



CEP Policy Paper

Prosecution of Returnees from Syria and Iraq in France

***Insights and Recommendations
for Policymakers and Security Agencies***

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Executive Summary

- This policy paper presents insights regarding the prosecution of returnees in France, more specifically individuals who left France to travel to the territory of the so-called Islamic State (ISIS) in Syria and Iraq and returned.¹ It also presents recommendations for policymakers and security agencies. It is the second of a series of CEP papers analyzing the prosecution, rehabilitation, and reintegration of returnees in different European countries.
- At least 1,490 individuals left France to travel to Syria and Iraq and join ISIS. Around a third of these travelers were women. In addition, several hundred minors were taken by their parents to or born in ISIS-held territory. The French thus make up the largest contingent among the more than 5,300 European travelers. To date, 656 French nationals or residents have returned voluntarily, were deported from Turkey, or were repatriated, including 217 men, 150 women as well as 289 minors. In July 2022, French authorities started actively repatriating minors and adult women from camps in Northeast Syria.
- In France, returnees are usually charged with “association of wrongdoing in relation to a terrorist enterprise,” abbreviated as AMT. Since 2016, any French foreign terrorist fighter (FTF) who joined a terrorist group such as ISIS after January 2015 is charged with AMT as a crime. If convicted, this charge can result in more than 30 years imprisonment. If the individual is classified as a “leader” he or she can even be sentenced to life imprisonment.
- As of March 2023, 195 returnees have been convicted, including 156 men and 39 women. Sentences range from a one year suspended prison sentence to imprisonment for life.
- The prosecution of (returned) FTFs in France has focused on terrorism-related offenses. Charges on core international crimes, such as crimes against humanity or war crimes, are more difficult to establish but are receiving increased attention in French courts. While public prosecutors from terrorism and war crimes units are co-investigating several cases, only a few returnees have officially been charged, including a woman who has been charged with crimes against humanity for her treatment of an enslaved Yazidi woman.
- Similar to the approach in other (European) countries, female returnees were not systematically investigated and prosecuted until 2017. Also, criminal AMT charges have only been brought forward in the past couple of years. Women receive different sentences, as they usually engaged in other activities than male FTFs.
- The approach of the French criminal justice to terrorism-related offenses, including the prosecution of returnees, has been impacted by the high numbers of FTF-related investigations and court cases as well as an increase in the terrorist threat levels in France in the last decade, contributing to a securitization.
- Key challenges when prosecuting returnees in France include: 1) limited resources; 2) difficult access to and use of evidence; 3) a lack of prosecuting international crimes; 4) a preventive approach to prosecution; 5) prison capacity and recidivism risk; as well as 6) lack of repatriation of French men, women, and minors from Northeast Syria.

¹ The working definition of returnees in the French justice system includes French nationals who returned from Syria and Iraq and those who had traveled there from a third country as well as foreign nationals who came to France to commit a terrorist attack.

Recommendations for Policymakers and Security Agencies

In analyzing the experience with the prosecution of returnees thus far, this policy paper makes the following recommendations:

- **Repatriate all remaining French men, women, and children as well as minors with a connection to France from Northeast Syria and Iraq.** French authorities should work to repatriate French nationals, which would allow them to enforce potential arrest warrants and enable their prosecution as well as their participation in rehabilitation and reintegration programs. Given the obvious security and humanitarian concerns as well as international legal obligations, this course of action is urgently required. Previous repatriations demonstrate that the French authorities have sufficient capabilities and capacities to effectively undertake these actions.
- **Strengthen efforts of joint investigations of terrorism-related and core international crimes.** The different relevant units within French judicial authorities should continue increasing their cooperation to exploit potential synergies, provide access to evidence gathered by international bodies such as the Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD) and the United Nations' International, Impartial and Independent Mechanism (IIIM), and ensure individual and collective accountability for victims of ISIS crimes. Potential solutions to capacity challenges are not only to increase (human) resources but also to develop and implement additional mechanisms for cooperation.
- **Further strengthen the cooperation with Yazidi communities and non-governmental organizations** in France and abroad, including in the search for potential victims, co-plaintiffs, and witnesses. This could involve trust-building measures as well as exchange formats between law enforcement agencies and non-governmental organizations with the objective to:
 - 1) clarify and better understand each other's work and methods, hence improving the probability that testimonies can be used in court;
 - 2) further improve culturally sensitive counseling and the provision of psychosocial support for victims of core international crimes and sexualized violence before, during, and after trials; and
 - 3) improve the conditions of legal proceedings in which members of the Yazidi community will want to participate, for example, by providing interpretation and translating judgements in relevant languages, such as Kurdish.

