foreign terrorist fighters.⁴⁰ Although it does also acknowledge the need for the social support of children and UNSC Resolution 2396 (2017) specifically calls upon States to assess and investigate suspected foreign terrorist fighters and their accompanying family members, including children. At the regional level, Directive 2017/541 on combating terrorism was adopted by the European Union in March 2017. This Directive criminalises the fact of travelling abroad to join a terrorist group and/or returning to the EU with the aim of carrying out a terrorist attack. Many Member States of the EU have reacted to this situation by developing new criminal law and administrative measures.

EU Member States have responded to these returning children in different ways but usually adopt a case-by-case approach that accommodates a mix of security, justice and child protection components.⁴¹ The research from partners in IJJO's project on *Strengthening Juvenile Justice Systems in the counter-terrorism context: Capacity-building and peer learning among stakeholders* uncovered a varied picture both in terms of the scale of the issue and the response.

In Belgium, for example, it is estimated that more than 500 citizens left for Syria between 2011 and 2016⁴² and as of August 2017, the Coordination Unit for Threat Analysis in Belgium (CUTA) estimated that there were 127 children linked with Belgium in Syria and/or Iraq, six had attempted unsuccessfully to travel to Syria and Iraq and four were suspected of intending to leave.⁴³ In response, the Belgian National Security Council produced a roadmap for dealing with a returning child from the moment of arrival which has the following steps:

- (i) evaluation of the threat;
- (ii) data checks for existing files;

³⁹ COOK & VALE, 2018, *op. cit.*

⁴⁰ United Nations Security Council Resolutions 2170 (2014) and 2178 (2014), adopted under Chapter VII of the UN Charter, determined that the flow of foreign terrorist fighters constitutes an "international threat to peace and security".

⁴¹ EUROPEAN PARLIAMENT. *The return of foreign fighters to EU soil: Ex-post evaluation*. Brussels: European Parliamentary Research Service, 2018, p.48. Available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2018/621811/EPRS_STU\(2018\)621811_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/621811/EPRS_STU(2018)621811_EN.pdf)

⁴² BOUTIN, B., CHAUZAL, G., DORSEY, J., JEGERINGS, M., PAULUSSEN, C., POHL, J., REED, A., & ZAVAGLI, S. *The Foreign Fighters Phenomenon in the European Union: Profiles, Threats and Policies*. The Hague: The International Counter terrorism Centre, 2016.

⁴³ CUTA. *Note contextuelle : Les Mineurs belges auprès de l'Etat islamique* (Background note: Belgian minors and the Islamic State), Ref OCAD 334110, September 2017.

- (iii) options for following up upon their return;
- (iv) determination if the child is at least 16 years old, at which point more coercive measures, including arrest and detention, are permissible;
- (v) ascertain the location and status of their parents;
- (vi) assess the extent to which the child has been indoctrinated and/or militarily trained.⁴⁴

Under this roadmap, social care mechanisms are activated and the priority is to ensure that children remain with their parents. In cases where this is deemed unsafe, attempts are made to place children in the custody of their grandparents or, failing that, in specific childcare services.

In the Netherlands, from February 2013 to March 2017, the Child Care and Protection Board (*Raad voor de Kinderbescherming*) investigated 81 children who had returned from Syria. Of these, 46 were children with their families and 35 were individual children aged 15 and over. As of 2017, an estimated 80 children with a Dutch connection were still believed to be in conflict areas in Syria and Iraq – half of them were boys and fewer than 20 per cent were over nine years old.⁴⁵ The Dutch General Intelligence and Security Service (*Algemene Inlichtingen- en Veiligheidsdienst*, AIVD) and National Coordinator for Security and Counterterrorism (*Nationaal Coördinator Terrorismebestrijding en Veiligheid*, NCTV) published a report in April 2017 discussing the role of children with a Dutch connection within so-called Islamic State territories.⁴⁶ It stressed the levels of violence these children have been exposed to and that if male and over nine years old, it is likely that they will have received military training.⁴⁷ The report underlines the importance of these experiences when determining the needs of returning children.

When a child returns from IS territory to the Netherlands, they are individually assessed to determine the appropriate care, security measures and interventions required and a treatment plan is drawn up as part of a multi-disciplinary case consultation. To prevent children from travelling abroad, the Child Care and Protection Board will first initiate an investigation and based on this can introduce a range of measures including passport withdrawal or cancellation, family supervision orders from the Child Court and an order for placement of a child in a care facility. In some circumstances, a court can order placement in closed care facilities where a child is deprived of their liberty.⁴⁸

Returning children should be regarded primarily as victims and treated as such, although this does not exclude the prosecution of children above the minimum age of criminal responsibility in appropriate cases. The challenge is to respond to their protection needs arising from their status as victims of recruitment and exploitation, and possibly other

44 *Ibidem*.

45 *Ibidem*.

46 A child with a Dutch connection is defined as having two parents of Dutch nationality or parents who lived in the Netherlands for an extended period of time. NATIONAL COORDINATOR FOR SECURITY AND COUNTERTERRORISM (NCTV) & GENERAL INTELLIGENCE AND SECURITY SERVICE (AIVD). *The Children of ISIS: The indoctrination of minors in ISIS-held territory*. The Hague: National Coordinator for Security and Counterterrorism (NCTV) & General Intelligence and Security Service (AIVD), 2017.

47 MINISTERIE VAN VEILIGHEID EN JUSTITIE. *Beleidsbrief bij Dreigingsbeeld Terrorisme Nederland 44 en voortgangsrapportage integrale aanpak jihadisme*, 2017. Available at: https://www.nctv.nl/binaries/Beleidsbrief%20DTN44%20en%20VGR_tcm31-254184.pdf

48 For more information see SPAENDONCK, R.W. To School or to Syria? The foreign fighter phenomenon from a children's rights perspective. *Utrecht Law Review*, 2016, 12 (2), pp. 41 – 62.

crimes as well such as trafficking⁴⁹, and at the same time to hold them accountable for any criminal offences they may have committed.

The organisation Radicalisation Awareness Network (RAN) provides helpful guidance for effective responses and interventions that focus on early intervention and normalisation; take a holistic, multi-agency approach; and are based on a tailor-made approach grounded in individual risk and need assessment.⁵⁰ The emphasis should be on providing returning children with support to assist their recovery and reintegration, in accordance with the CRC.⁵¹ This should include medical, psychosocial and educational support. The period of time after return is an important opportunity for reintegration and EU Member States should implement tailored reintegration programmes for returning children, including by assigning mentors to enable them to reintegrate without stigmatisation or marginalisation.

Recommendation

The rights of children returning from conflict areas must be upheld.

- While recognising the complex relationship between victimisation and offending behaviour, children returning from conflict areas must be treated in a way that acknowledges that they are primarily victims that they need support with their physical and mental recovery and psychosocial reintegration. They should only be prosecuted as a measure of last resort.

49 It should be noted that in cases where violence committed against a child by terrorist and violent extremist groups qualifies as the crime of trafficking in persons, the child should be treated, and afforded protection, as a victim of trafficking in persons. An important element of the victim protection framework is the non-punishment of victims of trafficking for offences directly connected or related to the trafficking situation that they have experienced. The non-punishment principle should apply regardless of the role of the child in the offence and where the offence was committed and irrespective of the initiation or outcomes of criminal proceedings, or the charges brought forward against the perpetrators. For more on this point see, UNODC. *Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System*. Vienna: Library Section, United Nations Office, 2017. Available at: https://www.unodc.org/documents/justice-and-prison-reform/Child-Victims/Handbook_on_Children_Recruited_and_Exploited_by_Terrorist_and_Violent_Extremist_Groups_the_Role_of_the_Justice_System.E.pdf

50 RAN, 2016, *op. cit.*

51 Article 39 of the CRC states that “States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.” UN GENERAL ASSEMBLY, CRC, 20 November 1989, *op. cit.*

2.3 Terrorist-related charges and the rights of the child

Counter-terrorism law and policy has the over-arching aim of keeping people safe and secure and the criminalisation and prosecution of terrorist offences supports this aim. The EU legal framework related to counter-terrorism consists of a range of secondary legislation but the key secondary law instrument is Directive (EU) 2017/541 on combating terrorism.⁵² This 2017 Directive defines terrorist offences, offences related to a terrorist group and offences related to terrorist activities. The Directive also outlines offences related to terrorist activities including:

- Public provocation to commit a terrorist offence (Article 5);
- Recruitment for terrorism (Article 6);
- Providing training for terrorism (Article 7);
- Receiving training for terrorism (Article 8);
- Travelling for the purpose of terrorism (Article 9);
- Organising or otherwise facilitating travelling for the purpose of terrorism (Article 10); and
- Terrorist financing (Article 11), plus other offences (Article 12).

Furthermore, the *Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (2015)* has now entered into force and criminalises the acts of:

- a) participating in an association or a group for the purpose of committing or contributing to the commission of terrorist acts;
- b) receiving training, including on obtaining knowledge or practical skills from another person to make or use explosives, firearms, or other weapons or hazardous substances for the purpose of committing terrorist acts;
- c) traveling in a country other than the country of one's place of residence or nationality for the purpose of terrorism; and
- d) planning or otherwise facilitating a third person's travel to another country with the purpose of engaging in terrorism.

Many Member States have adopted legislation criminalising some or all of these acts.⁵³ This reflects a marked increase since 2001 across Europe in legislation to criminalise conduct that takes place before a terrorist crime is committed. This includes criminalisation of preparatory acts and acts deemed to support or contribute to terrorism including financing, providing material support or inciting terrorism directly or indirectly. On this last point, many European countries now have offences on their statute books to counter the spread of ideas that can lead to inciting others to commit terrorist acts or that justify, encourage, praise or glorify terrorist acts that may incite further terrorist acts. Some have gone further and criminalised any expression that is deemed to praise, glorify, support, defend, apologise for, or seeks to justify acts defined as "terrorism" under domestic law.

⁵² This replaces Council Framework Decision 2002/475/JHA and amends Council Decision 2005/671/JHA.

⁵³ For an overview of OSCE countries (also including EU Member States) see ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE. *Status of the Universal Anti-Terrorism Conventions and Protocols as well as other International and Regional Legal Instruments related to Terrorism and Co-operation in Criminal Matters in the OSCE Area*. Vienna: OSCE Transnational Threats Department, 2018. Available at: <https://www.osce.org/atu/17138?download=true>

Research for the IJJO project *Strengthening Juvenile Justice Systems in the counter-terrorism context: Capacity-building and peer learning among stakeholders* revealed that children and young people have been convicted of a range of terrorist-related offences relating to preparatory acts including: participation in a terrorist organisation, criminal conspiracy with a view to committing a terrorist act, advocating terrorism, dissemination of propaganda, use of prohibited insignia, preparation of a serious violent offence endangering the state, incitement to terrorism, attempted participation in a terrorist group, preparing to participate in a terrorist organisation and preparing a terrorist attack. Very few of the children and young people whose records were analysed were convicted for engaging directly in violent acts in recent years (most countries looked at statistics from 2014 to 2016).⁵⁴

Children who have been recruited and exploited by terrorist and violent extremist groups often play a role in preparing for terrorist attacks or in supporting the group's activities. Having a broad range of criminal offences covering activity in the preliminary phase of a terrorist attack or that is supportive of terrorism can therefore affect children disproportionately. In Austria, children and young adults represented a large proportion – 59 per cent – of all those convicted under the Criminal Code of terrorist-related offences which suggests that children and young people are being somewhat disproportionately affected by these offences.⁵⁵

Caution should be exercised when children are prosecuted for mere association with, or membership in, a terrorist group since they have often joined the group through exploitative and coercive methods of recruitment without a proper understanding of the implications and consequences of their actions. It is questionable whether a prosecution for association with such a group can be reliable in these circumstances. In Austria, between 2014 and 2016, at least three quarters of children and young people convicted of terrorist-related offending were convicted of the offence of participation in a terrorist organisation, which was very broadly understood and covered a range of activities.⁵⁶

Children can also be disproportionately prosecuted for offences relating to spreading ideas to incite terrorism or of glorifying or condoning offences. Many of these offences are committed online where children are the main consumers and generators of content. Childhood and adolescence are times when it is commonplace to explore different identities and anti-authoritarian ideas. Children may not always have a clear understanding of the consequences of the views they are expressing and may make impulsive statements online that do not represent fixed ideas or beliefs about violent ideology, but rather are designed to shock and provoke.

In France, the offence of 'apology for terrorism' was introduced in 2014 in an amendment to the French Criminal Code⁵⁷ and, as of 1st August 2016, 110 children had been prosecuted for this. Amnesty International has argued that this offence is too ill-defined and vague in its wording, leaving room for broad interpretation⁵⁸ and the UN Special

54 Regional Overview (IJJO, 2018, *op.cit.*)

55 Regional Overview (IJJO, 2018, *op. cit.*)

56 This is an offence under article 278b of the Austrian Criminal Code.

57 SERVICE-PUBLIQUE. *Apologie du terrorisme - Provocation au terrorisme*. Available at: <https://www.service-public.fr/particuliers/vosdroits/F32512>

58 See AMNESTY INTERNATIONAL. *Dangerously Disproportionate: The Ever-Expanding National Security State in Europe*. Amnesty International, International Secretariat, 2017. Available at: [https://www.amnesty.org/download/Documents/EUR0153432017ENGLISH.PDF.\(2017\)](https://www.amnesty.org/download/Documents/EUR0153432017ENGLISH.PDF.(2017)) p.37

Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has expressed concern that the offence has been used too extensively specifically against minors in France.⁵⁹ In 2016, an 18 year old was convicted for this offence and sentenced to three months suspended sentence for naming his Wi-Fi network 'Daesh 21' causing his lawyer to argue that "He used two words: Daesh and 21. That does not amount to condoning terrorism! He's just an 18-year-old who made a stupid mistake."⁶⁰

Children have the right to freedom of expression and this right is also closely connected to other rights in the CRC that are supportive of their right to be heard and to participation.⁶¹ This right is not absolute but any restriction on a child's right to freedom of expression must be provided by law, serve one of the listed aims in article 13 (2) of the CRC (namely, to respect the rights or reputations of others; or for the protection of national security or of public order [*ordre public*], or of public health or morals) and be necessary and proportionate to protect that interest. Any restrictions on freedom of expression must also respect the prohibition of discrimination and be subject to independent judicial oversight. When prosecuting children for offences relating to the spread of ideas that incite terrorism, caution must be exercised to ensure that restricting their right to freedom of expression is both necessary and proportionate in order to achieve the aim of protecting national security.

