

CHILDREN, THE JUSTICE SYSTEM, VIOLENT EXTREMISM AND TERRORISM: An overview of law, policy and practice in six European countries



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Acronyms

BfV	Domestic Intelligence Services (Germany)
CUTA	Coordination Unit for Threat Analysis (Belgium)
DPJJ	Judicial Juvenile Protection Services (France)
EU	European Union
ICCT	International Centre for Counter-Terrorism
IS	So-called Islamic State
MACR	Minimum Age of Criminal Responsibility
NCTV	National Coordinator for Security and Counterterrorism (the Netherlands)
SIPI	Intercultural Participation and Integration Foundation (the Netherlands)
SoNeKos	Social Network Conferences (Austria)
UNCRC	UN Convention on the Rights of the Child

Definitions

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. The following definition comes from 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 offenses 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

Terrorist-related offending can provoke fear, hostility and sensationalist reporting in the media. Although the number of children alleged to be or engaged in terrorist-related activity in Europe is relatively small, it is vitally important that the criminal justice and protection response for children involved is consistently individualised to the child's circumstances and proportionate to the specifics and facts of the offence.¹

This report explores what happens to children when they come to the attention of the criminal justice authorities as a result of alleged involvement with terrorist activity in six European countries (Austria, Belgium, Croatia, France, Germany and the Netherlands). It is also based upon input from practitioners in Greece, Hungary, Italy, Latvia and Portugal. It considers if the existing law and policy frameworks are sufficient in terms of their compliance with international and regional standards on justice for children, and highlights some promising practices that are currently being used to strengthen criminal justice and protection systems for children.

It is one component of a European Union (EU) funded project entitled *Strengthening Juvenile Justice Systems in the counter-terrorism context: Capacity-building and peer learning among stakeholders*,² and is based upon national reports produced as part of the project.³ These national reports examine the current situation of children suspected of or convicted of terrorism in their respective countries, and describe some promising practices that are being used to strengthen criminal justice systems for children in a counter-terrorism context.

Despite the many differences in history, legal tradition and experience of terrorist activity amongst the six countries under review, there is some common ground. All are grappling with balancing sometimes conflicting demands between respecting, protecting and fulfilling children's rights as outlined above and complying with terrorism-related criminal and administrative procedures that are largely designed for adults.

¹ UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) adopted in 1985, Rule 5.1.

² 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 eight European countries.

³ The partners to the project are: the International Juvenile Justice Observatory, Belgium; 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 University of Zagreb, Croatia; Stichting 180 and Defence for Children, Netherlands; the Latvian Centre for Human Rights, Latvia; and the University of Miskolc, Hungary. Input was also provided to this report from IJJO's network of experts in Greece, Hungary, Italy, Latvia and Portugal.

Key findings from the national reports

1. Children are largely invisible in law and policy relating to counter-terrorism.
2. There is no common profile of a child involved in terrorist-related offending.
3. Very few children convicted of terrorist-related offences have engaged directly in violent acts and most are criminalised for activities such as glorifying terrorism or participation in a group. They are mostly motivated by extremist right-wing and Islamist ideologies.
4. Numbers have risen in recent years in some, but not all, of the countries under review. This increase can be attributed to broadening the scope and definition of terrorist-related crimes.
5. The regular criminal justice procedures for children are usually, but not always, followed in cases concerning terrorist-related offending.
6. Further research and analysis is needed at country-level to assess the use of diversionary measures for children involved in terrorist-related offending and to determine if detention is used as a measure of last resort and for the shortest appropriate period of time.
7. There is increasing awareness that children in detention are vulnerable to the process of radicalisation and may be at risk of radicalising others.
8. Administrative measures are being imposed upon children but sufficient procedural safeguards are not always in place to ensure that the best interests of the child are carefully weighed against national security interests. This is particularly the case for children aged 16 and over.
9. In view of the complexity of cases where children are involved in terrorist-related offending, close collaboration between different agencies is needed.

The key findings from the national reports are further explored in Chapter 6.

1. Introduction

Over the past ten years there has been a steady increase in the number and severity of terrorist attacks in Europe. Whilst attacks by separatist and left-wing extremist movements have declined during this period, right-wing and religiously motivated extremist attacks have increased in number. Respect for human rights and the rule of law is the foundation of the fight against terrorism in Europe, as elsewhere, and any measures taken to counter terrorism must be proportionate and not undermine democratic values. This requires the development of national counter-terrorism strategies that prevent acts of terrorism, prosecute those responsible for such criminal acts and promote and protect human rights and the rule of law.

Although the number of children⁴ alleged to be or engaged in terrorist-related activity in Europe is relatively small, national counter-terrorism strategies do not always effectively interrogate the ways in which children are affected by violent extremism nor how they could pose security risks. As a consequence, there is insufficient attention paid to the fact that children involved in terrorist-related offending are often specifically targeted for recruitment by terrorist groups whether within or outside their country. This can be for propaganda purposes or because of a perception that children are more susceptible to grooming than adults.⁵ They are therefore victims and offenders, and this duality in status is not always clearly accommodated within criminal justice and protection systems that are largely designed for adults, and are not always in compliance with children's rights. The issue of child returnees from Syria and Iraq also remains unresolved 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.⁶

This report seeks to fill some of these gaps by exploring what happens to children when they come to the attention of the criminal justice authorities as a result of alleged involvement with terrorist activity; to review if the existing law and policy frameworks are sufficient in terms of their compliance with international and regional standards on justice for children; and to highlight some promising practices that are currently being used to strengthen criminal justice and protection systems for children.

It is one component of a European Union (EU) funded project entitled *Strengthening Juvenile Justice Systems in the counter-terrorism context: Capacity-building and peer learning among stakeholders*⁷ and is based upon national reports produced as part of the project by partners from six European countries - Austria, Belgium, Croatia, France,

⁴ 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.

⁵ See for example Quilliam Foundation, *The Children of the Islamic State* (2016), p. 18.

⁶ See RAN issue paper, *Child returnees from conflict zones* November 2016.

⁷ 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 eight European countries.

Germany and the Netherlands.⁸ These national reports examine the current situation of children suspected of or convicted of terrorism in their respective countries, and describe some promising practices that are being used to strengthen criminal justice systems for children in a counter-terrorism context. It is also based upon input from practitioners in Greece, Hungary, Italy, Latvia and Portugal.

The starting point for this report is the overarching principle of the UN Convention on the Rights of the Child (UNCRC) regarding children in conflict with the law 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.*”⁹ This principle applies to all children, including those charged with serious offences, who are entitled to be treated in accordance with international and regional standards for children regarding criminal justice procedures.¹⁰

Although the international standards do not talk explicitly about state obligations to counter terrorism, nor how children charged with terrorist-related offences should be dealt with, their basic tenets should still be applied regardless of the severity or character of the offence. In practice, this means that states are obliged to have legal, institutional and operational frameworks in place to ensure:

- The best interests of the child are a primary consideration in all decision-making;
- prosecution of a child is always regarded as a measure of last resort and states provide alternatives to judicial proceedings for children;
- fair trial guarantees and protections are met including being dealt with by authorities following procedures specifically applicable to children; and
- the purpose of any sentence given to the child is to rehabilitate and reintegrate the child into society.

⁸ The partners to the project are: the International Juvenile Justice Observatory, Belgium; 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. Input was also provided to this report from IJJO’s network of experts in Greece, Hungary, Italy, Latvia and Portugal.

⁹ Article 40(1) of UNCRC.

¹⁰ The standards include the UNCRC, 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, Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, 2010, and UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 2012.

This report first gives a summary of what the six national reports say about children in the context of violent extremism and counter-terrorism – How many have been convicted of offences? Which offences? What happens to returnees from Syria and Iraq? What is the background and history of children involved in terrorism-related offending?

The second section of the report looks in more detail at some of the emerging issues around the procedural protection and treatment of children involved in terrorist-related offending and specifically looks at the use of administrative measures and the importance of multi-agency collaboration and coordination. The report does not look specifically at initiatives characterized as primary prevention, or countering violent extremism - these are considered in a separate IJJO project called PRALT.¹¹ It does consider tertiary prevention¹² measures that are used as part of a child offender's rehabilitation and reintegration back into society, such as attending de-radicalisation programmes. It should be noted that this report is a summary of the national reports and as such is largely limited to the content of these reports. It is not meant to be a comprehensive analysis. A White Paper setting out policy recommendations will also be developed as part of the project.

2. Developments and trends

2.1. A note on terrorism-related offences

All the six countries under review have transposed EU legislation in line with the *Framework Decision on combating terrorism* issued by the Council of the European Union in April 2002.¹³ This is the core EU legislation criminalising terrorism. However, there is variation in implementation and differing provision in terms of procedural safeguards for children who are suspected of terrorism-related crimes. Some of these differences are explored in the summary below.