As the first war crimes cases are expected to be heard before a French court in the coming months, stakeholders involved in the management of such trials should begin developing adequate outreach strategies. For example, giving testimony in court might benefit from trust-building exercises between witness and interpreter before the trial.

About CEP

The Counter Extremism Project (CEP) is an international, nonprofit, and non-partisan policy organization formed to combat the growing threat from extremist ideologies. One area of focus for CEP is the rehabilitation of extremist offenders.

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CEP Resources

- CEP Policy Paper by Sofia Koller, Carlotta Sallach, and Alexander Schiele, “Recent Legal and Political Developments in the Repatriation of European Nationals from Northeastern Syria,” December 2022:
https://www.counterextremism.com/sites/default/files/2022-12/CEP%20Policy%20Paper_Recent%20Repatriation%20of%20Europeans%20from%20Syria_Dec%202022.pdf
- CEP webinar with Sofia Koller and Tanya Mehra, “A New Momentum – The Repatriation And Prosecution Of Alleged European ISIS Affiliates From Northeast Syria In 2022,” December 6, 2022:
https://www.youtube.com/playlist?list=PLMgGq1NecSpaPcO_IsUTcuaaieNXvNZha
- CEP Policy Paper by Sofia Koller, “Prosecution of German Women Returning from Syria and Iraq,” updated version of October 2022,
<https://www.counterextremism.com/de/content/update-prosecution-german-women-returning-syria-and-iraq>
- CEP webinar with Sofia Koller, Alexandra Lily Kather, and Anne-Clémentine Larroque, “Back from Raqqa – The Prosecution of Returnees in Germany and France,” October 17, 2022, <https://www.youtube.com/playlist?list=PLMgGq1NecSpbPXEsZj4WhlrOlkqhGY-IR>
- CEP webinar with Dr. Gina Vale and Sofia Koller, “The Fall-Out of Gendered Counterterrorism Approaches in Northeast Syria,” February 28, 2022:
<https://www.youtube.com/watch?v=Ngk23Eplb7s>
- CEP report by Dr. Robert Pelzer and Mika Moeller, “Rehabilitation and Reintegration of Released Islamist Extremists in Germany,” August 2020:
https://www.counterextremism.com/sites/default/files/CEP%20Report_Rehabilitation%20and%20Reintegration_Aug%202020.pdf

Introduction and Context

Individuals from France make up the largest contingent of the more than 5,300 European travelers in absolute numbers, followed by individuals from Germany and the U.K. (each around one thousand).² In the past 10 years, 1,490 adults have left France to travel to Syria and Iraq and join ISIS.³ The majority of those who traveled were male (963) and more than a third were female (527). In addition, several hundred minors were taken by their parents to or born in ISIS-held territory (see graphic below). Hence, there are approximately 1,950 individuals from France with an affiliation to ISIS. Travelers from France also represent the largest contingent of European women.

Experts generally estimate that roughly one third of the FTFs from Europe were killed abroad and another third returned to their home countries either voluntarily or after being deported. In the case of French individuals, this was organized via the French-Turkish police cooperation called the Protocol Cazeneuve established in 2014.⁴ Following the territorial decline of ISIS from 2017 onwards as well as the defeat of the so-called 'caliphate' in 2019, several thousand surviving foreign ISIS affiliates, including reportedly more than one thousand French men, women, and minors, were arrested by the U.S.-supported and Kurdish-dominated Syrian Democratic Forces (SDF). These individuals have since been detained in SDF-administered camps and detention facilities in the semi-autonomous Hasakeh region in Northeast Syria. The camp Al Howl alone is housing around 55,000 people from Syria, Iraq, and 60 other countries with the vast majority being children. Health and safety conditions are so detrimental that the camp is considered a "breeding ground for the next generation of ISIS"⁵ as well as "per capita, one of the most dangerous places in the world to be a child."⁶

As there is no consensus on whether countries of origin have a legal obligation to repatriate their nationals from Syria, governments have responded differently to this complex situation. Officially, the French government had at first adopted a case-by-case approach, but in practice only repatriated 35 French minors between 2019 and January 2021.⁷ These were either orphans or children that were repatriated without their mothers. France has been criticized for this "clear-cut unofficial policy of outsourcing."⁸ As of summer 2022, several hundred men,