Recommendation

Caution should be exercised in selecting terrorist-related charges.

- Children should not be prosecuted solely for association with a terrorist or violent extremist group when they have been recruited and exploited by that group.
- Children should not be disproportionately or unnecessarily criminalised for expressing opinions, often online, that are viewed as glorifying or inciting terrorism.

⁵⁹ UN HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER. *Preliminary findings of the visit: UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concludes visit to France*, 23 May 2018. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23128&LangID=E>

⁶⁰ MCGUINNESS, R. French teen guilty of 'defending terrorism' after naming Wi-Fi network to 'Daesh 21'. *Sunday Express*, 7 November 2016. Available at: <http://www.express.co.uk/news/world/729742/French-teen-Wi-Fi-network-Daesh-21-guilty-defending-terrorism-Dijon-France>

⁶¹ These participation rights in the CRC include: article 12 (right to be heard), article 14 (freedom of thought, conscience and religion), 15 (freedom of association) and 17 (access to information).

2.4 Minimum age of criminal responsibility

States should set as high a minimum age of criminal responsibility as possible reflecting the emotional, mental and intellectual maturity of children.⁶² Children under the minimum age of criminal responsibility should never be prosecuted and their behaviour should be addressed by protection measures imposed by family courts outside of the criminal justice system. In Germany, for example, in 2016, a 12 year old boy placed two home-made nail bombs at a Christmas market and at the city hall of his home town. Later it was disclosed that he had been visited frequently by social workers prior to this because his father had a history of violence.⁶³ He had also been in contact with IS recruiters via social media and through a local mosque. Since he was under the age of criminal responsibility, he was dealt with by the protection services and the family court ordered that he be placed in a closed institution and closely monitored by social workers.

In some jurisdictions, there are exceptions to the minimum age of criminal responsibility in cases which involve severe offences such as those involving terrorism. In Hungary, for example, the age of criminal responsibility is 14 years old. However, it is lowered to 12 years old if it is found that the child has the capacity to understand the nature and consequences of his or her acts in relation to six criminal offences (homicide, voluntary manslaughter, battery, some acts of terrorism under article 314 of the Criminal Code, robbery and plundering). International standards are clear that the minimum age of criminal responsibility should be applied consistently to all children in conflict with the law regardless of the nature or severity of the offence and should refer to the age of the child at the time of the offence.

The age of criminal majority is the age at which the criminal justice system processes offenders as adults. There are circumstances when the age of criminal majority is effectively lowered to be under 18. This is mainly by way of transferring children aged 16 and over to the adult criminal justice system or adjudicating them in courts which have some adult features and which can impact on the sentences they can receive. These circumstances are examined in more detail in section 2.7 on fair trial procedures below.

By contrast, in several countries, there are additional protections for young adults (aged usually between 18 and 21 years old) reflecting an understanding of the neuroscience behind brain maturity which has found that psychosocial and cognitive development continues up to age 25 and possibly even beyond.⁶⁴ Furthermore, offending peaks usually from the ages of 15 to 19 and then declines and⁶⁵ only a very small number of

62 The CRC provides that States Parties shall establish a minimum age below which children shall be presumed not to have the capacity to infringe the criminal law; UN GENERAL ASSEMBLY, CRC, 20 November 1989, *op. cit.*, Article 40 (3)(a). The CRC Committee recommended in General Comment No 10 that the minimum age of criminal responsibility should not be below 12 years of age. UNCRC, GC 10, 25 April 2007, *op. cit.*, para 32.

63 FAIOLA, A. & MEKHENNET, S. They're young and lonely. The Islamic State thinks they'll make perfect terrorists. 'What's happening to our children?'. *The Washington Post*, 11 February 2017. Available at: https://www.washingtonpost.com/sf/world/2017/02/11/theyre-young-and-lonely-the-islamic-state-thinks-theyll-make-perfect-terrorists/?utm_term=.ce70f18ca504

64 For more information, see THE ROYAL SOCIETY. *Brain Waves Module 4. Neuroscience and the Law, Policy document 05/11*. London: The Royal Society, 2011. Available at: https://royalsociety.org/~media/Royal_Society_Content/policy/projects/brain-waves/Brain-Waves-4.pdf

65 See for example, PRUIN, I., & DÜNKEL, F. *Better in Europe? European responses to young adult offending*. London: Barrow Cadbury Trust, 2015. Available at: https://www.barrowcadbury.org.uk/wp-content/uploads/2015/02/T2A_Better-in-Europe_Report-_online.pdf

persistent offenders continue a criminal career in to adulthood after this. In Austria, for example, certain protections and the sentencing provisions of the Youth Court Act apply to this age category⁶⁶ and the situation is similar in Croatia. In the Netherlands, juvenile justice provisions can be extended to young people aged between 18 and 23 years old according to the personality of the perpetrator or the circumstances in which the crime was committed. In Germany, if a judge thinks a young person, aged 18 to 21, does not have the maturity of an adult, it is possible to deal with his or her case at the Youth court. In France and Hungary, young adults over 18 and under 21 have their age taken in to account as a mitigating circumstance according to the judicial practice.

Recommendation

The minimum age of criminal responsibility should be applied consistently.

- The minimum age of criminal responsibility should be applied consistently to all children in conflict with the law regardless of the nature or severity of the offence.
- Consideration should be given to extending procedural safeguards and protections to young adults in the context of counter-terrorism.

⁶⁶ Austria: Article 46a of the Youth Court Act.

Table 1: Overview of minimum age of criminal responsibility, protections in place for young adults and transfer of cases to the adult criminal justice system

Country	Minimum age of criminal responsibility (MACR)	Protections in place for young adults (usually 18-21 years old)	Children tried and/or sentenced in adult criminal justice system for serious crimes
Austria	<p>MACR is 14 years old. Offences committed by a child aged 14-18 years old are dealt in the “normal” courts with specialised judges as no specialised Youth Court exists. The provisions of the Youth Court Act (including procedural safeguards and regulations on sentencing) must be applied regardless of the severity of the offence. Detention in a closed facility is only possible for children over 14 years old.</p>	<p>Young adults over 18 and under 21 years old cannot be tried in an adult criminal case and certain protections and the sentencing provisions in the Youth Court Act must also apply.</p> <p>Young adults between 18 and 21 years can be hold in youth prisons.</p>	No
Belgium	<p>No clear minimum age is specified but for children below the age of 12 years only a reprimand, a supervision order or intensive educational guidance can be given by the Youth Court. Detention in a closed facility is only possible for children over 14 years old.</p>	No	Children 16 years old and over can be tried in an ‘extended youth court’ that applies adult criminal law. They can be punished with all criminal sanctions except life imprisonment.
Croatia	MACR is 14 years old	Young adults over 18 and under 21 can be prosecuted and sentenced as adults or as children depending on the severity of the offence, motivations for offending and prior offending history.	No

Country	Minimum age of criminal responsibility (MACR)	Protections in place for young adults (usually 18-21 years old)	Children tried and/or sentenced in adult criminal justice system for serious crimes
Hungary	MACR is 14 years old. Persons between 12 and 14 years can also be held liable in case of six criminal offences: homicide, voluntary manslaughter, battery, acts of terrorism, robbery and plundering if they have the capacity to understand the nature and consequences of their acts.	Young adults over 18 and under 21 have their age taken in to account as a mitigating circumstance according to the judicial practice.	No
Germany	MACR is 14 years old	If a judge thinks a young person, aged 18 to 21, does not have the maturity of an adult, it is possible to deal with his or her case at the Youth court. The youth prison holds people aged between 14 to 24 years old with the average age being 21 years old.	Children 16 years old and over charged with terrorist-related offences can be tried in State Security Courts which should apply the procedural and sentencing guidelines set out in the Juvenile Courts Act.
Netherlands	MACR is 14 years old	Can extend juvenile justice provisions to young people aged between 18 and 23 years old according to the personality of the perpetrator or the circumstances in which the crime was committed.	Children 16 and 17 years old can be sentenced in an adult criminal court.

2.5 Opportunities for diversion

As far as possible, children should be dealt with by way of diversion and outside of the formal criminal justice system because entry into the criminal justice system creates an additional risk of violations of rights and of re-offending.⁶⁷ For the purposes of this White Paper, 'diversion' is defined as "the conditional channelling of children in conflict with the law away from formal judicial proceedings towards a different way of resolving the issue that enables many — possibly most — to be dealt with by non-judicial bodies, thereby avoiding the negative effects of formal judicial proceedings and a criminal record, provided that human rights and legal safe- guards are fully respected."⁶⁸

An important aim of diversion is to address the root causes of the child's offending behaviour to prevent further re-offending. This is achieved by ensuring that a child complies with certain conditions such as regular attendance at school or a drug dependency treatment programme. Diversionary measures can be broad in scope and ideally practitioners will have a wide range of options available to them to select and use to ensure an individualised approach. Measures can include access to local support services or specific kinds of assistance to help children to disengage from offending including counselling or developing skills to deal with their offending behaviour, such as anger management or problem solving.

These measures seek to address the cause of the child's behaviour, respond to it in a constructive way and aim to involve and strengthen a child's support networks including their family and community. The intensity of a diversion programme, meaning the frequency and duration of programme activities, can be adapted according to the nature of the offence and the level of risk of re-offending. In most countries, it is the prosecutor who plays a critical role as a gatekeeper for the use of diversion and who has the power to decide whether to instigate criminal proceedings or use diversionary procedures. However, diversion away from the formal system can be applied at different stages of proceedings including by police before or after arrest, by investigating magistrates, judges or prosecutors before or after charge and by judges during trials.

It is vitally important that the use of diversion complies with human rights standards meaning that there is compelling evidence that the child has committed the offence, the child has admitted the offence freely and voluntarily, diversion is a proportionate response to the circumstances and gravity of the offence taking into account the nature of the sanction a court is likely to impose, the interests of the victims and public interest in justice and the child gives consent to participate. To ensure that consent is given freely, the child must be given adequate information on the nature and duration of the measure and consequences for failure to participate. They should also always have access to legal advice before making a decision. A child's parents or guardian may also need to provide their consent.

Given the serious nature of terrorist offending, many justice professionals may not consider that diversion is appropriate. Certainly, the research conducted by the partners to the IJJO

67 UN GENERAL ASSEMBLY, CRC, 20 November 1989, *op. cit.*, Articles 37 and 40 (3)(b). See also, UN GENERAL ASSEMBLY. *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules): resolution / adopted by the General Assembly, 29 November 1985, A/RES/40/33, Rules 6 and 11.*

68 UNICEF. *Toolkit on Diversion and Alternatives to Detention [online]*, 2010. Available at: https://www.unicef.org/tdad/index_55653.html

project on strengthening juvenile justice systems in a counter-terrorism context did not find much evidence of the use of diversion in counter-terrorism cases. There will be many instances where it is not appropriate, for example, when a child denies committing the offence, when the risks to public safety are too high or when a child has previously been diverted from formal judicial procedures without a successful outcome. However, diversion can and should be considered as a valid option for use for terrorist-related offences for the following reasons:

- It is a legal imperative: the Committee on the Rights of the Child has stated that minor offences should be considered for alternative measures to judicial proceedings, but that these alternative measures can be considered for more serious offences as well.⁶⁹
- There is growing awareness and understanding of its effectiveness in preventing re-offending in a counter-terrorism context.⁷⁰
- The vast majority of youth offending in Europe is already dealt with out of court by means of informal diversionary measures: for example, in Croatia about 75%⁷¹, in Belgium about 80% and in Germany about 70% of cases are dealt with in this way.⁷² This means that many jurisdictions have effective and comprehensive diversionary systems already in place to respond to this group of children.
- As we have discussed in section 3 above, children are increasingly being charged with terrorist-related offences owing to the expanded use of preparatory offences and offences related to spreading ideas and glorifying terrorism. Many of these children are first-time offenders and may be highly suitable for diversionary measures.
- Diversion measures address the factors directly associated with offending and are therefore likely to reduce the problem of re-offending and reduce the risk to society. They can include counselling, vocational training to increase employment prospects, education and specific programmes to address aspects of violent extremist ideology relevant to the offence. The child must actively participate in these measures and in doing so takes full responsibility for their offending.
- Diversion prevents the harms arising from association with a formal judicial procedure including rupturing of social relationships, marginalisation and stigmatisation, the burden for future employment of a criminal record and re-victimisation during trial proceedings.
- Diversion prevents the harms arising from being deprived of liberty including re-recruitment by terrorist and violent extremist groups as well as the risk of a child radicalising others whilst in detention.

To achieve these benefits, it is vitally important to take an individualised approach and

69 UNCRIC, GC 10, 25 April 2007, *op. cit.*, para 24.

70 See for example GLOBAL COUNTERTERRORISM FORUM. *Initiative to Address the Life Cycle of Radicalization to Violence. Recommendations on the Effective Use of Appropriate Alternative Measures for Terrorism-Related Offenses, 2015*. Available at: <https://www.thegctf.org/Portals/1/Documents/Toolkit-documents/English-Effective-Use-of-Appropriate-Alternatives.pdf> See also GLOBAL COUNTERTERRORISM FORUM (GCTF). *Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context, 2015*. Available at: <https://www.thegctf.org/Portals/1/Documents/Toolkit-documents/English-Neuch%C3%A2tel-Memorandum-on-Juvenile-Justice.pdf>

71 RICIJAŠ, N. et al (2014): *Conducting Intensified Care and Supervision (ICS) in Croatia: Perspectives of Juvenile Offenders and ICS Measure Leaders*. Zagreb: UNICEF Office for Croatia, 2014.