According to the EU Framework Decision, terrorist offences are committed with the aim of:¹⁴ seriously intimidating a population, or unduly compelling a government or international organisation to perform or abstain from performing any act, or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation. A full list of the acts to be defined as terrorist

¹¹ For more information on the PRALT project see the website: <http://www.oijj.org/en/prevention-juvenile-radicalisation-introduction>. Such issues are also covered in depth in the *Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context* and the *UNODC Handbook on Children Recruited and Exploited by Terrorist Groups* (2017).

¹² Tertiary prevention means approaches to the prevention of reoffending by children who have already been in contact with the justice system as alleged offenders.

¹³ Framework decision of the Council 2002/475/JI from 13 June 2002 on combating terrorism, ABI L 164, 22/06/2002, p. 3 The framework decision was amended multiple times, most recently with the Directive (EU) of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA

¹⁴ Article 1(1) Framework decision of the Council 2002/475/JI from 13 June 2002 on combating terrorism, ABI L 164, 22/06/2002.

offences under national law, when committed with the requisite intention, is listed below¹⁵:

- Attacks upon a person's life which may cause death;
- Attacks upon the physical integrity of a person;
- Kidnapping or hostage-taking;
- Causing extensive destruction to a government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
- Seizure of aircraft, ships or other means of public or goods transport;
- Manufacture, possession, acquisition, transport, supply or use of explosives or weapons, including chemical, biological, radiological or nuclear weapons, as well as research into, and development of, chemical, biological, radiological or nuclear weapons;
- Release of dangerous substances, or causing fires, floods or explosions, the effect of which is to endanger human life;
- Interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life;
- Illegal system interference for terrorist purposes.

Threatening to commit any of the acts listed in the previous points is also defined as a terrorist offence.

The 2017 Directive defines a 'terrorist group' as "a structured group of more than two persons, established for a period of time and acting in concert to commit terrorist offences". The Directive also outlines offences related to terrorist activities and includes:

- 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).

Some but not all the countries under review have adopted legislation criminalising these activities.¹⁶

¹⁵ 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)

¹⁶ UN Security Council Resolution 2178 of September 24, 2014 also requires all UN member states to take urgent action to stem the "acute and growing threat posed by foreign terrorist fighters" both at home and abroad.

2.2. A snapshot of developments and trends

The following section summarises data and information in the national reports regarding the number of children who have come to the attention of the justice and protection authorities as a result of involvement with terrorist activity. It also examines the criminal justice and protection systems in place to respond to them. It is limited to the information available in the national reports and may not therefore be comprehensive. This is not least because it was challenging to obtain easily comparable data on the number of children convicted of terrorist-related offences, and the definition of offences varies widely between countries. Nevertheless, this snapshot aims to reflect current developments and trends and permits some comparisons to be made between countries.

Austria

“Considering the great political and media attention, which has followed Islamist extremism, it is often overlooked that the number of convicted children and young adults for right-wing extremism has been at a constant high for years.”

National Report of Austria (2018) prepared for the IJJO project *Strengthening Juvenile Justice Systems in the counter-terrorism context: Capacity-building and peer learning among stakeholders*

There are two principle sources of counter-terrorism and extremism law in Austria. The National Socialist Prohibition Law (*Verbotsgesetz* or *VerbotsG*) was passed in 1945 and has been amended numerous times since then. It aims to suppress any potential revival of Nazism by penalizing offences that are generally associated with right-wing extremism. The Criminal Code (*Strafgesetzbuch* or *StGB*) covers all other forms of offences committed in the context of terrorism or extremism (e.g. left-wing or Islamist motivated extremism). Both laws are applicable to children as much as to adults although children (and young adults) are processed within a separate criminal justice procedure and subject to different sentencing provisions. It should be noted that the data available in Austria¹⁷ does not always differentiate between those under 18 and those under 21 (defined as young adults) so the following data concerns 14 to 21 year olds.

Between 2014 and 2016, 50 children and young adults were convicted under the *VerbotsG* for right-wing extremist offences, a number which has slightly decreased in recent years.¹⁸ However, since the refugee and migrant movements of 2014/15, there has been a noticeable rise in incitement of hatred and anti-asylum propaganda from right-wing extremist groupings on the internet. The following are examples of offences that have led to sentencing under the *VerbotsG*:¹⁹

¹⁷ The main source of information for this report was the *Annual Reports on the Protection of the Constitution* (2014-2016), published by the Office for the Protection of the Constitution and Counter-Terrorism.

¹⁸ Information from the Federal Court proceedings automation system (Ministry of Justice, BMJ), response given via email to authors of Austrian national report, 20th of September and 10th of October 2017.

¹⁹ *Verfassungsschutzbericht* 2014, p. 16.

- Desecration of memorial monuments to the victims of the Nazi regime.
- Incitement and islamophobia expressed through alteration (i.e. pasting over) of street signs in the proximity of a Mosque.
- Daubing the wall of a Turkish nursery school with a swastika.
- Staging of an event for the far-right scene, involving representatives of far-right political parties and otherwise pertinent groups from various countries.
- Incitement of violence against a Roma campsite via Facebook.

It is unusual for children and young people to be given custodial sentences for such offences, and as of August 2017 none were in detention for right-wing extremist offences.

Between 2014 and 2016, a further 50 children and young adults were convicted of one or more of the terrorism offences set out in the Criminal Code (*StGB*)²⁰ – 80 per cent were male and 20 per cent female. It is noticeable that **children and young adults represent a large proportion – 59 per cent – of all those convicted under the Criminal Code of terrorist-related offences**. By way of comparison, children and young adults represent only 15 per cent of all those convicted under the *VerbotsG* over the same period.

None of the terrorist-related offences under the Criminal Code concerned attempted or actual terrorist attacks. At least three quarters of children and young people were convicted of the offence of participation in a terrorist organization.²¹ This is interpreted quite broadly and includes activities such as providing information or promoting an organisation. A further twenty per cent were convicted of inciting or approving of terrorist offending including by sharing information on social media. Between 2014 and 2016, a comparably small percentage of children and young adults were convicted of attempts of departure and even participation in combat in Syria.²² An estimated 300 ‘foreign fighters’ left Austria for Syria and Iraq in 2016.²³ Of these, 139 were aged under 25 years old²⁴ and it is not known if they travelled on their own or with parents or other relatives.

Criminal Code offences are applicable for all other forms of terrorist or extremist activities apart from right-wing offences, which fall under the *VerbotsG*. Accordingly, the data regarding convictions under the Criminal Code offences, does not clearly distinguish between left-wing and Islamist motivated terrorism. In this context, it is striking that only six children and young adults in 2016 were reported to the police on the grounds of left-wing extremist crimes - mostly for damage of property. This is significantly lower than the number of right-wing extremists who were reported to the police during this time-period (89 children and young adults).²⁵

²⁰ Namely, the following articles in the Austrian Criminal Code: 278b (participation in a terrorist group), 278c (crimes which can be characterised as having terrorist intent such as murder or grievous bodily harm), 278e (training for terrorist purposes), 278f (providing instructions to commit terrorism), and 282a (incitement to terrorism).

²¹ This is an offence under article 278b of the Austrian Criminal Code.

²² Glaeser, Bernd, *Radikalisierungsprävention durch die Bewährungshilfe*, un-published paper, 2016, p.1.

²³ Figures are from the Report on the Protection of the Constitution 2015, p. 25 and the Report on the Protection of the Constitution 2016, p. 24.

²⁴ Die Presse: *Terrorismus: 296 Jihadisten in Österreich unter Beobachtung*, APA Austrian Press, 10 August 2017.

²⁵ Statistics from the *Verfassungsschutzberichte* 2014-16.

In recent years, the police powers of surveillance and investigation in the context of terrorism and extremism have been increased. In 2016, Austria took further legislative steps and 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 the provisions do not require any criminal liability, the measures may also be applied to persons under 14 years (the minimum age of criminal responsibility is 14 years in Austria). Enhanced threat investigation such as surveillance and covert investigations fall under the competence of the Federal Office for the Protection of the Constitution and Counter-Terrorism and its units in the counties.

Belgium

“Once they are arrested and considered to be ‘suspects’, these young people cannot be treated as standard adult terrorists. Not only that, they should be considered as children at risk. Above all, they are children and they must benefit from specific treatment due to their vulnerability, with procedures and measures adapted to their needs.”

National Report of Belgium (2018) prepared for the IJJO project *Strengthening Juvenile Justice Systems in the counter-terrorism context: Capacity-building and peer learning among stakeholders*

Belgium has experienced several very violent terrorist attacks in recent years. The March 2016 attacks were considered the worst ever experienced and claimed the lives of 32 people and injured several hundreds. The perpetrators of attacks in France in 2015 were also linked to Belgium which has the highest reported number of recruits to Islamist armed groups per capita in Western Europe. It has been estimated that more than 500 Belgian citizens have left for Syria since 2011.²⁶ 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.²⁷

Belgium updated its counter-terrorism legislation in 2003 with new provisions inserted in its Criminal Code. In 2013, further offences were added including public provocation to commit a terrorist offence, recruitment for terrorism and training for terrorism. Following the Brussels and Paris attacks of 2015 and 2016, further amendments were made including criminalising travelling abroad for terrorist motives and extending the scope of investigative methods.