² See: Éric Dupond-Moretti, "Déclaration de M. Éric Dupond-Moretti, garde des sceaux, ministre de la justice, sur les djihadistes français partis en Syrie," Sénat, 5 October 2022, <https://www.vie-publique.fr/discours/286713-eric-dupond-moretti-05102022-djihadistes-francais>; Joana Cook & Gina Vale, "From Daesh to 'Diaspora' II: The Challenges Posed by Women and Minors After the Fall of the Caliphate," CTC Sentinel, July 2019, <https://ctc.usma.edu/wp-content/uploads/2019/07/CTC-SENTINEL-062019.pdf>, p.36.

³ See: Interview with Soren Seelow, 7 March 2023.

⁴ According to this agreement, initiated in September 2014 by the former French minister of the interior, Bernard Cazeneuve, Turkey will inform France in case a French (presumed) FTF is expelled from Turkish territory. Following this notification, French police officers are sent to Ankara and accompany the individual until boarding. After arrival in France the individual is arrested. As of July 2018, already 193 individuals had returned to France through the procedure outlined in this agreement; see: Laurie Fachaux, "Expulsion de djihadistes français de Turquie. Que sait-on ?," TV5 Monde, 11 November 2019, <https://information.tv5monde.com/info/expulsion-de-djihadistes-francais-de-turquie-que-sait-331494>.

⁵ See: Courtney Kube & Carol E. Lee, "ISIS infiltrated a refugee camp to recruit fighters. Inside the Biden admin's plan to stop it," NBC News, 6 October 2022, <https://www.nbcnews.com/news/world/isis-syria-al-hol-camp-population-reduced-biden-administration-plan-rcna50877>.

⁶ See: Save the Children, "North East Syria: Rise in Killings 'Terrifying' Children in Al Hol Camp, says Save The Children," 29 June 2022, <https://www.savethechildren.net/news/north-east-syria-rise-killings-terrifying-children-al-hol-camp-says-save-children>.

⁷ See: France 24, "France repatriates seven children from jihadist camp in Syria," 13 January 2021, <https://www.france24.com/en/middle-east/20210113-france-repatriates-seven-children-from-jihadist-camp-in-syria>.

⁸ Matteo Pugliese, "France and Foreign Fighters. The Controversial Outsourcing of Prosecution," Italian Institute for International Political Studies, 19 December 2019, <https://www.ispionline.it/en/publicazione/france-and-foreign-fighters-controversial-outsourcing-prosecution-24666>.

women, and minors—French nationals or residents—remained in Northeast Syria.⁹ France has been facing intense national and international pressure, for example, after—despite repeated warnings—a diabetic French woman died in the camp, leaving behind a 6-year-old daughter.¹⁰ After reprimands by the United Nations Committee on the Rights of the Child, the European Court of Human Rights condemned France in September 2022 for violating its nationals’ “right to entry” and ordered the French government to re-examine existing and new repatriation requests to safeguard the decisions against “arbitrariness.”¹¹ In this context and following a ‘new momentum’ of repatriations displayed by other governments throughout 2022, France became increasingly isolated among its (European) partners. In addition to other factors, such as the presidential and legislative elections in spring 2022 and a reported change of opinion of key French government officials, this situation resulted in a change of policy.¹² Starting in July 2022, French officials organized several repatriation missions. The French government brought back 16 women and 35 children (including seven unaccompanied minors) from Roj camp in July 2022,¹³ one woman and her two children in early October 2022, 14 women and their 40 children as well as one adult woman without child from Al Howl camp in October 2022,¹⁴ and finally, 15 women and 32 children from Roj camp in late January 2023.¹⁵ In total, 109 children and 47 women were repatriated to France from Northeast Syria since summer 2022.¹⁶

Overall, 656 French nationals or residents have returned either voluntarily, were deported from Turkey, or returned via repatriation, including 367 adults (around 24 percent of the total number of individuals that had traveled from France to Syria) as well as 289 minors.¹⁷ Of the 527 French

⁹ See: Franceinfo with AFP, “Syrie. encore une centaine de femmes et près de 250 enfants français sont retenus dans les camps syriens, selon Laurent Nunez,” 6 July 2022, https://www.francetvinfo.fr/france/ihadistes-francais/syrie-encore-une-centaine-de-femmes-et-pres-de-250-enfants-francais-retenus-dans-les-camps-syriens-selon-laurent-nunez_5241043.html.