72 DUNKEL, F. Juvenile Justice Systems in Europe – Reform developments between justice, welfare and 'new punitiveness'. 11th Annual Conference of the European Society of Criminology, 21st- 24th September 2011, Vilnius. Available at: <http://www.zurnalai.vu.lt/files/journals/196/articles/3676/public/31-76.pdf>

to develop diversionary measures that respond directly to a child's circumstances and background and are proportionate to the nature of the offence that they admit to having committed. Some promising options for diversion programmes for children in a counter-terrorism context include:

- Referral to rehabilitation services such as counselling, peer or adult mentoring, medical or psychological care or classes to develop skills to deal with their offending behaviour such as building self-esteem and self-control. Specific rehabilitation services may be required to respond to children when they have been recruited and exploited by terrorist or violent extremist groups and have been exposed to often very high levels of violence and trauma.
- Special attention should be paid to rehabilitation services that are needed by girls who have experienced gender-based violence including sexual violence in the course of their association with terrorist or violent extremist groups.
- Attending school or vocational training to increase the chances of future employment.
- Referral to rehabilitation programmes that specifically address any ideological aspects of terrorist offending where this is found to be relevant following an individual assessment. Such programmes are sometimes described as 'de-radicalisation' measures that focus on altering views, values and attitudes. Other programmes focus more on a child's behaviour and actions and are designed to modify forms of interaction and behaviour and can be more accurately defined as promoting disengagement from violence.
- Referral of the child and their family to family support services. The aim is to strengthen the family support structures and establish relationships that can promote affection, responsibility, limitations, and control.
- Close and regular supervision by a social worker or probation officer.

Recommendation

Diversion should be a valid option for terrorist-related offences.

- As far as possible, children who are alleged as, accused of or recognised as having committed a terrorism-related offence should be dealt with by way of diversion and outside of the formal criminal justice system. This is not least because entry into the criminal justice system creates additional risks of secondary victimisation and re-recruitment by terrorist and violent extremist groups.
- Existing diversionary measures should be reviewed to see how they are being applied in terrorist-related cases involving children across EU Member States to gain a better understanding of how they can be used most effectively.
- Justice professionals (judges, lawyers, prosecutors etc.) need to be better trained, equipped and confident to use diversionary measures in terrorist-related cases.

Promising Practice: The Diamond Training in the Netherlands for children at risk⁷³

The Diamond Training programme was developed by the Intercultural Participation and Integration Foundation (*Stichting Interculturele Participatie en Integratie* or SIPI). SIPI has ten years of experience working with children and young people (aged 12 to 27 years) of a non-western background who are at risk of 'radicalisation' or who have been involved in terrorist-related offending. The Diamond Training is a flexible programme which aims to resolve a disconnect between their self-esteem, autonomy and individuality on the one hand and being connected to their own ethnic cultural background and Dutch society on the other hand. Parents, family members and other people important to the child are often directly involved. The programme is used in different contexts and settings with children and young people perceived to be vulnerable to radicalisation as well as part of a sentence imposed by the Juvenile Court.

The objectives of the Diamond Training are for children and young people to: increase their self-confidence; develop empathy and their own identity; reduce any feelings of being treated unfairly; learn to set goals and deal with inter-cultural conflict; improve social skills; and integrate more into society through participation in education, internships and work. Mentors work with children through group-training to discuss dual identity and ideology as well as supporting them to find work or to enter into education.

The Diamond Plus Training is more intensive (and more expensive) and focusses specifically on the de-radicalisation and reintegration of radical Muslim youths. A mentor develops a family-oriented plan for a year of work with the young person and their wider circle. An important feature of this programme is collaboration with other organisations such as municipalities, police, detention centres, HALT (a Dutch organisation which aims to prevent and combat youth offending), probation, the Child Care and Protection Board, Safety Houses, schools and care, reintegration and child protection services. As of 2017, the training had been used with around 15 children and young people.

Forty-six male and female Muslim adolescents and young adults with a migrant background who were 'possibly vulnerable to radicalisation' participated in a longitudinal evaluation of the Diamond Training.⁷⁴ The results were encouraging and showed that the training significantly increased their reports of agency and a marginal increase was found in reported self-esteem, empathy and perspective taking but also narcissism. Attitudes toward ideology-based violence and their own violent intentions were significantly lower after the training than before. These results suggest that an intervention aimed at empowering children and young people in combination with strengthening empathy can be successful in countering violent radicalisation.

73 For more information see: FEDDES, A.R., MANN, L., & DOOSJE, B. Increasing self-esteem and empathy to prevent violent radicalization: a longitudinal quantitative evaluation of a resilience training focused on adolescents with a dual identity. *Journal of Applied Social Psychology*, 2015, Volume 45 (7), pp. 400-411

74 *Ibidem*

2.6 A specialised system during investigation and arrest

Detecting and investigating terrorist activities is undeniably challenging. In recent years, Member States across the European Union have enacted laws and policies to strengthen the powers of law enforcement in terrorist-related investigations in an attempt to meet this challenge. For example, law enforcement officials have been given broader powers to carry out searches and seizures and to use “special investigative techniques” such as the use of informants and the use of covert surveillance, in the context of counter-terrorism investigations. There is also more collection and sharing of individuals’ personal information and use of watch lists and databases.

Many of these enhanced powers are used to investigate and monitor children and the use of these powers is bolstered in particular by UN Security Council Resolution 2396 (2017) which calls upon States to assess and investigate suspected foreign terrorist fighters and their accompanying family members, including children. In Germany, for example, the domestic intelligence agency was given the power to track and collect data on children aged 14 years and upwards in 2016.⁷⁵ Previously they were only permitted to do this for children aged 16 years old and upwards but the age was lowered largely in response to a specific case involving a 15 year old girl recently returned from Syria.⁷⁶ In 2016, Austria adopted the Police State Protection Act which authorises measures for the protection of public safety including conducting covert investigations and collecting information from passenger transport companies and public telecommunication service providers. As these provisions do not require any criminal liability, the measures may also be applied to children (the minimum age of criminal responsibility is 14 years in Austria).⁷⁷

Whilst intelligence gleaned from such monitoring may be highly useful in preventing terrorist attacks, it is important to remember that a child who has been recruited and exploited by terrorist or violent extremist groups is also a child in need of protection and rehabilitation. Prolonged monitoring for evidence-gathering purposes may prevent them from being provided with the support they require. Furthermore, the collection of information to carry out surveillance or to place individuals on watch lists and exchange information between States, is likely to result in interference with children’s privacy and other rights.

In the UK, British police and intelligence agencies use children – some under 16 – as informants in covert operations against terrorists with only limited protections and safeguards in place.⁷⁸ Given that terrorist and violent extremist groups are, by definition, violent and intimidating organisations, the use of child informants represents a serious violation of their right to be protected from the risk of violence and from very serious physical and mental harm. Physical harm may result from being in a violent environment, or from punishment and retaliation if children are discovered to be working covertly. Mental harm (which can be more pronounced because children’s brains are still developing) may

75 Regional overview (IJJO, 2018, *op.cit.*)

76 BARKIN, N., & SERVIN, T. Germany loosens restrictions on monitoring radicalized teenagers. *Reuters*, 22nd June 2016. Available at: <https://www.reuters.com/article/us-germany-security-teenagers-idUSKCN0Z81RK>

77 Salimi, *Neue Rechtsgrundlagen für den Staatsschutz*, p.3; Draft Bill, 110/ME XXV.GP-Ministerialentwurf, p.4.

78 HOUSE OF LORDS, SECONDARY LEGISLATION SCRUTINY COMMITTEE. *Draft Investigatory Powers (Codes of Practice and Miscellaneous Amendments), Regulation of Investigatory Powers (Juveniles) (Amendment)*. London: Legislation Office, House of Lords, 2018. Available at: <https://publications.parliament.uk/pa/ld201719/ldselect/ldsecleg/168/168.pdf>

result from exposure to damaging behaviours, the pressures of having to 'live a lie', and the imbalance of power between the child and their police handler.⁷⁹

During investigations, law enforcement officials need to be mindful at all times of the obligation to protect children from violence and harm, the principle of the best interests of the child, and the desirability of promoting the child's rehabilitation and reintegration.

When a case has moved beyond the initial investigation stage and a child has been arrested for a terrorist-related offence, then there are certain safeguards that must be in place to ensure that the arrest of a child is conducted safely, with due regard for their rights and dignity and in compliance with EU Directive 2016/800.⁸⁰ Special units within the police to deal specifically with children on arrest have been established in many EU Member States.⁸¹ It is likely that police or other security forces who are trained and specialised in dealing with terrorist-related cases may be involved as well. As much as possible, the lead should be taken by the police unit that is specialised and training in dealing with child offenders with the support and collaboration of their security colleagues.

A child under the minimum age of criminal responsibility should not be arrested but instead referred to child protection agencies. The arrest of a child over the minimum age of criminal responsibility should be a measure of last resort and should last for the shortest possible period of time.⁸² Where possible, alternatives to arrest, such as summonses and notices to appear at police stations, should be used. Arbitrary arrest or detention is prohibited.⁸³ This means that any arrest or detention of children must not only be lawful but also reasonable in all circumstances.⁸⁴ The European Court of Human Rights (ECtHR) states that there must be reasonable suspicion for arrest to take place and that this is met when "an objective observer would be satisfied that the person may have committed the offence". Previous convictions for terrorism-related, or any other offences, being

79 A case challenging the use of 'child spies' has been brought by a UK-based NGO Just for Kids Law. See TWITE, J. Child Spies being used to gather intelligence on country lines gangs. *Youth Justice Legal Centre*, 27th September 2018. Available at: <https://yjlc.uk/child-spies-being-used-to-gather-intelligence/>

80 EUROPEAN UNION. 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. *Official Journal of the European Union*, L 132, 21.5.2016, p. 1-20; EUROPEAN COMMISSION. *EU acquis and policy documents on the rights of the child* (version 1.9). Brussels: Directorate-General Justice and Consumers, European Commission, 2017. Available at: http://ec.europa.eu/justice/fundamental-rights/files/acquis_rights_of_child.pdf

81 EUROPEAN COMMISSION – DIRECTORATE GENERAL FOR JUSTICE. *Summary of contextual overviews on children's involvement in criminal judicial proceedings in the 28 Member States of the European Union*. Luxembourg: Publication Office of the European Union, 2014, p.10. Available at: <http://www.childreninjudicialproceedings.eu/docs/EU%20Summary.pdf>

82 UN GENERAL ASSEMBLY, CRC, 20 November 1989, *op. cit.*, Articles 37 (b).

83 Under Articles 9 and 11 of the ICCPR and Article 37(c) of the CRC, no-one shall be subject to arbitrary detention. Principle 2 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment also holds that arrest, detention or imprisonment shall be carried out only strictly in accordance with the provisions of the law and only by competent officials or persons authorized for that purpose. UN GENERAL ASSEMBLY. *International Covenant on Civil and Political Rights (ICCPR)*, 16 December 1966, United Nations, Treaty Series, vol. 999; UN GENERAL ASSEMBLY, CRC, 20 November 1989, *op. cit.*; UN GENERAL ASSEMBLY. *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* adopted by General Assembly resolution 43/173 of 9 December 1988.

84 UNCRC, GC 10, 25 April 2007, *op. cit.*, para. 79. See also UN GENERAL ASSEMBLY, Beijing Rules, 29 November 1985, *op. cit.*, Rules 17.1(b) and 17.1(d); UN GENERAL ASSEMBLY. *United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules): resolution adopted by the General Assembly*, 14 December 1990, Rule 3; UN GENERAL ASSEMBLY. *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (Havana Rules)*, 2 April 1991, A/RES/45/113, Rules 68 and 70.

a member of a particular ethnic group, practising a particular faith, or having a family member who is associated with a terrorist or violent extremist group cannot constitute reasonable suspicion under this test.

Only minimum force should be used in dealing with children on arrest. There should be no use of handcuffs or restraints unless it is necessary for the protection of others or the protection of the child against harming him or herself, and no degrading treatment. Every child who is arrested must be informed immediately of the reason for their arrest⁸⁵ and of their rights, in a manner which is consistent with their age and level of understanding.

Children who have been recruited and exploited by terrorist and violent extremist groups may be particularly vulnerable whilst being held in pre-charge detention since they will have experienced violence and victimisation that may have affected their physical and mental health. The experience of detention can exacerbate underlying physical and mental health issues and children should have access to medical care as required. The risks of retaliation from terrorist groups or from other detainees for children suspected of terrorist-related offending are also enhanced and specific security measures should be adopted to ensure their safety whilst in police detention.

The Committee on the Rights of the Child has recommended that children are not held for a period of more than 24 hours without being brought before a court or released and no exceptions should be made to this in a counter-terrorism context.⁸⁶ Children should have access to a lawyer at the earliest possible time after arrest.⁸⁷ This right is critical in terrorist charges where the investigation might be very complex and the consequences of conviction very serious. Girls should be dealt with by female police officers including during supervision, searches and interviews.

In addition, there are safeguards that must be in place to ensure the rights of child suspects when they are being interviewed at a preliminary phase of the case. These safeguards become even more important when children who have been recruited and exploited by terrorist and violent extremist groups are being interviewed since their exposure to extreme violence and trauma may make them unusually vulnerable to coercive methods of questioning.⁸⁸

Furthermore, they may be fearful of disclosing information about the group that recruited them owing to a sense of loyalty or attachment or genuine fear of retaliation. They are also likely to mistrust and harbour grievances against law enforcement authorities which can make them appear oppositional and therefore more challenging to interview.

85 Article 9 (2) of the ICCPR, which applies equally to children as it does to adults, provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest. UN GENERAL ASSEMBLY, ICCPR, 16 December 1966, *op. cit.*

86 UNCRIC, GC 10, 25 April 2007, *op. cit.*, para. 83.

87 UN GENERAL ASSEMBLY, CRC, 20 November 1989, *op. cit.*, Article 37(d).

88 DRAKE, K. Why might innocents make false confessions? *Psychologist*, 2011, Vol 24 (10), pp. 752-755. Available at: <https://thepsychologist.bps.org.uk/volume-24/edition-10/why-might-innocents-make-false-confessions>.