²⁶ B. Van Ginkel and E. Entenmann (Eds.), *The Foreign Fighters Phenomenon in the European Union. Profiles, Threats and Policies*, The International Centre for Counter-Terrorism - The Hague 7, no. 2, 2016.

²⁷ CUTA, *Note contextuelle : Les Mineurs belges auprès de l'Etat islamique* (Background note: Belgian minors and the Islamic State), Ref OCAD 334110, September 2017.

The Criminal Code is applicable to children as much as to adults, although children are processed within a separate criminal justice process and subject to different levels of sentencing (with some exceptions for children aged over 16 explained further below). Belgium is a federal state and responsibility for criminal justice for children is shared between the federal arm and the three communities (Flemish, French and German-speaking).

A child does not commit 'crimes' under the Belgian system; rather they commit 'acts qualified as an offence', for which a specialised jurisdiction, the Youth Court, is competent to apply measures of protection, care, education and/or restorative justice as set out in the Youth Protection Act. When a child's case first reaches a prosecutor, they may decide that the facts imply that a child is 'at risk', in which case they will be given protection measures such as home visits or placement in a foster family or community institution. Other protection measures can extend to deprivation of liberty in a closed educational centre or institution of youth protection. There are also circumstances in which a child over 16 can be transferred to the adult criminal justice system.

Data collected by the Youth Court in Belgium only defines whether a child is 'at risk' or if he or she committed 'an act considered as an offence.' As a result, it is not possible to draw clear conclusions about the numbers of children who have been found responsible for terrorist-related offending. However, the **prosecution services state that they have seen a steady increase in the numbers of children suspected of terrorist-related offences: in 2014 it was 22, in 2015 it was 35, and in 2016 it was 66.**

Croatia

"No minors have committed any criminal offences of violent extremism and/or terrorism [...] it is clear that in the case of radical and extremist behaviour of a minor, the justice system, as well as the social welfare system involved in the criminal proceedings, would take individual characteristics into consideration while developing specific programmes and procedures for a minor, and selecting the sanction type."

National Report of Croatia (2018) prepared for the IJJO project *Strengthening Juvenile Justice Systems in the counter-terrorism context: Capacity-building and peer learning among stakeholders*

Croatia has not experienced a terrorist attack in recent years and very few Croatian citizens have been identified as amongst those who have travelled to Iraq and Syria. However, terrorism is considered a threat to both international and national security and it is understood that the territory of the Republic of Croatia is used as a transit area within which terrorists have travelled. In 2013, a new Criminal Code entered into force containing provisions prohibiting financing of terrorism, public incitement, recruitment and training for terrorism and organising terrorist groups. In 2015, the Criminal Code was amended to expand the offence of preparation. For children over the age of criminal

responsibility (age 14-18), a criminal offence is defined according to the Criminal Code but the criminal procedure and sanctioning are conducted according to the Youth Courts Act.

No children were charged or convicted of terrorist-related offences in Croatia between 2001 and 2016. Indeed, the only case concerning terrorist legislation was brought in 2013 against an adult accused of publishing a video on social media that encouraged terrorist acts. A child was identified in 2015 as having an intent to travel to Syria having made contact on social media, and was provided with psychological help.²⁸

France

“Today, the radical discourse succeeds in drawing in children from very different backgrounds, social classes or religions, which demonstrates the extraordinary capacity of such discourse to adapt to the different ways that children are vulnerable.”

National Report of France (2018) prepared for the IJJO project *Strengthening Juvenile Justice Systems in the counter-terrorism context: Capacity-building and peer learning among stakeholders*

France has been subject to several violent terrorist attacks in past years resulting in many deaths; furthermore, it is estimated that nearly 2,000 people have travelled from France to Syria and Iraq to join terrorist groups and around 300 have since returned.²⁹ As of December 2017, 62 children had returned to France from so-called Islamic State (IS) territories of whom two are now adults and three have left the country, leaving 57 child returnees.³⁰

In response to this situation, France has adopted a variety of counter-terrorism measures. It established a state of emergency between November 2015 and November 2017, has bolstered its counterterrorism legislation, approved the creation of a National Guard and launched a de-radicalisation centre. Terrorist offences are defined in the Criminal Code and include “moving abroad in order to take part in terrorist actions.”³¹ Many of the powers invoked during the state of emergency have since been put in to law in the Law to Strengthen Internal Security and the Fight against Terrorism, which entered into force in November 2017. Amongst other issues, it includes administrative measures to order people considered a threat to national security to live in an assigned place of residency, and permitting house searches without judicial authorisation.

²⁸ Report of the Croatian Security and Intelligence Agency (SOA), 2015.

²⁹ *Beyond the Caliphate: Foreign Fighters and the Threat of Returnees*, Soufan Centre, October 2017 pp 10, 12.

³⁰ Figures provided in the French national report, 2017.

³¹ France: Code de la Securite Interieure, article L 224-1, modified by law 2016-987 from 21 July 2016-art. 11.

Since a change in the law in 2013, the anti-terrorist section of the Paris Regional Court has almost exclusive jurisdiction over terrorist offences for both adults and children (except for offences of direct provocation of terrorist acts or publicly advocating such acts³²). Children investigated for criminal offences, including terrorist-related offences, are dealt with by the specialised Judicial Juvenile Protection Services (DPJJ). 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. Depending on the circumstances of the case, the DPJJ may propose alternatives to judicial proceedings or immediate appearance in front of the court. They may also take any temporary education measures deemed necessary including civil measures for children at risk.

The number of children prosecuted and convicted of terrorist-related offences is small and amounts to fewer than one per cent of the total case load of the DPJJ. As of August 2015, 67 children were prosecuted for terrorist-related offences and the number had increased to 178 by 2016. **No child has been convicted of attempted or actual terrorist attacks. They are mainly prosecuted for the offence of criminal conspiracy with a view to committing a terrorist act³³ and for advocating terrorism** (*'apologie du terrorisme'*). Research conducted in 2017 found that most cases concerning children related to Islamist-related offending, but there were also cases concerning Basque nationalists, Corsican and right-wing activists.³⁴

Between 2012 and 2017, 70 children in total were prosecuted for the offence of criminal conspiracy with a view to committing a terrorist act. Under this provision, participation is sufficient to amount to a terrorist offence. There has been a steady increase in the numbers of children charged with this offence – just one child was charged in 2012 and by 2017 this had risen to 22. The majority (93 per cent) were aged between 15 and 17 years old. Fifty of these children were still being investigated as of December 2017 and 20 had been convicted. They were almost always detained during the investigation. On conviction, some were given sentences of detention, others were given suspended sentences. There was a higher proportion of girls prosecuted for this offence than in cases concerning non-terrorist related criminality. Out of 70 children, a third (23) were girls and two thirds (47) were boys.

The offence of advocating terrorism was introduced in 2014 in an amendment to the French Criminal Code, and as of 1st August 2016, 110 children had been prosecuted for this. Amnesty International has criticised this offence for being too ill-defined and vague, leaving room for broad interpretation.³⁵ The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has

³² Article 706-16, 706-17 et 706-22-1 of the French Code of Criminal Procedure.

³³ France: Article 421-2-1 of the Criminal Code.

³⁴ *Radicalité engagée, radicalités révoltées. Un enquête sur les mineurs suivis par la PJJ - Rapport Bonelli*, January 2018.

³⁵ See *Dangerously Disproportionate: The Ever-Expanding National Security State in Europe*, Amnesty International (2017) p.37.

expressed concern that advocating terrorism has been used extensively against minors.³⁶

As of 1st August 2016, 189 children were the subject of protective court orders because they were perceived to be at risk of radicalisation. These mainly included investigation or a measure of non-custodial educational assistance. That figure had increased from 39 on 1st August 2015. Furthermore, as of 1st August 2016, 364 children were under evaluation by the DPJJ because of 'signs of radicalisation' and a further 146 children because their parents were deemed to be radicalised.

Germany

"...there is an overall dominance of the security discourse, focusing mainly on violent extremists, in public and political discussion. Consequently, the particular context of young people - of juveniles - is often overlooked."

National Report of Germany (2018) prepared for the IJJO project *Strengthening Juvenile Justice Systems in the counter-terrorism context: Capacity-building and peer learning among stakeholders*

There have been several Islamist-related terrorist attacks in Germany in recent years. Furthermore, an official estimate is that more than 910 Islamists left Germany for Syria or Iraq. About one-third of those who departed are known to be or assumed to be back in Germany. More than 70 of these returnees have experienced armed combat or at least have undergone some type of military training. Owing to its history of far-right and far-left extremism, the German authorities have extensive experience in counter-terrorism. In 2004, a joint counter-terrorism centre (*Gemeinsames Terrorabwehrzentrum*) was established to facilitate the exchange of strategies and information amongst Germany's 16 States and between security, police and the Office of the Protection of the Constitution. The main source of counter-terrorism legislation is the Criminal Code (*StGB*) which prohibits a range of terrorism-related preparatory actions, including actual or attempted departure from Germany to participate in terrorist training, acquiring weapons or explosives with the intent to commit attacks, and terrorist finance. It does not directly define terrorism but implies that someone who commits one of the offences listed under articles 129a³⁷ (participation in a terrorist organisation) and 129b³⁸ (supporting terrorist organisations

³⁶ OHCHR, 23 May 2018, 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.