¹⁰ See: Manon Aublanc, “Djihadisme. Pourquoi la France a-t-elle changé sa doctrine en rapatriant 16 mères détenues en Syrie,” 20minutes, 5 July 2022, <https://www.20minutes.fr/justice/3320851-20220705-djihadisme-pourquoi-france-change-doctrine-rapatriant-16-meres-detenu-syrie>.

¹¹ Frank Andrews, “Syria camps. European court calls on France to ‘re-examine’ refusal to repatriate women,” Middle East Eye, 14 September 2022, <https://www.middleeasteye.net/news/syria-european-court-france-reexamine-refusal-repatriate-nationals-camps>; Sofia Koller, Carlotta Sallach & Alexander Schiele, “Recent Legal and Political Developments in the Repatriation of European Nationals from Northeastern Syria,” CEP, December 2022, https://www.counterextremism.com/sites/default/files/2022-12/CEP%20Policy%20Paper_Recent%20Repatriation%20of%20Europeans%20from%20Syria_Dec%202022.pdf.

¹² See: Sofia Koller, “How France finally made the tough decision to bring home its ISIS families,” The National News, 8 July 2022a, <https://www.thenationalnews.com/weekend/2022/07/08/repatriating-wives-and-children-of-isis-terrorists-is-a-first-step-in-a-long-process/>; Koller, Sallach & Schiele 2022.

¹³ See: France Diplomatie, “Repatriation of children and mothers from North-East Syria,” 5 July 2022, <https://www.diplomatie.gouv.fr/en/country-files/syria/news/article/repatriation-of-children-and-mothers-from-north-east-syria-05-jul-2022>; Bénédicte Jeannerod, “France Repatriates 51 Women and Children from Camps in Syria,” Human Rights Watch, 13 July 2022, <https://www.hrw.org/news/2022/07/13/france-repatriates-51-women-and-children-camps-syria>.

¹⁴ See: *ibidem*.

¹⁵ See: Rojava Information Centre, Tweet from 24 January 2023, <https://twitter.com/RojavaIc/status/1617866632667500544?t=TkG7JcgNjL1NnE105hdCUA&s=09>; France Diplomatie, “Rapatriement d’enfants et de mères du nord-est syrien,” 24 January 2023, <https://www.diplomatie.gouv.fr/fr/dossiers-pays/syrie/evenements/actualites-2023/article/rapatriement-d-enfants-et-de-meres-du-nord-est-syrien-24-01-23>; Rojava Information Centre, Tweet from 24 January 2023, <https://twitter.com/RojavaIc/status/1617866632667500544?t=TkG7JcgNjL1NnE105hdCUA&s=09>; France Diplomatie, “Rapatriement d’enfants et de mères du nord-est syrien,” 24 January 2023, <https://www.diplomatie.gouv.fr/fr/dossiers-pays/syrie/evenements/actualites-2023/article/rapatriement-d-enfants-et-de-meres-du-nord-est-syrien-24-01-23>.

¹⁶ See: Save the Children, “Save the Children calls for more countries to follow France and repatriate women and children from unsafe camps in North East Syria,” 24 January 2023, Reliefweb, <https://reliefweb.int/report/syrian-arab-republic/save-children-calls-more-countries-follow-france-and-repatriate-women-and-children-unsafe-camps-north-east-syria>.

¹⁷ See: Interview with Soren Seelow on 7 March 2023; Jean-Charles Brisard, Tweet from 24 January 2023, <https://twitter.com/JcBrisard/status/1617881300324724736?t=o2EoVhX3PwR3tHNeUt5-MA&s=09>. In addition to

women who had traveled to Syria and Iraq, 150 women have reportedly returned.¹⁸ Also, around 75 women are believed to remain in Syria freely and approximately 50 have reportedly died. The exact number of individuals related to France who remain in Syria is difficult to determine. In part, this determination depends on the criteria used to classify the citizen or immigration status of the respective individual. Reportedly, 67 men, 45 women, and between 80 to 100 minors related to France remain in Kurdish detention.¹⁹

French Nationals & Residents that Traveled to, Returned from, or Remain Detained in NE Syria ²⁰								
Travelers from France: >1,950			Returnees: 656			Detained in NE Syria		
Men	Women	Minors ²¹	Men	Women	Minors	Men	Women	Minors
963	527	460-700	~217	150	289	67	45	80-100