These safeguards include:

- Children have the right to remain silent when questioned and not to incriminate themselves.
- The child should never be subjected to any form of cruel, inhuman or degrading treatment or punishment, including threats or verbal abuse.
- The use of well-trained interviewers is essential. Training should cover the physical, mental and social development of children as well as the special needs of groups such as girls, disabled children, and children belonging to a religious, linguistic or other minority. They should keep in mind that during the interview, child suspects who have been victim of recruitment and exploitation may find it very difficult and even re-traumatising to speak about their experiences.
- A child should be interviewed in the presence of a lawyer or legal representative.
- A child should be interviewed in the presence of a parent or guardian.
- They should be provided with adequate food and water and access to sanitation.
- Interviewing late at night should be avoided and they should be given breaks as needed given they are likely to have more limited concentration levels.
- As a precautionary measure, permanent video recording of interrogation rooms should be used as appropriate.
- For girls, who have been victims of recruitment and use by terrorist and violent extremist groups, it can be good practice to ask if they have a preference about the sex of the interviewer.

The findings from the IJJO project research were that the procedures and safeguards for children who have been arrested and are in police detention are usually no different if they are arrested for terrorist-related offences or for other criminal offences. However, in some countries it is argued that longer periods of pre-charge detention are required in terrorism cases because of the complexity of investigating terrorism cases, the difficulty in obtaining admissible evidence, and the importance of protecting the public from terrorist attacks. In France, for example, the period in detention can be extended up to 48 hours for a child who is aged 13 to 15 years who has been arrested for an offence punishable by at least five years in prison (which would include the offences of criminal conspiracy with a view to committing a terrorist act and for advocating terrorism). If a child is over 16, the time in police detention can be extended to 48 hours if the offence is punishable by at least one year in prison. It can be extended to a total of 96 hours if the offence constitutes an act of terrorism and at least one adult is suspected of having participated in the offence. These extensions are done on written authorisation by the magistrate after hearing the child.

Recommendation

Children are vulnerable during investigation and arrest and their rights must be upheld.

- Investigating terrorist-related offences is challenging, complex and often pressured work. During investigations, law enforcement officials must make every effort to protect children from violence and harm, uphold the principle of the best interests of the child, and promote the child's rehabilitation and reintegration.
- Children held in pre-charge detention must be provided with protections and safeguards including access to a lawyer and transfer to a court within 24 hours.

Case law from the European Court of Human Rights on the right to a lawyer in a case concerning national security - *Salduz v Turkey*

Salduz, a 17-year-old boy, was taken into custody in Turkey on suspicion of having participated in an unlawful demonstration in support of an illegal organisation. While being interrogated, he confessed to the suspected offences before the public prosecutor and the investigating judge. He was later allowed access to a lawyer and convicted and sentenced. He complained that his defence rights had been violated as he had been denied access to a lawyer while he was in police custody.

The European Court of Human Rights (ECtHR) ruled that denying legal assistance to Salduz while he was held and interrogated in police custody was a violation of his right to a fair trial because the police should provide access to a lawyer from the first interrogation of a suspect unless there are very compelling reasons not to in particular circumstances. In this case, the Turkish government's only justification for denying Salduz access to a lawyer was that he was suspected of committing an offence related to national security.

Furthermore, despite Salduz contesting the accuracy of the statement he made to the police without legal advice, it was relied upon to convict him. This was, therefore, a clear violation of the right to a fair trial under the European Convention on Human Rights. In particular, in view of Salduz's young age, the Court noted the fundamental importance of providing him with legal assistance and the government's obligation to do so under international treaties, including the CRC.

Source: EUROPEAN COURT OF HUMAN RIGHTS. *Case of Salduz v. Turkey*, application no. 36391/02. Judgment 27 November 2008

2.7 Ensuring the right to a fair trial

The CRC requires children to be tried by a competent, independent and impartial authority, tribunal or judicial body, following procedures specifically applicable to children. The Committee on the Rights of the Child recommends that states establish separate courts to adjudicate children charged with a criminal offence either as separate units or as part of existing courts.⁸⁹ It further recommends that where it is not possible to establish separate courts, a state should ensure the appointment of specialised judges or magistrates to deal with cases of juvenile justice.⁹⁰ Key features of specialised courts include:

- **Respect for the privacy of the child** throughout proceedings, with a trial taking place in a closed courtroom and with a prohibition on any identification of the child in the media. This may be even more important in terrorist-related cases concerning children where the level of media interest can be very intense and there can be a serious risk of reprisals or stigmatisation.⁹¹ There is a heightened risk of disclosure of identity when cases are heard in adult courts which are open to the public and the media should be held to account for disclosing a child's identity contrary to regulations.
- Offences committed during childhood should not appear on the **criminal records** of children when they become adults, in order to provide them with a real opportunity to be fully reintegrated into society with a clean record. If diversion measures are applied, confidential records may be kept for administrative and review purposes only and should later be destroyed.⁹²
- Using **procedures that enable a child to participate effectively in the trial.**⁹³ Children should be dealt with in non-intimidating and child-sensitive settings and the language used by the court must be such that the child is able to understand what is happening.⁹⁴
- **Children should be informed and given advice** throughout the justice process, for example, about charges, the different procedural steps that will be taken and the judgment or outcome of a hearing. The ECtHR recognised in *S.C. v the United Kingdom*⁹⁵ that the accused needs to have a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed, in order for the individual to participate effectively in the proceedings.
- Children should have access to a lawyer to support and assist them.
- Parents or other supportive adults should be informed as well about when charges are brought and be able to accompany their children during court hearings.

89 The CRC Committee has recommended that States establish juvenile courts either as separate units or as part of existing regional/district courts in UNCRC, GC 10, 25 April 2007, *op. cit.*, para 92-93.

90 UNCRC, GC 10, 25 April 2007, *op. cit.*, paras 92-93.

91 UN GENERAL ASSEMBLY, CRC, 20 November 1989, *op. cit.*, Article 40(2)(b)(vi)

92 See also Directive (EU) 2016/800, 11 May 2016, *op. cit.*, which states that children have the right to appear in person at, and participate in, their trial (art.16(1)). Moreover, the child has the right to be accompanied by a parent or other appropriate adult during court hearings (art.15 (1.2).

93 UN GENERAL ASSEMBLY, CRC, 20 November 1989, *op. cit.*, Article 40(2)(b)(iv). See also, LIEFAARD, T., RAP, S., & BOLSCHER, A. *Can anyone hear me? Participation of children in juvenile justice: A manual on how to make European juvenile justice systems child-friendly*. Brussels: International Juvenile Justice Observatory, 2016 in particular pages 67-72. Available at: <https://www.oijj.org/en/improvingjjs-manual>

94 UNCRC, GC 10, 25 April 2007, *op. cit.*, para. 92.

95 EUROPEAN COURT OF HUMAN RIGHTS. *Case of S.C. v. United Kingdom*, application no. 60958/00. Judgment 15 Jun 2004.

- Children need to feel safe in the court environment. Security measures may need to be introduced during terrorist-related trials to ensure this such as increased police or other security staff both in and outside the courtroom and the strategic use of security checkpoints and screening procedures.

Case study: Disclosure of boy's identity following conviction for terrorist-related offence in Wales

A 17-year-old boy, B, who has a diagnosis of autism, was convicted in an adult court for engaging in the preparation of a terrorist act, encouraging terrorism, and for possessing terrorist information. He was given a life sentence with a minimum term of 11 years' imprisonment. Reporting restrictions on disclosing his identity were initially in place owing to his age but the Press Association applied successfully to the court for these to be lifted. The presiding judge allowed for the boy's name, date of birth, photograph and town of residence as well as details about the offence and conviction to be disclosed to the media on the basis that it was in the public interest for him to be identified.

Source: <https://www.bbc.co.uk/news/uk-wales-42607784>

Specialised tribunals for children who are being adjudicated for terrorist-related offences is especially important because such trials can be intense, intimidating and protracted owing to their complexity. They also attract high levels of media attention. Without the needed protections and safeguards in place, the conduct of the trial itself can have a negative impact and possibly re-victimise a child who has been recruited and exploited by terrorist and violent extremist groups.

There is varied practice on the formation and use of specialised juvenile courts within EU Member States. In 20 jurisdictions, there are specialist courts dealing with juvenile justice.⁹⁶ In some cases, the specialist juvenile courts consist of courtrooms that are physically separated from adult courts. In other cases, ordinary courts are adapted to the needs of children, including through the involvement of specialist judges. In Austria and Croatia, for example, there are specific procedural laws for children and young adults which are always followed. Nine Member States do not have specialist courts. In these countries, all children are tried or participate as victims and witnesses in the ordinary courts with the same judges who adjudicate on cases involving adults.⁹⁷

Even in countries which do have specialised courts, some also have provisions for children to be transferred to adult courts in certain circumstances for trial or sentencing as set out in the table below. In Germany, for example, children over 16 years old can be brought before State Security Courts for terrorist-related cases rather than Youth Courts. The State Security Court should apply the procedural and sentencing guidelines set out in the Juvenile Courts Act⁹⁸ for such cases. For example, the Juvenile Court Supporter should be present – as representatives of the child welfare service, they have the task of assisting the child and their family and informing the court about alternatives to detention and sentencing procedure. In practice, professionals in the State Security Courts are not

⁹⁶ EUROPEAN COMMISSION – DIRECTORATE GENERAL FOR JUSTICE, 2014, *op. cit.*, p.9

⁹⁷ *Ibidem.*

⁹⁸ Germany: Article 1(1) of the Juvenile Court Act of 1953 determines that the special provisions of the JCA shall apply whenever a juvenile (aged 14-18 years old) or - upon certain conditions – a 'young adult' (aged 18-21 years old) commits an offence that punishable by German law.

specialised in dealing with children and are not trained in focussing on rehabilitation as required in the Juvenile Court Act. A hearing in the State Security Court can be more traumatising for children, as they may struggle with not knowing what is going on, are held in a high security environment, have difficulties with the language used and sometimes they are handcuffed.

In Belgium, children over 16 can also be transferred to the adult criminal system⁹⁹ provided that the Youth Court concludes that a protection measure is not appropriate. Such a transfer is permitted only if the child has already been subject to a protection measure or if the offence is serious, for example murder, attempted murder, sexual abuse, physical assault resulting in lasting physical injuries, torture or robbery. In the Communities' new draft laws, serious violations of international humanitarian law and terrorism-related charges have been inserted in the list of offences which justify transfer to the adult criminal system.

Children in these circumstances are not tried by adult courts but by a specialised 'extended youth court' that applies adult criminal law and can punish children with all criminal sanctions except life imprisonment. If the child is sentenced to a prison sentence, this sentence is executed in specialized institutions at least until the age of 18. After that age has been reached, it is possible to transfer the young adult to adult prisons. Research was conducted on the use of this transfer provision in practice and concluded that "transferring children to adult courts can have negative effects on preventing re-offending", that it did not act as a deterrent effect and within a period of four to six years, at least half of the children transferred had been convicted again.¹⁰⁰

99 Belgium: Art. 57bis Youth Protection Act.

100 CHRISTIAENS, J., & NUYTIENS, A. Transfer of Juvenile Offenders to Adult Court in Belgium: Critical Reflections on the Reform of a Moderate Practice. *Youth Justice*, 2009, vol 9(2), pp. 131-142.

Table 2: Overview of transfer of cases to the adult criminal justice system in project countries.

Country	Children tried and/or sentenced in adult criminal justice systems for serious crimes
Austria	Not applicable.
Belgium	Children 16 years old and over can be tried in an ‘extended youth court’ that applies adult criminal law. They can be punished with all criminal sanctions except life imprisonment.
Croatia	Not applicable.
France	In certain circumstances, a judge may decide that children 16 years old and over are not given a mitigated sentence although this is rarely used in practice.
Hungary	Not applicable.
Germany	Children 16 years old and over charged with terrorist-related offences can be sentenced in State Security Courts which should apply the procedural and sentencing guidelines set out in the Juvenile Courts Act.
Netherlands	Children 16 and 17 years old can be sentenced in an adult criminal court depending on the seriousness of the offence and circumstances of child. Currently, this decision is made by a public prosecutor.

The Committee on the Rights of the Child has explicitly expressed concern at the practice of transferring children to adult courts on the basis of their age, for example if they are over 16, or to provide for the application of adult criminal law to certain offences, including terrorist offences.¹⁰¹ The Committee recommends that “those States parties which [...] allow by way of exception that 16 or 17-year-old children are treated as adult criminals, change their laws with a view to achieving a non-discriminatory full application of their juvenile justice rules to all persons under the age of 18 years.”¹⁰² This is because when children are tried in adult courts they can lose key protections such as the right to be heard and to have access to people who can support them. The loss of these protections can have a negative impact on their fair trial rights and ultimately on the progress of their

¹⁰¹ UNCRC, GC 10, 25 April 2007, *op. cit.*, para. 38. See also, for example, in its Concluding Observations to Canada in 2003, the Committee expressed its concern at the ‘expanded use of adult sentences for children as young as 14’ (UNCRC. *Concluding Observations of the Committee on the Rights of the Child: Canada*, 3 October 2003, CRC/C/15/Add.215, para. 56). In its Concluding Observations to Pakistan in 2016, the Committee recommended that the State ‘(c) Ensure that all stages of cases involving children, even those concerning terrorism-related crimes or violations of sharia law, including arrest, detention (whether pre-trial or post-trial) and trial, are overseen by juvenile courts, in compliance with the Convention and all applicable international standards.’ (UNCRC. *Concluding Observations on the fifth periodic report of Pakistan*, 11 July 2016, CRC/C/PAK/CO/5, para 25).

¹⁰² UNCRC, GC 10, 25 April 2007, *op. cit.*, para 38.

rehabilitation. Similarly, when a child is alleged to have committed a terrorism-related offence jointly with an adult, the competence of authorities and institutions specifically applicable to a child should be used rather than the competence of the adult criminal justice system.