³⁷ Section 129a of the German Criminal Code prohibits membership, participation or formation of any organisation the objectives, or activity of which, are aimed at murder, manslaughter, hostage taking, inflicting serious physical or psychological injury, computer sabotage, arson, crimes involving firearms, certain serious environmental crimes or other serious criminal offences. However this is only applicable if the purpose of the criminal offence is to seriously intimidate the population, to force an authority or international organisation to act under duress by use of violence or the threat of violence, or to eliminate the basic political, constitutional, economic or social structures of a state or international organisation or interfere with them in such a way that the effects of the interference may cause considerable damage to the state or international organisation.

³⁸ Section 129b of the German Criminal Code allows authorities to prosecute the founding, membership, support and recruiting members or supporters for, criminal or terrorist organisations abroad (and outside the European Union), where there is a domestic connecting factor, as set out in the law. Domestic connecting factors include the involvement of a German national, either as a perpetrator or as a victim, the suspect's activity is in Germany, or a victim or perpetrator is in fact in Germany.

abroad) is a terrorist. Article 89a of the Criminal Code makes it a crime to “prepare a serious offence endangering the state”, irrespective of whether the perpetrator is part of a ‘terrorist organisation’ according to Article 129a or 129b. None of these articles includes any specific provisions regarding children.

There have been significant developments in law and policy that increase police powers of surveillance and investigation. In 2016, Germany adopted additional counter-terrorism legislation (*Improving Information Exchange to Combat International Terrorism*), which authorizes the Federal Police to operate undercover agents for law enforcement purposes and for the protection of public safety; expands data exchanges with foreign intelligence services; authorises the domestic intelligence service (BfV) to establish and operate joint databases with foreign partners; increases control and monitoring of communications using prepaid mobile phones; and lowers the age of suspects which the BfV is allowed to track and collect data on from 16 years to 14 years.

Germany has also introduced the 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.³⁹ Such people are known as *Gefährder*. The Federal Criminal Police Office estimates nearly 700 people are *Gefährder* as of 2017.

The number of terrorism-related cases being investigated has risen year on year. In 2017 approximately 900 terrorism-related cases were opened by federal prosecutors, 800 of which were Islamist-related; in 2016, about 250 were opened and in 2013 there were approximately 80 cases in the courts.⁴⁰ This includes offences concerning travelling abroad with the aim of committing violence.⁴¹

It was challenging to find figures directly relating to children and young people with regards to prosecution and conviction of terrorist-related offending. However, figures from the Federal Bureau of Statistics reveal that **in 2015, five children were convicted and given a prison sentence for using prohibited insignia and hate speech and in 2016, eleven children were convicted and given a prison sentence for dissemination of propaganda, use of prohibited insignia, preparation of a serious violent offence endangering the state (article 89a StGB) and hate speech.**⁴² An analysis of people who had travelled to Syria and Iraq conducted by the German authorities found that 79 per cent were male and 21 per cent female.⁴³ Amongst the first wave of people leaving, five per cent were under 18 and by 2015 around 16 per cent were under 18.⁴⁴

³⁹ Germany: Bundestags-Drucksache 16/3570, p. 6 (translation by the authors).

⁴⁰ Deutsche Justiz ist mit Terror-Verfahren überfordert.

⁴¹ This amendment was introduced in response to the UN Security Council Resolution 2178 of September 2014, which provides that all States shall ensure that their legal systems provide for the prosecution, as serious criminal offences, of travel for terrorism or related training, as well as the financing or facilitation of such activities.

⁴² Information sourced from German Ministry of Internal Affairs 2017.

⁴³ Analysis of the background and process of radicalization among persons who left Germany to travel to Syria or Iraq based on Islamist motivations German Security Services, December 7, 2016.

⁴⁴ As above.

Hungary

Hungary condemns terrorism in all its forms and shares the view that international terrorism is one of the most important security threats. According to the latest information, as a central European country, Hungary is not a country that is threatened or targeted by international terrorism and no international terrorist networks exist within its borders. At the present time Hungary is only affected by the Foreign Terrorist Fighter phenomenon by virtue of geography and its position as a transit route. Because of Hungary's history (there is no colonial past) and demographic character (the population is homogeneous, the most significant minority is Roma, who have lived in the country for several centuries), the problem of terrorism does not take the same form as in many Western European countries.

The relationship with minorities living in Hungary is fundamentally normal, and political, religious, or other discriminatory attitudes do not appear statistically in respect of child offending. The radicalisation of young people has no religious, political or other motives, similar processes could mainly be observed in connection with football hooliganism.

According to the current Hungarian Criminal Code, the criminal offences related to terrorism can be found in Chapter XXX which establishes criminal offences against public security. In this chapter, four different criminal offences are established in connection with terrorism: Acts of Terrorism, Failure to Report a Terrorist Act, Terrorist Financing, and Unlawful Seizure of a Vehicle. Furthermore, Chapter XXXII (criminal offences against public peace) also contains a criminal offence in connection with terrorism, namely Incitement to War.

In Hungary the minimum age of criminal responsibility is fourteen years (Section 16 of the Criminal Code). However, children between twelve and fourteen years old can also be held liable if the following criteria are met:

- a) The criminal liability of a person between twelve and fourteen years can occur in case of six criminal offences: homicide (Subsections (1)-(2) of Section 160), voluntary manslaughter (Section 161), battery (Subsection (8) of Section 164), acts of terrorism (Subsections (1)-(4) of Section 314), robbery (Subsections (1)-(4) of Section 365) and plundering (Subsections (2)-(3) of Section 366).
- b) The perpetrator between twelve and fourteen years is required to have the capacity to understand the nature and consequences of his acts.

In Hungary, no children have been convicted of terrorist-related offences and no criminal proceedings were initiated against them for such offences. Among the similar – terrorism-type – criminal offences, the Criminal Offense with Firearms and Ammunition was typically committed, but political or other background could not be proven in connection with these offences either. Criminal legislation therefore does not prioritise this question; as result of which Hungarian legislation does not allow different rules for juveniles in the case of terrorism-related offences.

Netherlands

“...there is not a single path towards radicalisation and extremism. Despite the public perception, poverty, religion or discrimination are not necessarily dominant factors. There is a multiplicity of causal factors: socio-psychological factors, social factors, political factors, ideological/religious factors, cultural and identity crisis, trauma and other trigger mechanisms, group dynamics, the presence of recruiters/groomers and the role of social media.”

National Report of the Netherlands (2018) prepared for the IJJO project *Strengthening Juvenile Justice Systems in the counter-terrorism context: Capacity-building and peer learning among stakeholders*

The main source of terrorist legislation in the Netherlands is the Terrorist Crimes Act (*Wet terroristische misdrijven*) which came into force in 2004 and which implements the EU framework decision. In March 2017, new counterterrorism powers permitted authorities to impose restrictions on people suspected of involvement in terrorism, including reporting obligations, geographic limits on movement, contact bans, prohibitions on leaving the country, and extending the power to strip Dutch nationals as young as 16 of their citizenship while abroad if suspected of joining a terrorist group.

There are no exact figures available about the number of children suspected or convicted of terrorism-related offences in the Netherlands. To find a reference point, **court rulings on children convicted of terrorism were examined⁴⁵ and only four cases were found between January 2001 and July 2017.** They concerned offences of incitement to perpetrating terrorist crimes by placing messages on Twitter and spreading them; attempted participation in an organisation that aimed to perpetrate terrorist crimes; preparing to participate in a terrorist organisation; and preparing a terrorist attack.

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 IS.⁴⁶ It stresses the levels of violence children living in IS territories may have been exposed to and that if male and over nine years old, they could have received military training.⁴⁷ The report underlines the importance of these experiences when determining the needs of returning children.

⁴⁵ For this, the website: www.rechtspraak.nl was used. On this website, court rulings are published anonymously. Please note that this is a selection and not a representation of all court rulings. For this research, the following keywords were used while searching; minor & radicalisation; minor & terrorism; minor & terrorist; child & terrorism; child & radicalisation; Islamic State & minor and minor & ISIS.

⁴⁶ National Coordinator for Security and Counterterrorism & General Intelligence and Security Service (2017) *The Children of ISIS*. A publication by the NCTV and the AIVD. 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.

⁴⁷ Netherlands: Ministerie van Veiligheid en Justitie 2017 *Beleidsbrief bij Dreigingsbeeld Terrorisme Nederland 44 en voortgangsrapportage integrale aanpak jihadisme*. Available at: https://www.nctv.nl/binaries/Beleidsbrief%20DTN44%20en%20VGR_tcm31-254184.pdf.