Upon arrival in France, minors are separated from their mothers and handed over to child assistance services.²² The competent authority depends on their place of arrival (in the *department* Seine-Saint-Denis if they arrive at Roissy airport and Yvelines if they arrive at Villacoublay). Minors are usually placed in a host family or child welfare home in these *departments*. For some time, returned children have also been placed closer to their family's place of residence. Based on a special framework established in 2018, returned minors first receive comprehensive medical, social, and psychological assistance.²³ They often meet their family of origin only several months later. While families had to wait around a year to have custody again, the approach is slowly changing and grandparents have recently received custody much sooner. Minors can also be subject to judicial educational investigation measures.

Adult men and women are arrested upon their return by security agencies and usually placed in pre-trial detention. Those repatriated in 2022 and 2023 are considered among the most radicalized. However, the individuals assessed to be the most dangerous (*“les cas lourds”*) continue to remain in Northeast Syria.²⁴ Yet, beside obvious humanitarian and security concerns, the repatriation and consequent prosecution of alleged or former ISIS affiliates

the 77 minors who have been repatriated between 2019 and 2022 (71 from Northeast Syria as well as 6 from Iraq), 217 minors have returned to France together with their parents, either deported from Turkey or in the context of a voluntary return; See: Eric Dupond-Moretti 2022.

¹⁸ See: Soren Seelow, “Au procès d’une « revenante » de Syrie, un cœur simple aspiré par la haine djihadiste. « Abou Merguez m’a dit que je serais une mécréante si je rentrais »,” 4 March 2023a, https://www.lemonde.fr/societe/article/2023/03/04/abou-merguez-m-a-dit-que-je-serais-une-mecreante-si-je-rentrais-au-proces-d-une-revenante-de-syrie-un-c-ur-simple-aspire-par-la-haine-djihadiste_6164086_3224.html.

¹⁹ See: Brisard 2023.

²⁰ Own calculation, based on Cook & Vale 2019, p.36 and additional sources mentioned in this paper. Some sources speak of more than 100 minors remaining in Syria; see Collectif des Familles Unies, Tweet from 19 January 2023, <https://twitter.com/FamillesDes/status/1615958812896133121>.

²¹ Includes minors traveled and born in theater.

²² See: Violaine Jaussent, “Syrie. quelles sont les étapes qui attendent les mères et les enfants rapatriés en France ?,” *FranceInfo*, 5 July 2022, https://www.francetvinfo.fr/monde/revolte-en-syrie/syrie-queelles-sont-les-etapes-qui-attendent-les-meres-et-les-enfants-rapatries-en-france_5239162.html.

²³ See: Premier Ministre, “Instruction relative à la prise en charge des mineurs à leur retour de zone d’opérations de groupements terroristes (notamment la zone irako-syrienne),” *Légifrance*, 3 June 2018, <https://www.legifrance.gouv.fr/circulaire/id/43128>; Léonor Sauvage, “Le dispositif gouvernemental de prise en charge des enfants combattants,” *Le Genre Humain*, 2019/2 (No 61), p. 219 to 224, <https://www.cairn.info/revue-le-genre-humain-2019-2-page-219.html>.

²⁴ Interview with expert at the French Ministry of Justice, 15 November 2022.

remains not only a crucial step in support of their disengagement and rehabilitation but is also important to ensure accountability for victims of ISIS.²⁵

Prosecuting Foreign Terrorist Fighters (FTFs) and Returnees²⁶ in France

The Criminal Justice Approach to Terrorism-Related Offenses in France

Two key factors have impacted the approach of the French criminal justice system to terrorism-related offenses, including the prosecution of returnees. First, high numbers of FTF-related investigations and court cases in France put a significant strain on the resources of the French criminal justice system. In addition to the roughly 2,000 French ISIS affiliates in Syria and Iraq, many more had tried but were intercepted before leaving France or, for example, before crossing the border between Turkey and Syria. Others were involved in the recruiting, preparing, and facilitating of these actual and attempted trips. The consequent “massification” of cases is exemplified by a steep rise in the number of respective court procedures. The number of terrorism-related court procedures in France rose from 26 in 2013 to 136 in 2015, 362 in 2016, and 415 at the beginning of 2017.²⁷ The CAT finds that as of May 2018, public prosecutors had been investigating 1,620 individuals for their links to Syrian-Iraqi terrorism networks, and between 2014 and 2017, 238 of such individuals had been prosecuted before a French court, including 209 men, 19 women, and 10 minors.²⁸