Mechanisms for close collaboration and cooperation are needed between courts dealing with children's cases and those responsible for prosecuting terrorism-related cases. In France, for example, the Paris Regional Court has jurisdiction over the prosecution, investigation and trial of the most serious terrorism offences (with the exception of the offences of direct provocation and of publicly advocating terrorist acts). It is a regular criminal court, but the investigating judges and prosecutors are trained to handle terrorism cases. However, children's cases related to terrorism are prosecuted, investigated and tried in collaboration with the public prosecutor and the specialised Judicial Juvenile Protection Services (DPJJ) with the most serious cases involving those aged between 16 to 18 years old being adjudicated in a special juvenile court (*Cour d'Assises Special de Mineurs*). Other important institutions are the Paris Court Educational Unit which has responsibility for collecting background information on a child and the Territorial Non-Custodial Educational Service, a judicial juvenile protection service with a centre in Paris which provides judicial measures of educational investigation.¹⁰³

Recommendation

Children charged with terrorism-related offences have the right to a fair trial.

- Terrorism-related cases involving children as defendants should not be transferred to the adult criminal system.
- Children's right to a fair trial should be ensured and, in particular, cases should be heard without delay and using procedures that ensure their right to be heard, their safety and their right to privacy.
- Children should have access to a lawyer throughout trial proceedings.

¹⁰³ For more information on the French approach see WEIL. S. *Terror in Courts, French counter-terrorism: Administrative and Penal Avenues. Report for the official visit of the UN Special Rapporteur on Counter-Terrorism and Human Rights*. Paris: PISA, Sciences-Po, 2018. Available at: <https://www.sciencespo.fr/psia/sites/sciencespo.fr/psia/files/Terror%20in%20Courts.pdf>

2.8. Pre-trial detention

There is often an assumption that children who are alleged as, accused of or recognized as having committed a terrorism-related offence have assimilated a violent extremist ideology and represent such a risk to society that non-custodial measures pre-trial cannot be contemplated. Children should only be deprived of their liberty as a measure of last resort and for the shortest amount of time possible.¹⁰⁴ This is because detention has harmful effects on children and can prevent their rehabilitation. In many countries, the lack of adequate facilities, insufficient access to education and training, and compromised contact with family and friends makes even short periods of time in detention traumatic for children.

In general, children in detention may be vulnerable to violence from their peers, staff and adult detainees but children accused of terrorism-related offences are especially vulnerable to violence when they are considered as threats to national security.¹⁰⁵ Another specific risk they face is that they are held in pre-trial detention for protracted periods of time owing to the complexity and length of some terrorist proceedings or because they have been charged alongside adults.

Pre-trial detention, whilst awaiting trial or while under investigation pre-charge, should only be used in exceptional circumstances and never as a punishment since this would violate the presumption of innocence. Exceptional circumstances can include when pre-trial detention is necessary to ensure her or his appearance at court and if he or she poses a danger to himself or herself or others.¹⁰⁶ Most countries have a range of alternatives to pre-trial detention that can provide oversight of the child to ensure public security including curfew, agreement not to contact any victim, removal of passports, reporting regularly at police stations, electronic monitoring and placement in the care of a trustworthy person who undertakes to ensure the child's presence at judicial hearings. Bail and other forms of conditional release should be accompanied by measures to support and supervise the child during this period.

Based on the information provided by IJJO project partners, it was not possible to reliably analyse the use of pre-trial detention for children charged with terrorist-related offending to determine if it is used as a measure of last resort and for the shortest appropriate period of time. However, it can be noted that in France, children over 16 years old can be held in pre-trial detention for up to three years if charged with terrorist-related offending.¹⁰⁷ In Germany, children can normally be placed in pre-trial detention for up to six months.¹⁰⁸ However, if the criminal investigations are particularly complex and difficult, the Higher Regional Court can prolong the pre-trial detention beyond this.

104 As required in UN GENERAL ASSEMBLY, CRC, 20 November 1989, *op. cit.*, Article 37(b).

105 See, for example, BECKER, J. *Extreme Measures: Abuses Against Children Detained as National Security Threats*. Human Rights Watch, 28 July 2016. Available at: <https://www.hrw.org/report/2016/07/28/extreme-measures/abuses-against-children-detained-national-security-threats>

106 UNCRC, GC 10, 25 April 2007, *op. cit.*, para. 80.

107 France's Code of Criminal Procedure (Code de procédure pénale), Law No. 2006-64, as amended by Article 17 of the Law on the fight against terrorism and various provisions relating to security and border controls (Loi n. 2006-64 relative à la lutte contre le terrorisme et portant dispositions diverses relatives à la sécurité et aux contrôles frontaliers), <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000454124>, art. 706-88(1).

108 Germany: Article 121 of the Code of Criminal Procedure.

In Austria, research revealed that children and young adults charged with terrorist-related offences stay in pre-trial detention between two weeks and almost a year.¹⁰⁹ In one case, an adult was kept in pre-trial detention for a serious terrorist crime committed as a young adult for 16 months.¹¹⁰ Although it is, in general, common practice for children and young people in pre-trial detention to be considered for release “under lenient measures and imposition of highly frequent probation support.”¹¹¹

Whilst in pre-trial detention, it is important that an individualised plan for reintegration is developed at an early stage that may include support for de-radicalisation or disengagement. In Austria, it is commonplace for children and young people charged with terrorist-related offending to have support from DERAD and other organisations during pre-trial detention.¹¹² Although there are risks of stigmatisation arising from this sort of support pre-trial, the rationale is that, if it started after conviction, then there would often be little time remaining to conduct a de-radicalisation programme due to the deduction of remand time served from the final sentence.¹¹³

Recommendation

Pre-trial detention as a measure of last resort

- Pre-trial detention should not be a default option for children awaiting trial for a terrorist-related offence.
- More research is needed to assess the effectiveness of non-custodial alternatives in ensuring public safety.
- If a child is in pre-trial detention, an individualized plan should be developed and implemented to guarantee their health, physical and mental development and reintegration.

109 Austria, File inspection conducted by authors of national report between August-October 2017.

110 Austria, Findings from file inspection carried out in the context of the project. The maximum duration of pre-trial detention until the beginning of the trial is - depending on the reason for detention and the complexity of the case - two years if the person is suspected of an offence that is punishable at least by five years of imprisonment (§ 178 StPO). For juveniles and young adults the maximum is a year if it is necessary due to the complexity and scope of the case (§ 35 para.3 JGG).

111 Austria, Interview conducted with a representative of Neustart on 5 July 2017.

112 Austria: Initially, the public prosecution expressed concern that ‘investigations should be able to proceed without external influence or disturbance’ and made use of its right to regulate contact with external persons for some detainees, including juvenile suspects in pre-trial detention. This attitude has, however, been discarded and contact with DERAD is standard nowadays. Hofinger/Schmidinger, *Deradikalisierung im Gefängnis*, 2017, p. 137, cf. S. 32, 45, 89, 93, 105, 123.

113 Austria: Interview with a representative of the penitentiary sector within the Ministry of Justice, conducted on 8 May 2017.

Promising practice: Social Network Conferences for children and young adults in pre-trial detention and eligible for conditional release in Austria¹¹⁴

In 2016, the amended Juvenile Court Act came into force in Austria allowing for Social Network Conferences (SoNeKos) to take place for children and young adults who have been sent to pre-trial detention or who are eligible for conditional release at the end of their sentence (articles 35 and 17a of the Youth Court Act). Participation in a SoNeKo is now obligatory for all those convicted of an offence concerning articles 278b *et seq* of the Criminal Code (“terrorist offences”), such as ‘participation in a terrorist group’ and who are nearing their conditional release – this is not also the case for adult offenders.

These Social Network Conferences are organised by Neustart, an organisation funded by the Ministry of Justice, which runs the Probation Service in Austria. The Conferences are attended by the young person, their probation officer and members of their social network such as family members, friends, teachers and support staff. The young person agrees to stick to certain obligations such as regular attendance at school, doing an apprenticeship and attending therapy such as anger management programmes. These conditions are written down and all parties agree to commit to the resulting plans. The probation officer outlines the main concerns in terms of release and recidivism and the plan should address these concerns directly. The plan is then sent to the youth judge charged with the case, who issues orders which are supervised by the probation officer.

Key objectives of the SoNeKos are:

- (i) to reduce time spent in pre-trial detention after a suitable plan has been worked out and accepted by the judge; and
- (ii) to ensure better integration for children at the end of their sentence with family, work and friendship structures and to encourage involvement in meaningful occupation and disengagement from violent and radical connections.

A significant advantage of SoNeKos is that the affected individual is given a central role in the decision-making process. Case-records from 2013 to 2015 show a positive trend: 85 percent of the offenders granted parole following a SoNeKo did not re-engage in delinquency.

114 For more information see: NEUSTART. *Probation service: Together we come ahead*. Available at: <https://www.neustart.at/at/en/> and PRIECHENFRIED, K. Alternativen zur Untersuchungshaft für Jugendliche. In M. PLATZER et al., *Jugendliche in Haft: Entwicklungen im österreichischen Jugendstrafvollzug von 2013 bis heute* (pp.11-114). Vienna: Herausgegeben von Academic Council on the United Nations Systems (ACUNS).

2.9. Proportionate and individualised sentencing

The gravity of terrorist offences means that there are heightened penalties attached to these crimes in many Member States. The international standards are clear that any sentence given to a child must promote their rehabilitation and reintegration so that they can take up a constructive role in society. When sentencing, “the reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence, but also to the circumstances and the needs of the juvenile as well as to the needs of the society”.¹¹⁵ It is imperative that the principles of sentencing for child offenders are upheld in a counter-terrorism context particularly given that most children are convicted of offences concerning lesser forms of contribution such as participation in a terrorist group or glorification of terrorism (see section regarding criminal charges above).

In determining the seriousness of the offence and the degree of responsibility of the child, the court should consider any aggravating or mitigating circumstances related to the nature and circumstances of the offence and the personal history, social circumstances and personal characteristics of the child.

Aggravating factors might include encouraging others to commit terrorist activities, committing the offence whilst already on bail for another offence, the extent of planning involved and being motivated by hostility towards certain ethnic or religious groups. Mitigating factors that could lead to a less severe sentence for the child might include:

- having no previous convictions;
- having a low level of responsibility for the offence committed; for example, providing limited help, assistance or encouragement;
- in some jurisdictions, pleading guilty at an early stage can be a mitigating factor;
- demonstrating remorse and a commitment to positive change;
- the extent to which the child has acted impulsively and without fully understanding the effect of their actions nor the pain caused to the victims;
- the extent to which the child has been susceptible to peer pressure;
- concerns about the child’s physical or mental health;
- the potential impact of any proposed sentence on the child’s future, including their education and prospects and the short- and long-term effects a particular sentence might have on that individual child’s chances of successful rehabilitation; and
- the levels of threat, coercion and violence experienced if a child offended in the context of having been recruited and exploited by a terrorist or violent extremist group. In some circumstances, the level of coercion involved may amount to a defence of duress (or its equivalent) or may lead to a child being directly handed over to child protection services with no prosecution.

In weighing up these complex considerations and shaping an appropriate sanction, a sentencing court should have access to a social inquiry report or assessment which examines a child’s vulnerability, mental health or intellectual ability, family background and degree of victimisation and exploitation by terrorist or violent extremist groups.

According to the IJJO project partners, a wide range of sentences are given by courts to children convicted of terrorist-related offences but it was challenging to obtain reliable

¹¹⁵ UNCRC, CRC, 29 November 1985, *op. cit.*, Article 17.1(a).

data on the extent to which these different sentences were used in practice because the data was either not available or not readily accessible.

In the Netherlands, the following sentences were given between 2001 and 2017:

OFFENCE	SENTENCE RECEIVED
Incitement to perpetrating terrorist crimes by placing messages on Twitter and spreading them.	Two weeks in juvenile detention (one of which was conditional).
Attempted participation in an organisation that aimed to perpetrate terrorist crimes.	Twelve months' juvenile detention, eight months conditional and a community sentence of 120 hours.
Preparing to participate in terrorist organisation IS.	Suspended juvenile detention, including the condition that the minor talked to a theologian to prevent further radicalisation.
Preparing a terrorist attack, threatening Members of Parliament Hirsi Ali and Wilders and incitement.	140 days' juvenile detention and placement in a juvenile custody institution measure.

A good example of a non-custodial sanction that is used is the behavioural measure applied in the Netherlands. This can be implemented while the young person remains at home with his or her family, or while they are in a foster care placement. It is aimed at young people who are repeat offenders or who are serious offenders. The aims of this measure include:

- To close the gap between the conditional youth detention and deprivation of liberty.
- To stop the development of a criminal career.
- To strengthen protective factors.
- To remove negative factors.
- To provide care to the young person.
- To change the behaviour of the young person.
- To promote successful reintegration of the young person into society.

The measure is imposed by a judge on the advice of the Child Protection Board, can be imposed for between six months and one year, and can be extended once. The measure can consist of several separate interventions. It can include training programmes and treatment, including specific behavioural interventions regarding terrorist-related offending. Foster care may be included as part of this measure.

As of July 2017, in Austria, the sentences for children and young adults convicted of terrorist-related offences varied widely from entirely conditional custodial sentences to

partly conditional sentences to long unconditional custodial sentences up to 12 years.¹¹⁶ Without being representative, it is noticeable that sentences of imprisonment were invariably given in the cases examined for the research that involved fighting and training in Syria.¹¹⁷ Moreover, particularly long sentences were delivered where multiple offences occurred, the person concerned had previous convictions and where the child or young adult was considered by the court to have reached an advanced as well as permanent state of radicalisation.¹¹⁸

In some countries, children over the age of 16 who are convicted of serious offences, such as terrorist-related offences, can be sentenced under adult criminal law. In the Netherlands, for example, children's cases are tried by a juvenile court judge. However, there is a mechanism for 16- and 17-year olds to be sentenced under adult criminal law.¹¹⁹ A juvenile court judge can justify this based on (a) the seriousness of the committed offences (b) the personality of the perpetrator or (c) the circumstances in which the crime is committed, for example if the crime also involved adults. This entitles the judge to apply more serious sanctions than those applicable under the children's courts which can only impose a maximum sentence of one year for 12 to 15-year-olds and two years for 16 and 17-year-olds.