From February 2013 to March 2017, the Child Care and Protection Board (*Raad voor de Kinderbescherming*) investigated 81 children who had returned from Syria: 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.⁴⁸

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.⁴⁹

Case study: Responding to a 17 year old girl at risk of flight to Syria from the Netherlands

Fatima was a teenage girl of Moroccan background living in the Netherlands with her mother. She had experienced some trauma in her life, her father had died of a heart attack and her favourite brother had travelled to Syria where he had died. Fatima was getting into trouble at school and her grades were deteriorating. Her mother had travelled to Morocco and Fatima was being cared for by her older sister. As a result, she came to the attention of the child protection authorities and was placed under youth supervision. Around the same time, she developed a relationship with a boy and entered into an Islamic marriage with him, her sister-in-law moved to Syria taking with her Fatima's favourite niece and she became part of a network of highly radicalised women called a 'sisterhood'.

Matters escalated when Fatima was arrested aged 17 in a hotel room with men alleged to have jihadist extremist views. As a result, she was placed in a closed institution on a child protection order for three months and had her passport removed owing to a perceived risk of flight to Syria to join IS and concerns surrounding her use of the internet.

When she left the closed institution, she began a Diamond-Plus intervention with the SIPI Foundation to support her. SIPI described her strengths as being her intelligence and being close to her mother, who was against radical ideology. They worked closely with her school, family doctor and the police and shared information together with consent of her mother. SIPI built a programme with Fatima focussed on the idea of daily behaviour change. Fatima had to attend school regularly and her mother was helped with parenting skills. Once they had built trust and commitment from Fatima and her family, they moved on to discussing some of her ideological beliefs and encouraged her, successfully, to break bonds with radical groups.

⁴⁸ As above.

⁴⁹ For more information see Rozemarijn van Spaendonck, *To School or to Syria? The foreign fighter phenomenon from a children's rights perspective* Utrecht Law Review Volume 12, Issue 2 (June) 2016.

2.3. Background of children suspected and convicted of terrorist-related offending

“The cause of the problem is anger at not fitting in to the society.”

Sandra Doevendans, Key Figure in the Municipality of Amsterdam, speaking during a *Strengthening Juvenile Justice Systems in the counter-terrorism context: Capacity-building and peer learning among stakeholders* project study visit, 2017.

All the national reports conclude that there is no clear-cut pathway to terrorist-related offending. Aside from the fact that boys are more likely to be involved than girls, attempting to define a common profile for children engaged in terrorist-related activities would be nothing but misleading. Interestingly in both France and Austria, there was a higher proportion of girls than in cases concerning non-terrorist related criminality.

The Netherlands report asserts that children and young people are at a critical stage in their development and conflicts with authority can play a role in creating a ‘cognitive opening’ for terrorist-related offending. Furthermore, they may be searching for an identity and drawn to behave in an impulsive and risk-taking way. This point is also made in the French report which highlights how challenging it is for prosecutors dealing with such cases to assess *“whether the behaviour or the discourse reflects real radicalisation or simply teenage provocation.”*

In Austria, research was done to examine 18 court records and histories concerning children and young people who had been convicted of terrorist offences.⁵⁰ This is a very small sample but nonetheless it is notable that these children share a few common characteristics: nearly all had relatively low levels of education - they had only completed compulsory education, an apprenticeship or had dropped out of education entirely - and many had experienced discrimination and alienation and difficult childhoods. While religion and Islamist ideology played a role for some, others remained uninfluenced and more often than not 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.

Approximately a third of these 18 Austrian cases concerned Russian nationals of Chechen descent who were marginalized children and young people. Some of those convicted had travelled to Syria or Iraq to actively participate in fighting, to train for combat, or to pursue a civil profession (e.g. paramedic). The sentences they received on conviction ranged from two and a half to twelve years. Approximately a third of these children and young people had attempted unsuccessfully to reach Syria with very different motivations and

⁵⁰ Ten court and criminal records of different Austrian counties as well as biographic interviews retrieved from the report by Aslan, *Islamistische Radikalisierung*, 2017.

histories: one of them wished to follow his brother into jihad, another claimed he wanted to deepen his understanding of Islam, while a third was aiming to receive military training. Their sentences varied from conditional custody accompanied by probation, to twenty months imprisonment. Many young men in the sample were active on social media - typically they shared videos and photos endorsing the IS and inciting the fight against 'infidels'. Sometimes, this type of online propaganda served as a tool to facilitate the recruitment of youths for jihad.

*Promising practice 1: The Diamond Training in the Netherlands for children at risk*⁵¹

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, and also 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, for example through participation in education, internships and work. Mentors work with children through group-training to discuss dual identity and ideology, as well as support them to find work or to enter into education.

The Diamond Plus Training is more intensive (and more expensive) and focusses on 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), the Child Care and Protection Board, Safety Houses, schools and care, reintegration, probation and child protection services. As of 2017, the training has 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

⁵¹ For more information see: AR Feddes, L Mann, B Doosje, *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*, Volume 45, Issue 7 (2015).

evaluation of the Diamond Training. 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.

3. Justice for children accused of terrorism-related offences

“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.”

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

3.1. The minimum age of criminal responsibility

International standards

States should set as high a minimum age of criminal responsibility as possible reflecting the emotional, mental and intellectual maturity of children.⁵² In some jurisdictions, there are exceptions to the minimum age of criminal responsibility in cases which involve severe offences such as those involving terrorism.⁵³ In Hungary, for instance, 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).

⁵² The UNCRC, Article 40(3)(a) 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. The CRC Committee recommended in General Comment No 10 (CRC/C/GC/10) para. 32, that the minimum age of criminal responsibility should not be below 12 years of age.

⁵³ For example, China, Kazakhstan, Malaysia and Tajikistan and Vietnam have a different minimum age of criminal responsibility for serious offending.

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.

Findings from national reports

In all six countries, there are no exceptions to the minimum age of criminal responsibility relating to the severity of the offence. The minimum age of criminal responsibility is 14 years in Austria, Croatia and Germany and 12 in Belgium and the Netherlands. In France, there is no explicit minimum age, although the concept of 'discernment' is applied and in practice only children aged over 13 are given criminal sentences.⁵⁴

Children under the minimum age of criminal responsibility should not be prosecuted and their behavior is usually dealt with 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 the city hall of his home town. Later it was disclosed that he had been in contact with IS recruiters via social media. 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 several countries, there are additional protections for young adults (aged between 18 and 21 years old). For example, in Austria, certain protections and the sentencing provisions of the Youth Court Act also apply to this age category⁵⁵ and the situation is similar in Croatia. On the other hand, in other countries, there are also circumstances when children aged 16 and over can be transferred to the adult criminal justice system which can impact on the sentences they can receive. These circumstances are examined in more detail on the following table.

⁵⁴ France: Article 122-8 of the Penal Code.

⁵⁵ 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	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.	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. Young adults between 18 and 21 years can be held in youth prisons.	No
Belgium	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.	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
France	Persons under the age of 18 “able to understand what they are doing” are criminally responsible. In practice children under 13 years old can only be given educational measures.	No	In certain circumstances, a judge may decide that children 16 years old and over are not given a mitigated sentence.

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.

3.2. Diversion

International standards

As far as possible, children should be dealt with 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.⁵⁶ Diversion away from the formal system can be applied at various 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. Diversion is often used for minor or first time offences although it should be applicable to any offences, including terrorist-related offences. Where possible, diversionary measures aim to involve and strengthen support networks of the child including the family and community.

⁵⁶ Articles 37 and 40(3)(b) of UNCRC. See also, Rules 6 and 11 of the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).

Findings from national reports

There is a diverse range of diversion programmes available in the six countries under review, such as court orders to attend de-radicalisation programmes and access to local support services or specific kinds of assistance to help their disengagement from violence, including counselling, education measures, 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 and deal with it in a constructive way. In most countries, it is the prosecutor who plays a critical role as a gatekeeper and can decide whether to instigate criminal proceedings or use alternative procedures.

Based on the information provided in the national reports, it was not possible to establish how frequently terrorist-related crimes involving children were resolved through diversion. The assumption is that in many instances diversion will not be considered as appropriate given the gravity of the offences concerned, however this is an area requiring further research. In many countries, for example France, Belgium and the Netherlands, children are assessed for their suitability for diversion on a case by case basis and are able to receive protective measures alongside investigation and prosecution for criminal matters.

3.3. Treatment at police station

International standards

Any contact by the police with a child should respect a child's rights and avoid any harm. Police officers who frequently engage with children should be trained specifically.⁵⁷ The Beijing Rules outline the basic safeguards that should exist for children at all stages of proceedings, including whilst in police custody:

- The presumption of innocence;
- The right to be notified of the charges;
- The right to remain silent;
- The right to counsel;
- The right to the presence of a parent or guardian; and
- The right to appeal to a higher authority.⁵⁸

The UN 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.⁵⁹

⁵⁷ Beijing Rules, No.12.

⁵⁸ Beijing Rules Nos. 7, 10, 15, Council of Europe Guidelines on Child-friendly Justice. Article 37(d) UNCRC states that every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance. Article 40 (2)(b)(ii) further holds that States shall ensure that every child shall have legal or other appropriate assistance in the preparation and presentation of his or her defence.