A second, interconnected factor is the increase in the terrorist threat levels in France in the last decade, which has been a major driving force in the securitization of the criminal justice system, for example, by introducing new terrorism-related laws and regulations. Important milestones were the proclamation of the so-called ISIS ‘caliphate’ in 2014, the attack on the offices of satire magazine *Charlie Hebdo* in January 2015, as well as the coordinated terrorist attacks in various locations in Paris on November 13, 2015. The November 2015 attacks prompted the then French president François Hollande to declare a state of emergency, which included the introduction of various derogative administrative measures in relation to terrorism offenses. The state of emergency was extended several times and some of its exceptional emergency counterterrorism measures were subsequently transformed into permanent legal provisions.²⁹

Beginning with the introduction of the main counterterrorism law of 1986, France has hence been continuously updating its arsenal of terrorism-related legislation.³⁰ The development of increasingly stricter counterterrorism measures including approaches to terrorism-related

²⁵ See Sofia Koller, “Prosecuting German Women Returning from Syria and Iraq,” CEP, October 2022b, <https://www.counterextremism.com/de/content/update-prosecution-german-women-returning-syria-and-iraq>.

²⁶ Instead of returned ‘foreign terrorist fighter’ (FTF), this paper will mostly use the more general term ‘returnee’ to underline the diversity of profiles; see: United Nations Security Council, “Resolution 2178 (2014), adopted by the Security Council at its 7272nd meeting, on 24 September 2014, U.N. Doc. S/RES/2178 (2014),” p. 2, <https://www.un.org/securitycouncil/ctc/content/foreign-terrorist-fighters>.

²⁷ See: Antoine Mégie, “Le contentieux judiciaire antiterroriste depuis 2015. ‘massification’, spécialisation et politization”, in: Romain Sèze (ed.), “Les États européens face aux militantismes violents,” ANR Vioramil, 2019, <https://hal.archives-ouvertes.fr/hal-02178614>.

²⁸ See: CAT, “La justice pénale face au djihadisme – le traitement judiciaire des filières syro-irakiennes (2014-2017),” CAT, 2019, p.4, <https://www.cat-int.org/index.php/2018/05/25/la-justice-penale-face-au-djihadisme-le-traitement-judiciaire-des-filieres-syro-irakiennes-2014-2017/>.

²⁹ See: Sharon Weill, “French foreign fighters: The engagement of administrative and criminal justice in France,” *International Review of the Red Cross* (2018), 100 (1-2-3), p.211–236, https://international-review.icrc.org/sites/default/files/reviews-pdf/2019-10/100_12.pdf.

³⁰ See: Council of Europe Committee of Experts on Counter Terrorism, “France”, Profiles on Counter-Terrorism Capacity, May 2021, <https://rm.coe.int/profile-france-2021-cdct-/1680a44e0c>.

offenses in France over the past five to 10 years is crucial to understand the prosecution of FTFs and returnees.

Offense or Crime: The Evolution of AMT

The main charge used when prosecuting terrorism-related offenses in general as well as in FTF and returnee cases is the “association of wrongdoing in relation to a terrorist enterprise” (*association de malfaiteurs en relation avec une entreprise terroriste* or AMT), codified in Article 421-2-1 of the French Criminal Code.³¹ There are three key elements that have to be proven for a conviction based on AMT, namely the existence of a group with a terrorist objective,³² the individual participation in such a group, as well as an intention of the individual to participate and being conscious of the group’s aims. In particular as far as the provisions relating to AMT are concerned, the penal policy in France has significantly evolved in the past several years:³³ Initially, AMT had been categorized as an offense (*délit*), punishable with a prison sentence of up to 10 years. This changed in 2004, when the French criminal justice system started to differentiate between acts of participation in a terrorist group (referred to as ‘correctional AMT’) and leadership roles in a terrorist group (referred to as ‘criminal AMT’).³⁴ This distinction made it possible for AMT to be prosecuted as a crime (*crime*), punishable by more than 10 years of prison. Joining a terrorist organization was thus considered aimed at committing acts of harming individuals and led to a continuous increase in the level of punishment in the following years, especially after terrorist attacks.