In France, children under the age of 16 years old benefit from legal mitigation at the point of sentencing; for example, they can only receive half of the imprisonment term that would be given to an adult. However, this is not automatic for children over 16 and a judge may, in exceptional circumstances, consider that the circumstances of the case, such as involving terrorism, and the child's personality mean that the mitigation is not applied. It should be noted that it is very rare for children over 16 not to receive the mitigation on their sentence.

116 Hofinger / Schmidinger: Deradikalisierung im Gefängnis, 2017, p. 27; File inspection conducted between August-October 2017.

117 Austria: File inspection conducted by authors, August-October 2017.

118 *Ibidem*

119 Art. 77b of the Dutch Criminal Code

Recommendation

Sentencing should be proportionate and individualised.

- Sentencing should always be proportionate to the circumstances of the child and of the offence and this is best achieved in a specialised court for children.
- Non-custodial sanctions must be available as an option for terrorist-related cases and legal professionals should be confident to request and use them.
- The public should be sensitised on the effectiveness of non-custodial sanctions in strengthening public safety and reducing the risk of re-offending.

2.10 Rehabilitation and reintegration measures whilst deprived of liberty

Rehabilitation and reintegration

The explicit objective of detaining children convicted of terrorist-related offences should be to contribute to their rehabilitation and to ensure their reintegration back into society on completion of their sentence. This is an obligation under international and regional standards and is also a critical aspect of preventing terrorism and violent extremism. Children and young people convicted of terrorist-related offending will be released back in to their communities at some stage and need to be supported with their reintegration and rehabilitation taking into account religious, social, educational, vocational and psychological issues.

“Research shows that harsh treatment in detention facilities can play a disconcertingly powerful role in the recruitment of a large number of individuals who have joined violent extremist groups and terrorist organisations. Several factors have been identified as spurring prisoners to seek protection by joining groups, including inhumane prison conditions and inhumane treatment of inmates, corrupt staff and security officers, gang activity, drug use, lack of security and proper facilities, and overcrowding.”

Source: UN GENERAL ASSEMBLY. Plan of Action to Prevent Violent Extremism—Report of the Secretary-General, 24 December 2015, A/70/674, paragraph 31.

Much work on rehabilitation is the same for children convicted of terrorist-related offending as for any other child offender. Rehabilitation is most effective in settings which are small enough for individual treatment to be provided, where children feel safe and secure, where adequate medical care is provided and where it is easy for children to be integrated into the social and cultural life of the community where the facility is located. Institutions should encourage contact with family and other social networks to support children and their right to practice religion. It should provide them with opportunities to obtain life skills through educational, vocational, cultural and recreational activities and it should promote services to help with their transition back into society.

The individual needs of children should be addressed such as mental health issues, recovery from gender-based violence, substance abuse, job placement and family counselling. Satisfactory conditions of detention are a pre-requisite to rehabilitation, including but not limited to: sleeping and living space; adequate clothing; food; hygiene and sanitary conditions; educational opportunities; and appropriately trained staff. Another overlooked aspect of rehabilitation is that children should have the right to complain and be given assistance on how to complain. On the other hand, rehabilitation is difficult to achieve where there is overcrowding, poorly trained staff, a climate of fear, violence and mistrust and an inadequate ratio of children to available staff. The risk of re-offending is likely to be much higher for children who do not trust authority figures, who feel marginalised and forgotten and who see their future as bleak and uncertain.¹²⁰

All of the above aspects of rehabilitation and reintegration are essential and, in many

¹²⁰ For more information on rehabilitation and reintegration, see JACOMY-VITÉ, S. *The social reintegration of young offenders as a key factor to prevent recidivism*, IJJO Green paper on Child-Friendly Justice. Brussels: International Juvenile Justice Observatory and European Council for Juvenile Justice, 2011. http://www.ejjc.org/sites/default/files/green_paper_ngo_section.pdf

cases, putting them in to practice will be sufficient to support children deprived of their liberty for terrorist-related offending. However, there are some particular issues concerning their care and treatment that may also need addressing and that prison authorities are increasingly concerned with. In 2017, Germany conducted a survey of prison employees regarding children and young adults in prison. Three quarters of those who responded said that the topic of radicalisation and extremism was of relevance for them and that in nearly half of all youth prisons there had been an incident related to the topic. In one third of youth prisons, extremist behaviour of at least one inmate had been noticed.¹²¹

Dispersal or separation

One issue is whether children convicted of terrorist-related offences should be dispersed in the normal way to live amongst other children in detention facilities or whether the nature of their offence and behaviour is such that they need to be held separately to avoid the risk of ‘contagion’ of an assumed violent extremist ideology. The risk of radicalisation of others needs to be carefully weighed against the risk that being held separately can deepen stigmatisation in and outside of the facility, heighten feelings of discrimination and marginalisation and fuel damaging and divisive narratives of ‘them’ and ‘us’.

Furthermore, if they are held separately from other children then there is a risk that they may be held in isolation and lack opportunities to mix and learn from others especially where there are low numbers of children in detention for terrorist-related offending. Such isolation might amount to *de facto* solitary confinement which is expressly prohibited. The Committee on the Rights of the Child¹²² has forbidden it and the United Nations Special Rapporteur on Torture has concluded that the use of solitary confinement “can amount to torture or cruel, inhuman or degrading treatment or punishment when used as a punishment, during pre-trial detention, indefinitely or for a prolonged period, for persons with mental disabilities or juveniles.”¹²³ Given that many children in detention for terrorist-related offending have been victims of high levels of abuse and violence arising from their recruitment and exploitation by terrorist and violent extremist groups, solitary confinement must be avoided in all circumstances to ensure there is no secondary victimisation.

Practice in the IJJO project research countries varies reflecting a lack of settled evidence and research. In Austria, children and young people convicted of terrorist-related offences are not held separately from the general population except in extreme cases. The national report highlights one case where “a young inmate of approximately 20 years of age, had been described as a ‘true fanatic’ by a supervisor. He missionised to such an extent that the only solution was to use solitary confinement.”¹²⁴ In the great majority of cases, accommodation with other detainees proves unproblematic.¹²⁵

The Netherlands, on the other hand, has followed an approach of strictly isolating prisoners convicted of terrorist offences into ‘terrorist wings’ where they are isolated from other detainees. As of February 2017, there were 27 adult detainees in these prisons

121 Germany: LEUSCHNER, F. Extremismus und Radikalisierung im deutschen Jugendstrafvollzug. *Zeitschrift für Jugendkriminalrecht und Jugendhilfe*, 2017, 3, pp. 257-262.

122 UNCR, GC 10, 25 April 2007, *op. cit.*, para 89.

123 UN GENERAL ASSEMBLY. *Torture and other cruel, inhuman or degrading treatment or punishment*, 5 August 2011, A/66/268, Summary.

124 Austria: Kuhn, Christian (Catholic pastor working in the detention centre in Josefstadt, Vienna): Interview by ACUNS, unpublished, 2016, p. 2.

125 Austria: Interview with the Executive Director of the detention centre in Gerasdorf on 9 August 2017.

awaiting trial or convicted of offences such as being foreign fighters, attempting to join terrorist groups in Syria or Iraq and committing terrorist attacks. Placement in these terrorist units is automatic for people suspected or convicted of a terrorist offence and is not subject to an individualised risk assessment although there are moves towards a more individualised approach to such cases. Since such a strict separation policy is followed, in practice this means that pre-trial and convicted prisoners are held in the same wing and women have been held alongside men.¹²⁶ It also means that children suspected of or convicted of terrorist-related offending who have been sentenced by an adult court could potentially be held in these wings although this has not actually happened in practice.¹²⁷ The disadvantages of this approach are becoming clearer and the Ministry is reviewing it and moving towards a more individualised approach where security classification is based upon individual risk profiles.

Children should not be automatically separated according to the type of offence they have been charged with or convicted of but on the basis of individualised risk assessments regarding the type of care needed and the specific risks around the use of violence. The Havana Rules clearly state that “[t]he principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.”¹²⁸

Assessment and monitoring

Another relevant issue is how children are assessed and monitored during their sentences and the extent to which the specific nature of their offending needs to be taken in to account and if so, how to do this. Children should be assessed on first arriving at a detention facility and a written, individualised, integrated and comprehensive educational, psychological, social and medical treatment plan for their time in pre-trial detention or sentence should be developed that takes the child’s ultimate reintegration into the community as its overall goal. An individualised treatment plan should be developed that sets out treatment objectives, time-frames and the means with which the objectives should be approached. Children should be invited to comment and input to this plan.

Whilst conducting this assessment, care should be taken not to automatically categorise children as being at a high risk of re-offending, of violence or of radicalising others because of the nature of their offence, religion, family background or travel history. The role that religion can play in a child’s rehabilitation should not be underestimated – it can be a protective factor that helps children to cope with being in detention and provides a moral framework. Research with young Muslim inmates in the United Kingdom found that this protective aspect of religious observance was routinely misunderstood and underestimated often because of lack of cultural awareness amongst prison employees.¹²⁹

126 AMNESTY INTERNATIONAL, OPEN SOCIETY JUSTICE INITIATIVE. *Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the Context of Counterterrorism*, 2017. Available at: <https://www.opensocietyfoundations.org/sites/default/files/inhuman-unnecessary-dutch-detention-english-20171027.pdf> (2017)

127 VELDHUIS, T.M., GORDIJN, E.H., LINDENBERG, S.M., & VEENSTRA, R. *Terroristen in detentie. Evaluatie van de Terroristenafdeling*. Groningen: RUG - Faculteit Gedrags- & Maatschappijwetenschappen, 2010.

128 UN GENERAL ASSEMBLY, Havana Rules, 2 April 1991, *op. cit.*, Rule 28.

129 TRANSITION TO ADULTHOOD & MASLAHA. *Young Muslims on Trial: A scoping study on the impact of Islamophobia on criminal justice decision-making*. London: Barrow Cadbury Trust and Maslaha, 2016. Available at: http://www.maslaha.org/sites/default/files/images/Young_Muslims_on_Trial%20%281%29.pdf

The assessment should take in to account that a child who has been recruited and exploited by a terrorist or violent extremist group may need additional support if there is a risk of retaliation or intimidation by the group. These children may also have experienced violence and trauma as a result of their association with these group, including sexual and gender-based violence. They may also have been rejected by their families and communities and need additional support in rebuilding relationships. An assessment should also explore the reasons behind the child joining the group (out of ideological conviction, coercion or manipulation, threat of violence etc.) and if there is a need for specific rehabilitative measures to promote disengagement from violence in the future.

Many countries have adopted risk assessment tools that are designed to evaluate specifically the likelihood of violent extremist tendencies of adult prisoners. The VERA-2¹³⁰ is the most widely used and researched tool currently available for this population. These tools have shown promise but require further development and testing. As yet, there is no risk assessment tool for violent extremist offenders available specifically for use with children. The ones currently in use for adults may not be suitable for use with children since they do not take into account the specific educational needs and developmental factors of children, they do not adequately respond to situations where children have been victims of recruitment and exploitation by terrorist or violent extremist groups nor do they acknowledge the unique potential of children to be rehabilitated.

Targeted rehabilitation programmes

Some children who have been convicted of terrorist-related funding, will need support in disengaging from violence that is often delivered through targeted rehabilitation programmes. This is a very challenging undertaking given the need to address both behavioural and ideological components behind offending and because in many facilities this is a new area of work. Such programmes should be introduced in a way that is sensitive to the possibility that there can be counter-productive consequences of labelling and stigmatising a child and reinforcing their identity as a 'terrorist'. Another challenge is that, to date, many of these rehabilitation programmes are new and have not been fully evaluated as to their impact and effectiveness. A default position is often to use the same programmes with children as are used with adult offenders, with often minimal adaptation.¹³¹

Promising practice is found in Austria, where all children and young people convicted of terrorist offences under 278b of the Criminal Code are supported by probation officers who have received specific training on de-radicalisation, disengagement and prevention. Neustart, the organisation providing probation in Austria, stresses that in addition to more 'traditional' rehabilitation strategies of probation support, like inclusion, crisis intervention, and ensuring a decent livelihood, the following aspects have proven important in the work with this specific group of young offenders:

- Frequent and continuous monitoring through behavioural analysis, risk evaluation

130 PRESSMAN, E., & FLOCKTON, J. Calibrating Risk for Violent Extremists and Terrorists: The VERA 2 Structured Assessment. *British Journal of Forensic Practice*, 2012, 14(4), pp. 237–251.

131 "There is little research into juvenile violent extremist offenders, and how (if at all) they should be treated differently from adult violent extremist offenders. Juveniles and teenagers make up a substantial proportion of the violent extremist offender population, yet many countries do not differentiate in their approaches toward adults and juvenile violent extremist offenders." - SILKE, A., & VELDHUIS, T. Countering Violent Extremism in Prisons, A Review of Key Recent Research and Critical Research Gaps. *Perspectives on Terrorism*, 2017, 11(5), pp. 2-11, p.8.

- and threat management;
- Promoting reflection on personal awareness of injustice;
- Integration of the client's positive personal environment, and assistance by relatives and/ or friends;
- Intervention talks with, for example, religious experts; and
- Illustration and revision of intercultural divisions.¹³²

Probation usually runs for three years, during each of which a minimum of 25 interactions with the probation specialists are scheduled.

The situation for girls

Girls who have been convicted of terrorist-related offending and are deprived of their liberty may face specific challenges that require attention. States need to put special measures in place for them that take their distinctive needs into account so that they have equal access to their rights and are not treated unfairly.