⁵⁹ UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice*, 25 April 2007 para. 83, CRC/C/GC/10.

Findings from national reports

In the countries under review, procedures for children in police detention are usually no different if they are arrested for terrorist-related offences. However, in France, the period in detention can be extended to 48 hours for a child aged 13 to 15 years 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.

3.4. Specialised court procedures

International standards

A separate and specialised criminal justice system for all those over the age of criminal responsibility and under the age of 18 should be established. This separate system should be engaged from the moment of first contact until all involvement with the system is concluded, irrespective of the severity of the offence that a child is charged with. It should consist of separate and specialist authorities and institutions, including within police stations, detention facilities and courts. All those working in the criminal justice system for children – including lawyers, judges, the police, the probation service, prison service and social services – should receive regular, ongoing specialised training. A vital part of a specialised system is that cases concerning children are heard in children's courts.⁶⁰ Key features of these courts include:

- The privacy of the child should be respected throughout the 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 imperative in terrorist-related cases concerning children where the risk of reprisals or stigmatisation are high and the levels of media interest are extensive.⁶¹
- The procedures used must be such that the child is able to participate effectively in the trial.⁶² 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.⁶³

⁶⁰ The UNCRC Committee has recommended that States establish juvenile courts either as separate units or as part of existing regional/district courts in General Comment No. 10 (2007): Children's Rights in Juvenile Justice, para 92-93 CRC/GC/10.

⁶¹ UN Convention on the Rights of the Child, Article 40(2)(b)(vi).

⁶² UN Convention on the Rights of the Child, Article 40(2)(b)(iv).

⁶³ UN Committee on the Rights of the Child, General Comment No 10 (2007) CRC/C/GC/10, 25 April 2007, para. 92.

The Committee on the Rights of the Child 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.”⁶⁴ This is because criminal justice systems for children should preserve public safety and hold a perpetrator accountable but also promote a child’s rehabilitation and reintegration into society.

Findings from national reports

The normal procedures for processing a criminal case concerning a child are usually followed in cases concerning terrorism-related offences (although it should be noted that the normal procedures do not always include specialised prosecution services for children or children’s courts⁶⁵). In Austria, for example, the Youth Court Act (*Jugendgerichtsgesetz, JGG*)⁶⁶ ensures that those charged with a criminal offence who are over 14 and under 21 years old are always treated differently to adults in terms of different court proceedings, judicial competences and sentencing practice.⁶⁷ Similarly, in Croatia, the Youth Court Act⁶⁸ regulates all provisions related to 14 to 18 year olds charged with a criminal offence. In France, the Paris Regional Court has almost exclusive jurisdiction over terrorist offences for both adults and children but children are dealt with by the specialised Judicial Juvenile Protection Services.

However, there are some inconsistencies in the treatment of children charged with terrorist-related offences. In Germany, children over 16 years old can be brought before State Security Courts rather than Youth Courts. The State Security Court should apply the procedural and sentencing guidelines set out in the Juvenile Courts Act⁶⁹ 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 specialised in dealing with children and are not trained in focussing on rehabilitation as required in the Juvenile Court Act. A trial in the State Security Court can be more traumatising for children, as they may struggle with not knowing what is going on, be held in a high security environment, have difficulties with the language used and sometimes they are handcuffed. Without adequate training, it is possible that sentencing may not be adequately proportionate.

⁶⁴ General Comment No. 10 (2007): Children’s Rights in Juvenile Justice, para 38 CRC/GC/10.

⁶⁵ For an overview of compliance with international and regional standards see *Alternatives to Detention for Juvenile Offenders Manual of Good Practices in Europe*, IJJO (2016).

⁶⁶ Austria: Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener (Jugendgerichtsgesetz 1988 – JGG) BGBl Nr. 599/1988 idF vom BGBl I Nr. 154/2015, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002825>. The Youth Court Act takes precedence over the Criminal Code and other laws because of its greater specificity.

⁶⁷ Austria: Schroll, Hans Valentin: § 1 JGG in Höpfl, Frank/Ratz, Eckart (ed.): Wiener Kommentar zum Strafgesetzbuch, 2nd edition, Vienna (status as of 1.10.2016), Rz.14.

⁶⁸ Croatia: Youth Court Act (Official Gazette 84/11, 143/12, 1448/13, 56/15).

⁶⁹ 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.

In Belgium, children over 16 can also be transferred to the adult criminal system,⁷⁰ 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 specialized 'extended youth court' that applies adult criminal law, and can be punished with all criminal sanctions except life imprisonment. If the child is sentenced to a prison sentence, this sentence is executed in specialised institutions (federal detention centres) at least until the age of 18. After that age has been reached, it is possible to transfer the young adult to adult prisons.

3.5. Use of pre-trial detention

International standards

Pre-trial detention should only be used in exceptional circumstances, where it is necessary to ensure the child's appearance at the court proceedings or where the child is an immediate danger to himself/herself or others, and only for limited periods of time. Bail and other forms of conditional release should be accompanied by measures to support and supervise the child during this period.

Findings from national reports

Based on the information provided in the national reports, it was not possible to 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.⁷¹ However, it is striking 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.⁷² In Germany, children can normally be placed in pre-trial detention for up to six months.⁷³ However, if the criminal investigations are particularly complex and difficult, the Higher Regional Court can prolong the pre-trial detention beyond this.

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.⁷⁴ In one case,

⁷⁰ Belgium: Art. 57*bis* Youth Protection Act.

⁷¹ As required in Article 37(b) of the UNCRC.

⁷² 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).

⁷³ Germany: Article 121 of the Code of Criminal Procedure.

⁷⁴ Austria, File inspection conducted by authors of national report between August-October 2017.

an adult was kept in pre-trial detention for a serious terrorist crime committed as a young adult for 16 months.⁷⁵ 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.”⁷⁶ As a first step, a Social Network Conference (SoNeKo) will take place during which a child’s case will be discussed by a range of stakeholders including the child themselves, their probation officer and members of their social network such as family members, friends, teachers and support staff. Agreement may be reached for a child to be released from pre-trial detention on condition they participate with probationary services although the final decision is made by the court. As part of this agreement, children may have to participate in de-radicalisation programmes.

Whilst in pre-trial detention, it is important that an individualised plan for rehabilitation and 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.⁷⁷ Although there are risks of stigmatization, the rationale for providing this support during pre-trial detention 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.⁷⁸

Promising practice 2: Social Network Conferences for children and young adults in pre-trial detention and eligible for conditional release in Austria⁷⁹

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’ who are nearing their conditional release – this is not also the case for adult offenders.

⁷⁵ 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).

⁷⁶ Austria, Interview conducted with a representative of Neustart on 5 July 2017.

⁷⁷ 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.

⁷⁸ Austria: Interview with a representative of the penitentiary sector within the Ministry of Justice, conducted on 8 May 2017.

⁷⁹ For more information see: <https://www.neustart.at/at/en/> and Priecheufried, Klaus: *Alternativen zur Untersuchungshaft für Jugendliche*, Jugendliche in Haft: Entwicklungen im österreichischen Jugendstrafvollzug von 2013 bis heute, ACUNS (ed.), Vienna 2015, pp.11-114.

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.

3.6. Proportionate sentencing

International standards

If a child is convicted of a criminal offence, any sentence passed should be rehabilitative and not punitive, taking into account the desirability of promoting the child's reintegration and the child assuming a constructive role in society. Children should only be deprived of their liberty as a measure of last resort and for the shortest appropriate period of time. In practice this means that a range of alternative sanctions to detention must be available to youth courts and other authorities when responding to offending behaviour including terrorist-related offending. This is explicitly required by the UNCRC to ensure that children are dealt with in a proportionate way which takes their needs and well-being into account.⁸⁰

Findings from national reports

One issue that arises is that 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.⁸¹ A juvenile court judge can justify this based on (a) the seriousness of the

⁸⁰ See UNCRC, art. 37(a); Havana Rules, rule 2; Riyadh Guidelines, para. 46; UN General Assembly, *United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)*, A/RES/45/110, 14 December 1990.

⁸¹ Art. 77b Dutch Criminal Code.

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 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.

According to the national reports, a wide range of sentences are given by courts to children convicted of terrorist-related offences, although it was challenging to obtain data on the extent to which these different sentences were used in practice, because the data was either not available or not accessible.

In the Netherlands, courts can impose a behavioural measure as an alternative to detention, which 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. It 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 such as de-radicalisation programmes. Foster care may be included as part of this measure.

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.