Hence, any French FTF who joined a terrorist group after the *Charlie Hebdo* attacks in January 2015 is charged with AMT as a crime, risking more than 10 years imprisonment.³⁵ A further increase after the attacks in Nice on July 14, 2016, led to members of a terrorist group risking sentences of up to 30 years while leaders can face imprisonment for life. However, while all cases related to the Syrian-Iraqi context are at first treated as a crime, public prosecutors can also decide to classify a case later as an offense (referred to as *re-correctionaliser*). This is done, for instance, if an individual only spent a limited time in Syria or if the respective person had not been with ISIS after 2015 but was already in detention, for example, in Turkey. Taking such mitigating circumstances into account can lead to penalties of less than 10 years. Yet, the decision-making process concerning which case is treated as an offense and which as a crime has been accused of being untransparent, raising crucial “questions concerning the equality of treatment of defendants and the principle of legality.”³⁶ One expert argues that this situation was indeed caused by the strain on judicial resources. According to the expert it was simply not possible to send all cases to the special Assize Court responsible for crimes, but prosecutors needed to consider the nuances in the circumstances of such cases.³⁷ The expert, however, also highlighted that generally agreed criteria for such decisions do not yet exist and are difficult to establish. A process was currently being developed.

Finally, another important aspect concerning the prosecution of suspected ISIS members and affiliates in France is the possibility of trials *in absentia*, without the suspect being present in

³¹ See: Weill 2019, p.223.

³² For example, returnees have also been acquitted of AMT because the court did not recognize the group that they had joined as a terrorist association; see: Weill 2019, p.225.

³³ Interview with judicial expert, 10 November 2022.

³⁴ See: Weill 2019, p.230.

³⁵ This was also applied retroactively to all investigations ongoing when the policy was decided in April 2016; see: Weill 2019, p.231.

³⁶ Weill 2019, p.232.

³⁷ Interview with expert at the French Ministry of Justice, 15 November 2022.

court. Used in an international context for example by the International Military Tribunal (IMT) of Nuremberg or the Special Tribunal for Lebanon, trials *in absentia* are considered by some experts as a “double-edged sword,” only to be used in a very limited set of circumstances.³⁸ For example, a suspect who is not present in court, “cannot effectively use his or her procedural rights to (cross-)examine witnesses and challenge inculpatory evidence.”³⁹ Similar to Belgium and the Netherlands, France has been using these so-called “ghost trials” to prosecute FTFs who remained abroad or had perished. For example, in a trial in January 2020 against 24 French men and women who were charged for their links to ISIS, 19 of the defendants were presumed dead and convicted *in absentia*.⁴⁰

Key Actors in Terrorism-Related Prosecutions

Terrorism-related cases, including returnee cases, are handled within the general criminal justice system.⁴¹ However, the French counterterrorism framework established in the 1980s and 1990s (and bolstered by at least 11 anti-terrorist laws since 2001) allows for all terrorism cases to be handled by investigating judges and specialized prosecutors in Paris.⁴² One of the most important developments of the last few years was the establishment of the National Anti-Terrorism Prosecutor's Office or Service (PNAT) by a new law on March 23, 2019.⁴³ Headed by the anti-terrorism prosecutor at the Paris Regional Court—currently Jean-François Ricard—the PNAT not only handles terrorist offenses under Article 706-16 of the Code of Criminal Procedure but also cases relating to crimes against humanity and war crimes. This fusion was intended to further centralize and harmonize investigations especially in light of the larger Syrian context and the role of French (potential) travelers to the conflict zone. Indeed, the establishment of the PNAT has been described as part of a “specialization” process in the French counterterrorism (CT) policy and practice, where the PNAT has established itself as an “expert institution.”⁴⁴

In terms of process, the PNAT first has to establish that it is legally competent, hence determining the perpetrator’s intention by analyzing his or her motivation, personality, and the nature of the act itself.⁴⁵ If the PNAT decides that the acts of the respective suspect are indeed likely to be part of a terrorist project, it starts a preliminary investigation in close cooperation with the counterterrorism unit of France’s domestic intelligence service DGSI (*Direction Générale de la Sécurité Intérieure*),⁴⁶ attempting to gather sufficient evidence to enable the

³⁸ Christophe Paulussen & Tarik Gherbaoui, “Trials in Absentia of Foreign Fighters and their Families?,” International Centre for Counter-Terrorism, 1 August 2022, <https://icct.nl/publication/trials-in-absentia-foreign-fighters/>; in the Netherlands, the Dutch government has repatriated several women from Northeast Syria after they had indicated that they would make use of their right to be present in court during their trial. A Dutch court had threatened to terminate proceedings against these women should they not be able to be present in court.