In many EU Member States there are fewer facilities for girls in general which can mean that it is difficult for them to maintain contact with families and friends because of distances to be travelled, lack of transport, and cost. This can lead to isolation which can have serious social and psychological effects and compound existing challenges regarding marginalisation by their communities arising from the nature of their offending. It may also mean that they are more likely to be held in overly secure settings because of a lack of suitable alternatives and if they are held separately from other girls, they may find themselves in effect in solitary confinement. Every effort must be made to place girls in facilities which can ensure appropriate and individualised planning for their rehabilitation and reintegration into society, acting at all times in their best interests. Assessment and classification should take into account the level of risk they pose as well as any history of mental illness, substance dependency and caretaking responsibilities.¹³³

Girls who have been recruited and used by terrorist and violent extremist groups may have been victims of gender-based violence. Mechanisms and structures must be in place to identify and respond to this with specialized support, counselling, and health care for their proper rehabilitation. Staff working with them should be qualified in the treatment of girls suffering from trauma. If they are pregnant or have just given birth, they should receive the same quality of pre- and post-natal care as adult prisoners and women in the community.

Staffing

Working with children who have been convicted of terrorist-related offending can be very challenging and demands high levels of integrity, professionalism and skill. International standards expect that staff should be trained in child psychology, child welfare and international human rights standards, particularly with respect to the rights of the child.¹³⁴ Recruitment of staff skilled in these areas is essential along with adequate staffing levels, adequate remuneration and ongoing and effective training, management and support

¹³² Glaeser, *Radikalisierungsprävention durch die Bewährungshilfe*, 2016, p. 4.

¹³³ UN GENERAL ASSEMBLY, *United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)* : note / by the Secretariat, 6 October 2010, A/C.3/65/L.5

¹³⁴ UN GENERAL ASSEMBLY, *Havana Rules*, 2 April 1991, *op. cit.*, Rules 82 and 85.

that reflects the specific challenges they are facing. The Beijing Rules hold that detention staff should be demographically representative of the children and young people being detained; this includes recruitment of women and male and female staff from minority groups which can be especially relevant in contexts where terrorist-related offenders come from minority backgrounds.¹³⁵

Recommendation

Rehabilitation and reintegration must be a primary objective.

- The explicit objective of depriving children convicted of terrorist-related offences of their liberty should be to contribute to their rehabilitation and to ensure their reintegration back into society on completion of their sentence.
- Children should not be automatically separated from other children in a facility according to the type of offence they have been charged with or convicted of, but on the basis of individualised risk assessments regarding the type of care needed and any specific risks around the use of violence.
- Rehabilitation programmes focused on disengagement from violence should be introduced in a way that is sensitive to the possibility of counter-productive consequences of labelling and stigmatising a child and reinforcing their identity as a 'terrorist'. The impact of these programmes needs to be carefully monitored and evaluated.
- Girls deprived of their liberty deserve to have special attention given to their specific needs.
- Staff working in facilities should be selected based on their integrity, humanity and professional capacity to deal with children.

135 UN GENERAL ASSEMBLY, Havana Rules, 2 April 1991, op. cit., Rule 22.

Promising practice: De-radicalisation of children and young people in prison in Germany¹³⁶

The Violence Prevention Network is an NGO which began working with violent young offenders involved in far-right extremism in Germany in 2001. It has evolved to also address violent young offenders involved in faith-based extremism with a specific methodology called Anti-Violence and Competence Training. This programme is delivered in youth detention facilities and prisons across Germany and focusses on building the competencies needed for an individual to desist from violence.

Step one consists of training in groups (maximum eight participants who attend voluntarily) for approximately four to six months whilst inside prison. During this training, participants are encouraged to examine their personal history and discuss how to build stable relationships with families, desist from offending and deal with conflict. There is also civic education on democratic principles and participants are encouraged to question and interrogate their ideological beliefs.

Step two consists of preparing individual children and young people to prepare for leaving detention including through one-to-one sessions, meeting with family members and discussing how to prevent re-offending. Step three takes place when they have left prison when the same trainer they have worked with in prison, provides support through meetings and by telephone for six to 12 months helping offenders to develop a new routine, build relationships, manage crises and seek employment.

All trainers have completed a one-year (anti-violence and competency trainer) course and usually have many years of experience in working with violent offenders. Their training includes comprehensive historical, intercultural, inter-faith and political knowledge, and understanding of symbolism and the specific institutional features of juvenile prisons. An evaluation in 2012 found that the re-incarceration rate of participants in the de-radicalisation training was well below the average.

Promising practice: Constructing a positive identity for children and young adults in detention in Austria (Caucasus Group)

According to estimates from the Ministry of the Interior, approximately 30,000 Chechens live in Austria today, most of them in Vienna.¹³⁷ There are relatively high numbers of Chechen children and young adults in Gerasdorf youth facility. In 2015, a journalist and a former politician, who are both well respected in the Chechen community, developed a project to work with these Chechen children and young adults in detention. One of the organisers of the Caucasus Group explained that Chechen children "often face negative stereotypes like 'Chechens are violent by nature' and are frequently victims of discrimination and exclusion in schools and other public institutions. In some cases, this has led to a premature end of schooling and incentivised the youngsters to succumb to criminality".¹³⁸

The objective of the Caucasus Group programme is to strengthen their sense of identity and give them a positive self-image by teaching about Chechen culture, history, religion and life in Austria and through a programme of physical activity. Discussion groups seek to counter common stereotypes of Chechens as violent whilst acknowledging the difficult background that many children and young people come from: "it is fair to say that the collective memory of wartimes is the glue within the Chechen community and it is surely what causes a great part of the social cohesion among the youths we support. There is not even one participant in our programme, whose family has not, in one form or another, had dramatic experiences during the wars. Fathers have been killed, uncles tortured, and houses burnt to ashes."¹³⁹

Since the Caucasus Group was founded in 2015, four modules of the programme, funded by the Ministry of Justice, have taken place and four young people have received additional mentoring and support on release with apprenticeships and employment. Other detention facilities have expressed an interest in replicating the project. No formal evaluation has taken place.

¹³⁶ For more information see: <http://violence-preventionnetwork.de/en/projects/deradicalisation-in-prison>

¹³⁷ ASLAN, E., ERŞAN AKKILIÇ, E., & HÄMMERLE, M. *Islamistische Radikalisierung, Biographische Verläufe im Kontext der religiösen Sozialisation und des radikalen Milieus*. Wiesbaden: Springer, 2018. pp. 74 et seq.

¹³⁸ Interview with Maynat Kurbanova on 16 August 2017.

¹³⁹ *Ibidem*.

2.11 Administrative measures and the best interests of the child

Many EU Member States are increasingly relying on administrative measures to prevent terrorism. These measures are imposed by the executive, often with minimal judicial involvement, and include prohibition from leaving the country, the revocation of travel documents and nationality, restriction from specified locations within countries or cities, restriction from contact with specified people, a duty to report to the police and electronic monitoring. Many of these provisions apply to children as much as they do to adults.

Some countries have adopted legislation that gives them administrative powers to **revoke the travel documents** of individuals, with the aim of preventing the departure of radicalised individuals and the return of people from 'IS' territories:

- In Germany, state authorities have had the power to confiscate identification documents as well as passports of suspected terrorists since 2015 in order to stop them from travelling to locations in which there are known terrorist camps. These suspected terrorists are provided with a temporary identity card which does not allow them to leave Germany and which is valid for up to three years.
- France allows the interior minister to revoke citizens' passports and bar them from foreign travel for up to six months, renewable for up to two years, if the minister has "serious reasons to believe" they are planning to go abroad with the aim of "participating in terrorist activities," or if authorities suspect they are traveling to a place where terrorist groups operate and in conditions conducive to their posing a threat to public safety upon their return to France.¹⁴⁰
- A law passed in Belgium in 2015¹⁴¹ allows the Minister of Home Affairs to withdraw an identity card, invalidate it or refuse its delivery to an individual of Belgian nationality if there is well-founded and serious evidence that the latter wishes to enter a territory upon which terrorist groups are active. The identity of the suspected individuals is communicated to the Minister by CUTA.
- In 2014, in Austria a packet of measures ("Anti-Terror Packet") was agreed on to fight violent extremism which included preventing people, including children and young adults, from taking part in fighting abroad including by confiscating passports.¹⁴² Other measures included giving the executive powers to check at the border whether or not children are leaving the country with the consent of their parents, in case of suspicion that the child is aiming to be involved in armed combat abroad. Until the case has been resolved, the security authorities can refuse departure and withhold travel documents.¹⁴³
- In Latvia, a 2017 law¹⁴⁴ permits the Ministry of Interior to prohibit a person from leaving Latvia for up to a year on the basis of information about planning to join an armed conflict, engaging in terrorist or other activity and posing a national security threat upon return.

140 France's Strengthening Provisions on the Fight Against Terrorism, Law No. 2014-1353 of November 13, 2014 (Loi n° 2014- 1353 du 13 novembre 2014 renforçant les dispositions relatives à la lutte contre le terrorisme).

141 Law of 10 August 2015, amending the Law of 19 July 1991 on population registers, identity cards, foreign cards and residence documents and amending the Law of 8 August 1983 organising a national register of physical persons, Belgian Official Gazette of 31 August 2015.

142 Parlamentskorrespondenz Nr. 1196 from 10 December 2014.

143 Parlamentskorrespondenz Nr. 1196 vom 10.12.2014. § 12a para 1a Grenzkontrollgesetz (Border Control Act, GrekoG).

144 Amendment to the National Security Law Grozījums Nacionālajā drošības likumā

It should be noted that while there is a right to limit freedom of movement on the basis of public order, such limits should be strictly necessary and proportionate, factually motivated, and subject to ongoing review.

According to the 1961 UN Convention on the Reduction of Statelessness, EU Member States are bound by obligations that, in practical terms, restrict the deprivation of citizenship of people who have dual nationality. Furthermore, Article 8 of the CRC provides that State Parties have to respect the right of children to preserve their identity, including nationality. Nonetheless, some countries have introduced legislation that permits the **revocation of citizenship of dual national citizens**. In the Netherlands, a 2017 law allows the authorities to strip dual citizens as young as 16 of their Dutch nationality if they determine that they have joined or fought abroad with a terrorist group and pose an “immediate threat” to national security. No criminal conviction is required and those whose Dutch citizenship is revoked are only given four weeks to appeal. In Belgium, a law enacted in 2015 allows the authorities to strip citizenship from naturalised dual nationals who have been sentenced to five or more years in prison for a terrorism-related offence.

In Italy, there is provision in the law¹⁴⁵ for the Juvenile Court to **deport** a child who is a non-EU foreign national “for reasons of public order or State security.” To date, there has been one such request to the Juvenile Court for deportation of a child who was born in Pakistan but resident in Italy because he was alleged to be at risk of committing an offence of being involved in training for terrorist purposes. The request was rejected by the court on the basis that the suspicion of involvement was not “supported by objective elements” and because the risk could be managed through other means including monitoring by social services and the police.¹⁴⁶

Germany relies on the legal concept of a person who poses a threat to national security and public safety and is at significant risk of committing politically motivated offences which would be specifically punishable under the German Code of Criminal Procedure.¹⁴⁷ Such people are known as *Gefährder*. The Federal Criminal Police Office estimates nearly 700 people were *Gefährder* as of 2017. They can be deported if they do not have German nationality although implementation of this measure varies a great deal across the 16 Federal States.¹⁴⁸

145 Italy: Art. 31, par. 4, Legislative Decree 27th July 1998 nr. 286 (Consolidated Act on Immigration).

146 Tribunale per i Minorenni di Sassari, 6 gennaio 2016, est. Vecchione.

147 Germany: Bundestags-Drucksache 16/3570, p. 6 (translation by the authors).

148 Germany: The deportation of a so-called “*Gefährder*” (a potential offender, who poses a threat to national security) is regulated in section 58a of the Residence Act (*Aufenthaltsgesetz*), which reads: “(1) The supreme Land authority may, based on an assessment of the facts and without a prior expulsion order, issue a deportation order for a foreigner in order to avert a special danger to the security of the Federal Republic of Germany or a terrorist threat. The deportation order shall be immediately enforceable; no notice of intention to deport shall be necessary.”

Case study: Deportation of an 18-year-old ‘Gefährder’ from Germany to Russia

Iznulla A. is a Russian national and was three years old when he and his family moved to Bremen in Germany to escape the worsening situation in Dagestan. He became radicalised after contact with a group at his local mosque called the ‘Culture and Family Association.’ He was arrested for taking steps to plan an attack on a shopping centre and, although he was found not to have reached the planning stage as a matter of criminal law, he was classified as *Gefährder* (meaning a person of risk) and steps were taken to deport him back to Russia.

His deportation was challenged in the domestic courts on the basis it would violate his right to family life and he would face human rights abuses in Russia. The case eventually reached the European Court of Human Rights (*X v. Germany* (application no. 54646/17), European Court of Human Rights, 2017) who held that he could not be deported to Dagestan but the Court permitted his deportation to other areas in Russia, namely Moscow. He was finally deported from Germany in September 2017.

Some countries have imposed **preventive detention** or “control” measures on terrorism suspects that severely restrict their movements at home. In Austria, a person can be required to visit a police station once or at regular intervals within a specified period of not more than six months.¹⁴⁹ In the state of Bavaria in Germany, laws have been introduced that allow people to be held without charge for up to three months at a time. In theory, the three-month periods could be continued indefinitely.¹⁵⁰

In England and Wales, the High Court Family Division has dealt with **child protection cases** involving: the planned or attempted removal of children by their parents to areas of Syria under IS control; children who are at risk of, or who are being radicalised by their parents; children who are, or who have been at risk of being involved in terrorist activities in England or abroad and girls who plan to travel to IS countries to become a ‘jihadi bride’. In deciding on the appropriate protection measure in each case, the Court has stressed that the best interests of the individual child is paramount, even in the context of counter-terrorism policies or security operations.¹⁵¹ Wardship orders (i.e. making the child a ward of the court, a measure used very sparingly in the past but increasingly often in terrorism-related cases) have been used to prevent radicalised children from traveling abroad to IS-affected countries and particularly to Syria. In such cases, the High Court Family Division has been prepared to make the children wards of court and to issue a passport seizure order or an order requiring the child and their parents to hand over the children’s passports to make it impossible for them to leave the country. Referral of these children to national prevention and de-radicalisation programmes has also been part of care measures and the Family Court has emphasised multiple times the importance of working hand in hand with local authorities and law enforcement officers in order to

149 Austria: Article 49e Security Police Act.

150 Germany (Bavaria): Sicherungshaft § 112a StPO.

151 For more information please see MUNBY, J. *Radicalisation cases in the family courts*. London: Courts and Tribunals Judiciary, 2015. Available at: <https://www.judiciary.gov.uk/wp-content/uploads/2015/10/pfd-guidance-radicalisation-cases.pdf>. See also HAMILTON, C. et al. *Children and Counter-Terrorism*. Italy: United Nations Interregional Crime and Justice Research Institute (UNICRI), 2016, pp.61-64. Available at: http://www.unicri.it/in_focus/files/Children_counter_terrorism.pdf

provide children with the protection they require.