In July 2017, six male children and young adults were in pre-trial detention in Austria for terrorist-related offences and six male children and young adults were in detention after being sentenced to unconditional imprisonment.⁸² The sentences for children and young adults convicted of terrorist-related offences varied widely from suspended custodial sentences with conditions to unconditional sentences of three to 12 years.⁸³ It is noticeable that sentences of imprisonment were given in cases involving fighting and training in Syria.⁸⁴ 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 been “radicalised.”⁸⁵

Case study: A 15 year old girl from Hanover, Germany sentenced to six years imprisonment for attacking police officers

Safia was born in Germany to a German father and a mother of Moroccan origin and had a successful school career at a grammar school. In 2016, she travelled to Turkey to join IS following her older brother but was then convinced to return home by her mother. Although questioned by authorities on her return to Germany, she was not investigated further. Shortly after her return, she attacked two police officers with a knife at a railway station in Hanover and was convicted of attempted murder and support and

⁸² Austria: Information provided to authors by Ministry of Justice, July 2017.

⁸³ Hofinger / Schmidinger: Deradikalisierung im Gefängnis, 2017, p. 27; File inspection conducted between August-October 2017.

⁸⁴ Austria: File inspection conducted by authors, August-October 2017.

⁸⁵ As above.

membership of a foreign terrorist organisation (contrary to Articles 129a Abs. 1 i. V. and 129b Abs. 1 Satz 1 of the Criminal Code).

The subsequent criminal trial was held in closed session because of her age. During the investigation, it was discovered that she had had close correspondence with IS and with Mohamad Hasan K. also from Hanover, who was sentenced to two years in prison for being her accomplice after failing to inform police despite knowing of Safia's plan. She received a sentence of six years' imprisonment, upheld on appeal, which generated debate and discussion within Germany given her young age and the facts of the case which suggested she had been groomed and exploited by a terrorist organisation.

3.7. Rehabilitation and reintegration

"How do you want me to learn about justice and equality, while all I encounter here is injustice?"

Detainee in a high-security institution, cited by the Ministry of Security and Justice during a *Strengthening Juvenile Justice Systems in the counter-terrorism context: Capacity-building and peer learning among stakeholders* project study visit to the Netherlands, 2017

International standards

Institutions where children in conflict with the law are detained should have their rehabilitation and reintegration as the main objective of all policies and processes from the moment the child arrives, irrespective of the offence the child is charged with or convicted of. It is a fundamental requirement of children's rights law that children are detained separately from adults, unless this is against their best interests.⁸⁶ Rehabilitation will work most effectively 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; they should provide them with opportunities to obtain life skills through educational, vocational, cultural and recreational activities; and they should promote services to help with their transition back into society. The individual needs of children should be addressed, such as mental health issues, substance abuse, job placement and family counselling.

These measures are vitally important in preventing children from being immersed in a process of radicalisation whilst they are in detention, which is a hostile environment where they are particularly vulnerable since they are separated from their immediate family and

⁸⁶ See art. 37 UNCRC; art. 10, para. 2 (b), of the International Covenant on Civil and Political Rights; rules 13.4 and 26.3 of the Beijing Rules; and para. 29 of the Havana Rules.

community. These measures will also help to ensure that children who are convicted or detained for terrorist-related offending will be supported to be rehabilitated and to disengage from violence – a far preferable outcome to harsh treatment that generates resentment and fuels violent extremism further.

Findings from national reports

Preventing children from being exposed to radicalisation in detention is a relatively new concept in the six countries under review, but one that is of growing interest. Germany recently 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 has been an incident related to the topic. In one third of youth prisons, extremist behaviour of at least one inmate had been noticed.⁸⁷ Capacity-building of staff on this issue is essential.

If children are held alongside adults then there is a risk that radicalisation can occur. In Germany, juvenile prisons hold children and young adults aged from 14 to 23 years old and the different age categories are not always adequately separated. For example, in Bremen prison, there was an incident where children shared education provision with adults, in the course of which a child was radicalised.⁸⁸

According to the national reports, there is growing interest in risk assessment tools for children in detention although limited use at present. These tools can help professionals to determine the level of risk of radicalisation and detect risk and protection factors. Based on this evaluation, professionals can develop individualised rehabilitation programmes.

A related issue is whether children in detention who are deemed to be at risk of radicalising others should be separated from or integrated with other children, or held separately, and this issue too is of increasing concern to prison authorities. With regards to children, it should be noted that the numbers at any one time are likely to be very small, which makes separation from the general population more challenging, since they may be held in *de facto* solitary confinement and lack opportunities to mix with others. There is likely to be a strong rehabilitative effect of maintaining contact with other children which suggests that segregation and separation may not be beneficial. Decisions on segregation should be made based upon a careful risk assessment but take into account that there are risks around reinforcing a sense of ‘us’ and ‘them’ through separation from the mainstream population of detainees.

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

⁸⁷ Germany: Fredericke Leuschner: *Extremismus und Radikalisierung im deutschen Jugendstrafvollzug*. In: *Zeitschrift für Jugendkriminalrecht und Jugendhilfe* 28, 2017, pp. 257-263.

⁸⁸ Discussion with staff from Bremen Prison, Project Study Visit, December 2017.

solution was to use solitary confinement.”⁸⁹ In the great majority of cases, accommodation with other detainees proves unproblematic.⁹⁰

The Netherlands 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 detainees in these prisons 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.⁹¹ 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.⁹² 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 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, vocational and psychological issues. This is a difficult undertaking given how politically sensitive this group is and the need to address behavioural and ideological components to offending. Good practice is found in Austria, where all children and young people convicted under 278b of the Criminal Code are supported by probation officers who have received specific training on de-radicalisation, disengagement and prevention. Neustart, the organization 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 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, Islam experts; and
- Illustration and revision of intercultural divisions.⁹³

⁸⁹ Austria: Kuhn, Christian (Catholic pastor working in the detention centre in Josefstadt, Vienna): Interview by ACUNS, unpublished, 2016, p. 2.

⁹⁰ Austria: Interview with the Executive Director of the detention centre in Gerasdorf on 9 August 2017.

⁹¹ *Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the Context of Counterterrorism*, Amnesty International and Open Society Justice Initiative (2017).

⁹² Veldhuis, T.M., Gordijn, E.H, Lindenberg, S.M., Veenstra, R., *Terroristen in detentie. Evaluatie van de Terroristenafdeling*, Rijksuniversiteit Groningen & WODC 2010.

⁹³ Glaeser, Radikalisierungsprävention durch die Bewährungshilfe, 2016, p. 4.

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

Promising practice 3: De-radicalisation of children and young people in prison in Germany⁹⁴

The Violence Prevention Network is an NGO which began working with violent young offenders involved in far-right extremism in 2001; it has now evolved to also address violent young offenders involved in Islamist extremism with a specific methodology called Anti-Violence and Competence Training. This programme is delivered in youth detention facilities and prisons across Germany and focuses 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 4: Constructing a positive identity for children and young adults in detention in Austria (Caucasus Group)

According to estimates from the Ministry of Home Affairs, approximately 30,000 Chechens live in Austria today, most of them in Vienna.⁹⁵ 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

⁹⁴ For more information see:

<http://violence-preventionnetwork.de/en/projects/deradicalisation-in-prison>

⁹⁵ Aslan, Ednan: *Islamistische Radikalisierung, Biographische Verläufe der religiösen Sozialisation und des radikalen Milieus*, Vienna, 2017, pp. 74 et seq.

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."⁹⁶

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.*"⁹⁷

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.

4. Children's rights and the use of administrative measures

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. All six countries under review have introduced provisions in law for the use of administrative measures in terrorism-related cases to varying degrees.

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

⁹⁶ Interview with Maynat Kurbanova on 16 August 2017.

⁹⁷ As above.

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 Minister of Home Affairs 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.⁹⁸
- A law passed in Belgium in 2015⁹⁹ 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.¹⁰⁰ 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.¹⁰¹
- In Latvia, a 2017 law¹⁰² permits the Ministry of Home Affairs 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.

These provisions apply to children as much as they do to adults. 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.

Some countries have introduced legislation that permits the **revocation of citizenship of dual national citizens**:

⁹⁸ 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)

⁹⁹ 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.

¹⁰⁰ Parlamentskorrespondenz Nr. 1196 from 10 December 2014.

¹⁰¹ Parlamentskorrespondenz Nr. 1196 vom 10.12.2014. § 12a para 1a Grenzkontrollgesetz (Border Control Act, GrekoG).

¹⁰² Amendment to the National Security Law *Grozījums Nacionālajā drošības likumā*.

- In the Netherlands, a 2017 law allows the authorities to strip dual citizens as young as 16 of 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 have only four weeks to appeal.
- In Belgium, a law enacted in 2015 allows the authorities to strip citizenship from naturalized dual nationals who have been sentenced to five or more years in prison for a terrorism-related offense.

In Italy, there is provision in the law¹⁰³ 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 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.¹⁰⁴ Similarly, in Germany, people classified as *Gefährder* can be deported if they do not have German nationality, although the use of this measure is very different across the 16 Federal States.¹⁰⁵

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.¹⁰⁶ 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.¹⁰⁷

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.

All states have an obligation to impose administrative measures on children in a way that ensures their best interests is a primary consideration. Procedural safeguards are not

¹⁰³ Italy: Art. 31, par. 4, Legislative Decree 27th July 1998 nr. 286 (Consolidated Act on Immigration).