The administrative measures described above do not require an individual to be suspected of having committed a terrorism-related crime. Judicial approval is not always required and decision-making powers are consolidated in the hands of an administrative authority and in the absence of effective independent oversight and with limited options for appeal. This can be particularly problematic for children and young people who are subject to these measures but who may lack knowledge of their legal rights in this situation, lack sufficient funds for legal representation and may or may not have the support of their families or other adults in challenging imposition of the administrative measures.

The law and policy relating to administrative measures is changing rapidly and many provisions are relatively new and the impact on children not yet clear. Nonetheless, it is likely that children will find it difficult to challenge imposition of these measures. All States have an obligation to impose administrative measures on children in a way that ensures their best interests is a primary consideration, but procedural safeguards are not always in place to weigh the best interests of the child against national security interests, particularly for children aged 16 and over. For example, children have the right to a nationality under article 7 of the CRC but in the Netherlands, children aged 16 and over can have their Dutch nationality revoked if they have dual nationality and are deemed to be a risk to national security with very limited scope for challenging this.

Recommendation

Exercise restraint when applying administrative measures to children.

- Administrative measures should only be imposed on children following procedures that take in to account the necessity of acting in their best interests.
- Children must be able to have meaningful and effective remedy and to challenge the imposition of these administrative measures.

The role of National Human Rights Institutions in Europe

National Human Rights Institutions are independent state institutions mandated with the promotion and protection of all human rights, including children's rights. In countries across Europe, they support implementation of children's rights on the ground, strengthen accountability mechanisms and hold governments to account. They have a very important role to play in promoting the rights of children in a counter-terrorism context.

They can perform activities such as: reviewing and commenting on how proposed counter-terrorism law and policy could affect children; investigating how counter-terrorism law and policy impacts on different groups of children and whether or not they are applied in a non-discriminatory manner; considering individual complaints and petitions from children or their representatives who claim violations, including victims of terrorism; providing legal aid or legal support for individual or collective claims relating to counter-terrorism measures; monitoring places of detention where children are held on terrorist-related charges; promoting public knowledge to counter misrepresentations of the role of children's rights in the context of counter-terrorism; and monitoring and reporting on the government's implementation of children's rights in a counter-terrorism context.

For more information see the European Network of National Human Rights Institutions, <http://ennhri.org/ENNHRI-Capacity-Building-Workshop-on-the-Role-of-NHRIs-on-Promotion-and>

2.12. Multi-agency collaboration and training of professionals

Responding effectively to children involved in terrorist-related offending cannot be achieved by a criminal justice response alone. A wide range of different bodies may be involved at different stages - law enforcement officials, prosecutors, judges, social workers, probation services, counter-terrorism specialists, civil society organisations, child protection and health and education workers. They need to take a collaborative approach to guarantee that public security is protected and the best interests of the child are upheld.

Multi-agency working can be used at different stages of the process: for example, when deciding if diversion is a suitable option and the most appropriate terms of a diversionary programme; when deciding if a child should be granted bail; on arrival at a detention facility to inform a sentencing plan; when deciding suitability for early release; and on release when putting in place a plan for reintegration. It can also be used in parallel to formal proceedings to ensure that a child who has been a victim of recruitment and exploitation by a terrorist or violent extremist group receives the protection and support that they require to help their rehabilitation.

There are challenges in implementing a multi-agency approach. These include difficulties in sharing confidential information between different agencies, competition over resources and funding within agencies and logistical questions around how best to organise and coordinate.

Whilst there is no ideal model, experience from the partners to the IJJO project is that it can help to have¹⁵²:

- clear guidance on information-sharing to improve the flow of data and information about individual children;
- specific roles and responsibilities should be assigned to each agency;
- having a case manager to lead and coordinate the process can be effective and increase efficiency;
- partnerships should be built at the local level, from the bottom upwards; and
- involving civil society can lead to stronger relationships of trust with the relevant communities.

All professionals working with children in conflict with the law should be specialized and well-informed on issues concerning the rights of the child and child development. The Committee on the Rights of the Child specifies that: "Professionals should be well informed about the child's, and particularly about the adolescent's physical, psychological, mental and social development, as well as about the special needs of the most vulnerable children, such as children with disabilities, displaced children, street children, refugee and asylum-seeking children, and children belonging to racial, ethnic, religious, linguistic or other minorities."¹⁵³ In the context of terrorist-related offending, there may be other technical considerations that require further training and specialisation especially in terms of security concerns, the use of special investigative processes and knowledge of any

¹⁵² See also, RADICALISATION AWARENESS NETWORK. *Handbook on how to set up a multi-agency structure that includes the health and social care sectors?* Copenhagen: RAN Health and Social Care Working Group (RAN H&SC), 2016. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/radicalisation_awareness_network/ran-papers/docs/ex-post-paper-handbook-ran-hsc-18-19-may-2016-copenhagen-dk_en.pdf

¹⁵³ UNCRC, GC 10, 25 April 2007, *op.cit.*, para 40

additional powers a court has in respect of terrorism cases.

Such professionals may need to have specialised training so that they are equipped to deal effectively and comprehensively with these challenging and often pressured cases. For example, law enforcement officers who deal with terrorist cases concerning children will need to be trained on appropriate conduct during investigations; defence lawyers will need to be trained in taking cases which require security clearance; and staff in detention centres will need specific training on how to identify and manage situations where children are exposed to violent extremist ideology. In the Netherlands, for example, one staff member in each detention facility where children are held has been trained to be a focal point on 'radicalisation' issues. Colleagues can raise concerns with these focal points and seek advice from them.

Recommendation

Multi-agency collaboration and training is essential and should be strengthened.

- In view of the complexity of cases where children are involved in terrorist-related offending, a multi-agency approach is needed that includes collaboration and cooperation between different stakeholders such as police, counter-terrorism experts, prosecution authorities, courts, probation, detention facilities, families, schools and welfare services.
- Whilst there is no ideal model, experience shows that it can help to have: clear guidance on information-sharing to improve the flow of data and information about individual children; specific roles and responsibilities assigned to each agency; a case manager to lead and coordinate the process; partnerships that are built at the local level; and a strong relationship with civil society organisations.
- Professionals should receive specialised training that builds on their existing knowledge of child rights and child development and enhances their capacity to work with this group of children.

Promising practice: Multi-agency case management in the Netherlands¹⁵⁴

The Netherlands takes a multi-disciplinary approach when responding to children involved in or at risk of terrorist-related offending. A noticeable feature of this collaborative approach is bringing together justice and protection bodies during multi-disciplinary case management consultations that are often supported by the National Coordinator for Security and Counterterrorism (*Nationaal Coördinator Terrorismebestrijding en Veiligheid, NCTV*). These consultations are held at municipal level to discuss individual cases. The approach prioritises prevention and rehabilitation. The objective is to develop individually tailored plans of action for children.

The meetings are led by especially trained case managers who coordinate the case, draw up the plan of action and record progress – having the coordination carried out by a single person helps to ensure the quality of case-specific measures. Participants can include the case manager, representatives from the municipalities, police, prosecution, probation services, the Child Care and Protection Board, schools, mental health services, health services and the NCTV. It is estimated that 70 per cent of municipal authorities have organised local case consultations for both children and adults.

Different measures are imposed at these meetings. For example, a child may be referred for mental health care or to NGO programmes such as the Exit programme and Family Support Centres. If a child is considered to be at risk of flight to IS territories, the Child Care and Protection Board can submit a request to the Child Court for a family supervision order and possible removal of the child from the family. Following the Temporary Administrative Counter-Terrorism Measures Act, the Minister of Security and Justice can impose measures such as area bans or police notification requirements. The minister is empowered to impose these measures, but does this in consultation with the concerned municipal authority.

A critical issue is that many of the professionals involved are subject to the applicable legislation and regulations such as the Dutch Personal Data Protection Act, the Judicial Data and Criminal Records Act and the Police Data Act. In the context of responding to children involved in terrorist-related offending, sharing multiple sources of information can be helpful in arriving at measures in their best interests that will support their rehabilitation and reintegration. Each professional must weigh up whether they are permitted to share confidential information. To facilitate this process, an Agreement on the person-specific approach to prevention of radicalisation and extremism (*Convenant persoonsgerichte aanpak voorkoming radicalisering en extremisme*) was developed by the NCTV in 2017. This sets out the legal principles around information sharing that are already in force to clarify them and to assist the different professionals in their decision-making process.

Another issue that emerged from the project research, and particularly from the study tours, was that people working with children allegedly engaged in terrorist-related activity face considerable pressure from public opinion, from their employers, from politicians and from the media. Above all, there is the pressure that comes from fear of 'getting it wrong' and there being serious consequences as a result. Professionals working in this field require training and support that equips them to fulfil their roles with confidence, knowledge and in compliance with the rights of the child.

Promising practice: Building cooperation in Germany - Live Democracy!

'Live Democracy!' is a programme run by the German Ministry of Family Affairs, Senior Citizens, Women and Youth to prevent extremism of all types including right and left wing. It was launched in 2015 and is due to run until the end of 2019. Funding for 2017 alone was €104.5 million. The programme works at municipal, federal state and federal levels and is administered through 16 Federal State Democracy Centres. These Centres provide advice to those working against extremism and have a coordination role between civil society and government authorities. They also fund programmes that include counselling services and advice on exiting and distancing from extremism. Even though funds are spread throughout the 16 federal states, some are better represented within the programme than others, with Berlin and North Rhine Westphalia securing a large part of the funds.

Recently they have begun to fund prevention and rehabilitation programmes for young offenders both in and outside of detention including providing training for prison and probation employees on identifying and responding to radicalised prisoners. The programme is relatively new and has not been evaluated to date however, its strength lies in its geographical reach and the breadth of programmes being funded which also serve to build the capacity of civil service.

For further information see: *Demokratie Leben!* Ministry of Family Affairs, Senior Citizens, Women and Youth 2017

¹⁵⁴ For more information see: MINISTRY OF SECURITY AND JUSTICE. *Evaluation of the Netherlands comprehensive action programme to combat jihadism*. The Hague: The Inspectorate of Security and Justice, Ministry of Security and Justice, 2017. Available at: <https://www.inspectie-jenv.nl/Publicaties/rapporten/2017/09/06/evaluation-of-the-netherlands-comprehensive-action-programme-to-combat-jihadism>

3. Conclusions

It was noted in the introduction to this White Paper that the actual numbers of children in Europe who are alleged to, accused of, or recognised as having committed a terrorist offence, is extremely small. A very low number have been engaged directly in violent terrorist acts whilst others have been convicted for offences covering activity in the preliminary or preparatory phase of a terrorist attack or that is supportive of terrorism.

Children have also been encouraged to travel from their home to other states to participate in or support terrorist acts, including in the context of armed conflict – again the actual numbers involved are small. Another group of children who are affected by counter-terrorism measures include those considered to be at risk of involvement with terrorist or violent extremist groups who may be subject to certain administrative measures as a consequence. Such measures can include court orders for child protection, removal of identity documents and surveillance and monitoring. It is hard to ascertain how many children are affected by these measures which by their nature are often covertly applied.

This children are often portrayed as being somehow exceptional compared to other children convicted of serious offending. This view holds irrespective of any more nuanced understanding of their motivations for offending or examination of whether they have been victims of coercion, manipulation or violent duress. Portraying them as ‘exceptional’ then makes it more straightforward for exceptional measures to be applied that sit outside the specialised justice systems for children.

The situation is not helped by the fact that the international and regional architecture on counter-terrorism law and policy rarely considers the situation for children explicitly. At the domestic level, the tendency has been to interpret and implement counter-terrorism measures in a way that creates ambiguity and a lack of clarity. The consequence is an incremental chipping away at the use of specialised juvenile justice systems for children. This is seen, for example, in the expansion of the use of “special investigative powers” over children, in using lower minimum ages of criminal responsibility for terrorist (and other serious) offences than for ‘ordinary’ criminal offences, in extending the periods of time children can be held in pre-charge and pre-trial detention for terrorist-related offences and in the transfer of children from a specialised juvenile justice system to the adult system for trial and/or sentencing.

This is a group of children who are likely to have been exposed to high levels of coercion, manipulation, violence and abuse in the course of their association with terrorist and violent extremist groups; they deserve the highest standards of individualised rehabilitation and reintegration. However, the structures and mechanisms needed to link the justice and protection responses do not always work effectively, particularly for those who are deprived of their liberty.

It is not an exaggeration to say that the treatment this group of children receive at the hands of justice, protection and other authorities charged with their care and with holding them accountable for their action, is indicative of the overall health and effectiveness of the justice and child protection systems for children within EU Member States. Although the scope and character of the phenomenon is likely to change, the fear and reality of terrorism in Europe is unlikely to disappear in the short or medium term. Many EU Member States have specialised juvenile justice systems and child protection frameworks

that are largely compliant with international and regional standards for children. It is vitally important that these systems are strengthened with adequate training and awareness and specific individualised responses. They can provide the solutions needed to the problems posed by children involved in terrorist-related offending.

Further reading and resources

Tools and guidelines

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This white paper examines law, policy and practice relating to the treatment of children who are alleged as, accused of or recognised as having committed a terrorism-related offence. The treatment this group of children receive at the hands of justice, protection and other authorities charged with their care and with holding them accountable for their actions, is indicative of the overall health and effectiveness of the justice and child protection systems for children within EU Member States.

This publication sets out a number of specific recommendations for EU Member States, EU institutions and practitioners working on these issues to ensure that international and regional standards on justice for children are fully complied with.



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