¹⁰⁴ Tribunale per i Minorenni di Sassari, 6 gennaio 2016, est. Vecchione.

¹⁰⁵ 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.”

¹⁰⁶ Austria : Article 49e Security Police Act.

¹⁰⁷ Germany (Bavaria): Sicherungshaft § 112a StPO.

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 UNCRC. 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.

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

Izmulla A. is a Russian national and was three years old when he and his family moved to Bremen 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 law, he was classified as *Gefährder* and steps were taken to deport him back to Russia. His deportation was challenged in 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 Rights¹⁰⁸ who held that he could not be deported to Dagestan, but permitted his deportation to other areas in Russia, namely Moscow. He was finally deported from Germany in September 2017.

5. Ways of working

There was common agreement in all the national reports that responding effectively to children involved in terrorist-related offending cannot be achieved by a criminal justice response alone. The response needs to involve collaboration and cooperation between different stakeholders including police, prosecution authorities, courts, probation, detention facilities, families, schools and welfare services. This is done in different ways and in different forums with the most extensive elaboration in the Netherlands (see promising practice 5 below) where the learning and experience is that:

- Partnerships should be built at the local level.
- Involving civil society can lead to stronger relationships of trust with the relevant communities.
- Clear guidance on information-sharing is needed to improve the flow of data and information about individual children.
- A case manager should be appointed to lead the process.

An issue that arises from this kind of collaboration is ensuring that data, privacy and confidentiality are protected, whilst also optimising networking and sharing of needed

¹⁰⁸ X v. Germany (application no. 54646/17), European Court of Human Rights, 2017.

information. When should practitioners share information such as an assessment of a child's risk of offending – and when should such information remain confidential? Such moral and professional dilemmas are not new but the context of terrorism creates new challenges for practitioners who are keen to uphold their professional norms and core values.

*Promising practice 5: Multi-agency case management in the Netherlands*¹⁰⁹

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 specially 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

¹⁰⁹ For more information see: Evaluation of the Netherlands comprehensive action programme to combat jihadism, Ministry of Security and Justice 2017

force to clarify them and to assist the different professionals in their decision-making process.

Promising practice 6: Building cooperation in Germany - Live Democracy!¹¹⁰

'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 parts 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.

6. Key findings

The key findings from the national reports are explored further below.

1. Children are largely invisible in law and policy relating to counter-terrorism.

National counter-terrorism strategies need to prevent acts of terrorism, prosecute those responsible for such criminal acts and promote and protect human rights and the rule of law. Terrorist organisations frequently target children specifically for recruitment and this is a trend that is likely to continue. It is imperative that their status as both offenders and victims is acknowledged and addressed in all aspects of national counter-terrorism strategies, not just relating to prevention.

2. There is no common profile of a child involved in terrorist-related offending.

Aside from the fact that boys are more likely to be involved than girls, attempting to define a common profile for children engaged in terrorist-related activities is not possible. Interestingly, in Austria and France, there was a higher proportion of girls convicted of terrorist-related offences than in cases concerning non-terrorist related criminality. Individual cases require individualised responses from criminal justice and protection agencies.

¹¹⁰ For further information see: *Demokratie Leben!* Ministry of Family Affairs, Senior Citizens, Women and Youth 2017.

3. Very few children convicted of terrorist-related offences have engaged directly in violent acts and most are criminalised for activities such as glorifying terrorism or participation in a terrorist or violent extremist group. They are mostly motivated by extremist right-wing and Islamist ideologies.

Children and young people have been convicted of a range of terrorist-related offences including: participation in a terrorist organisation (for example, in Austria), criminal conspiracy with a view to committing a terrorist act and advocating terrorism (for example, in France), dissemination of propaganda, use of prohibited insignia and preparation of a serious violent offence endangering the state (in Germany) and incitement to terrorism, attempted participation in a terrorist group, preparing to participate in a terrorist in a terrorist organisation and preparing a terrorist attack (in the Netherlands). Very few of the convicted children engaged directly in violent acts; many were criminalised for activities such as 'glorifying' terrorism or participation in terrorist groups.

4. Numbers have risen in recent years in some, but not all, of the countries under review. This increase can be attributed to broadening the scope and definition of terrorist-related crimes.

The scope and definition of 'terrorist-related offences' has expanded in many European countries in recent years to include preparatory acts and forms of complicity, conspiracy and associative offences. It is likely that children and young people have been particularly affected by this expansion. In Austria, for example, it is noticeable that children and young adults represent a large proportion – 59 per cent – of all those convicted under the Criminal Code of terrorist-related offences, and that most of them were convicted of the offence of participation in a terrorist organisation which is interpreted broadly. This suggests that children and young people are disproportionately affected by these offences in Austria. The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has expressed concern that, in France, the offence of advocating terrorism has been used extensively against minors.¹¹¹

5. The regular criminal justice procedures for children are usually, but not always, followed in cases concerning terrorist-related offending.

A key part of a specialised system is that cases concerning children should be heard in children's courts.¹¹² When cases involving children are heard in adult courts, it is more likely that protective procedures are not followed, professionals are not specialised in hearing children cases, children are not able to actively participate and they may ultimately receive unduly long sentences. In most countries under review, children cases are heard according to the usual procedures followed for children in conflict with the law. However, in Germany, children charged with terrorist-related offences can be transferred to a court specialising in terrorist cases which does not always have sufficient procedural protections in place for children. In the Netherlands, France and Belgium, children aged 16 and 17 can be subject to adult sentencing procedures - a

¹¹¹ OHCHR, 23 May 2018, 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.

¹¹² The UNCRC Committee has recommended that States establish juvenile courts either as separate units or as part of existing regional/district courts in General Comment No. 10 (2007): Children's Rights in Juvenile Justice, para 92-93 CRC/GC/10

common criteria for this is the severity of the offence which often includes terrorist-related offences. It is not clear that this practice inevitably results in higher sentences but if they are being sentenced according to adult procedures, there is a significant risk that they may not receive a proportionate sentence that is explicitly focused on their rehabilitation and social reintegration.

6. Further research and analysis is needed at country-level to assess the use of diversionary measures for children involved in terrorist-related offending and to determine if detention is used as a measure of last resort and for the shortest appropriate period of time.

Based on the information available, it was not possible to draw conclusions about the use of diversion for children involved in terrorist-related offending, although it is generally understood that diversion is not commonly used in this context. A specific area of interest is to consider whether diversionary measures and/or community-based non-custodial sentences are an effective means to achieve the interrelated objectives of lowering recidivism, protecting children, and increasing public safety.

7. There is increasing awareness that children in detention are vulnerable to the process of radicalisation and may be at risk of radicalising others.

This is a new issue for many prison authorities, and there is growing interest in individualised intake and risk assessments for children charged with or convicted of terrorist-related offending. There is also some well-established practice in providing targeted disengagement programmes to children and young adults whilst in prison and as part of reintegration measures on release. However, there is a need for clarity in policy about when and how children may be separated from the general population of detainees – this must be done on the basis of child-sensitive assessment and classification procedures.

8. Administrative measures are being imposed upon children but sufficient procedural safeguards are not always in place to ensure that the best interests of the child are carefully weighed against national security interests. This is particularly the case for children aged 16 and over.

The law and policy relating to administrative measures is changing rapidly and many provisions are relatively new. Their impact on children is not yet clear, however, it is likely that children will find it difficult to challenge imposition of these measures since they frequently 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. Effective counter-terrorism measures and the protection of human rights should not be conflicting goals, but complementary and mutually reinforcing – all states have an obligation to impose administrative measures on children in a way that ensures their best interests is a primary consideration.

9. In view of the complexity of cases where children are involved in terrorist-related offending, close collaboration between different agencies is needed.

There was common agreement in all the national reports that responding effectively to children involved in terrorist-related offending cannot be achieved by a criminal justice response alone. 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, prosecution authorities, courts, probation, detention facilities, families, schools and welfare services. An issue that arises from this kind of collaboration is ensuring that data, privacy and confidentiality are protected whilst also optimising networking and sharing of needed information. When should practitioners share information such as an assessment of a child's risk of offending – and when should such information remain confidential? Such moral and professional dilemmas are not new but the context of terrorism creates new challenges for practitioners who are keen to uphold their professional norms and core values.

This report explores what happens to children when they come to the attention of the criminal justice authorities as a result of alleged involvement with terrorist activity in six European countries (Austria, Belgium, Croatia, France, Germany and the Netherlands). It is also based upon input from practitioners in Greece, Hungary, Italy, Latvia and Portugal. It considers if the existing law and policy frameworks are sufficient in terms of their compliance with international and regional standards on justice for children and highlights some promising practices that are currently being used to strengthen criminal justice and protection systems for children.

It is one component of a European Union (EU) funded project entitled *Strengthening Juvenile Justice Systems in the counter-terrorism context: Capacity-building and peer learning among stakeholders* and is based upon national reports produced as part of the project. These national reports examine the current situation of children suspected of or convicted of terrorism in their respective countries and describe some promising practices that are being used to strengthen criminal justice systems for children in a counter-terrorism context.



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