³⁹ Ibidem.

⁴⁰ See: Constant Méheut, “France Judges Dead Jihadists but Refuses to Repatriate the Living,” 26 January 2020 <https://www.nytimes.com/2020/01/26/world/europe/france-ghost-trials-isis.html>

⁴¹ See: Weill 2019, p.222.

⁴² See: Mégie 2019, p.1.

⁴³ See: Council of Europe Committee on Experts on Counter Terrorism (CDCT): “France”, Profiles on Counter-Terrorist Capacity, May 2021, <https://rm.coe.int/profile-france-2021-cdct-/1680a44e0c>.

⁴⁴ Mégie 2019; Antoine Mégie, “Le parquet national antiterroriste. la fabrication d’une figure experte de la lutte contre le terrorisme en France,” *Revue Gouvernement et Action publique*, 2023 (forthcoming).

⁴⁵ Interview with expert on French Counter Terrorism Justice, 2 February 2023; Article 421-1 of the Criminal Code defines what constitutes a terrorist act; see: Code pénal, Article 421-1, Légifrance, 21 June 2016, https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006149845.

⁴⁶ See: Constance Wilhelm-Olympiou & Helin Kösin, “Jugement des revenantes de Daesh en France. Une période charnière,” *Le Caveat*, 3 March 2023, <https://www.le-caveat.org/publications/jugement-des-revenantes-de-daesh-en-france-une-priode-charniere>.

case being sent to the investigation judges (*juges d'instruction*)⁴⁷ at the Paris Judicial Court (*Tribunal de Grande Instance de Paris*).⁴⁸

The PNAT also decides whether a case should be qualified as only terrorism-related or potentially also includes international crimes, such as crimes against humanity. If the case includes several potential legal qualifications, the investigating judges can decide to enact the so-called *co-saisine* or joint investigation, which enables investigating judges from different units to work together on a case. A recent prominent example is the case against the French cement company Lafarge, which was indicted before the Paris Judicial Court for complicity in crimes against humanity, financing of a terrorist enterprise, and endangerment of people's lives based on its activities in Syria between 2012 and 2014.⁴⁹ The qualification of the PNAT enabled the prosecution of Lafarge as a commercial entity by the financial crimes, the antiterrorism, and the war crimes units of the investigating judges. It was the first time that a company as an entity was charged with terrorism financing violations rather than individual decision makers within a commercial entity.⁵⁰ This approach enables the prosecution of more complex cases that include violations of both national and international criminal law. However, it also presents a range of challenges. These include for example whether or not the PNAT decides to begin a process concerning the determination of the qualification of a particular case and hence enables the prosecution beyond terrorism-related charges. In the case of a joint investigation, it is also contentious which unit will take the overall lead in the case and will therefore provide the first judge. This is crucial, since depending on which unit the first judge belongs to, a case will be for example heard before the normal Assize Court (in the case the emphasis is on core international crimes) or the specially composed Assize Court (in the case the emphasis is on terrorism offenses).

Depending on the severity of the case, terrorism-related cases are heard before two distinct courts.⁵¹ The 16th Chamber of the Paris Judicial Court rules on terrorism-related offenses (correctional AMT; potential sentence of up to 10 years in prison). It is composed of the same three judges in all cases. This allowed these judges to develop a specific expertise related to FTFs. Terrorism-related crimes (criminal AMT; potential sentence of more than 10 years in prison), are dealt with by the specially composed Assize Court (*Cour d'Assises*). Contrary to other non-terrorism-related Assize Courts, this Assize Court does not have lay jurors but is composed of three professional judges (*magistrats*). As mentioned, those who traveled to Syria after 2015 are usually being prosecuted for criminal AMT before the Assize Court.⁵² Reportedly, there are very few exceptions to this process and in some cases a returnee

⁴⁷ As terrorism-related cases are treated within criminal law, they need to be investigated by investigating judges.

⁴⁸ Interview with expert at the Ministry of Justice, 5 October 2022.

⁴⁹ See: European Center for Constitutional and Human Rights, "Lafarge in Syria. Accusations of complicity in grave human rights violations," n.d., <https://www.ecchr.eu/en/case/lafarge-in-syria-accusations-of-complicity-in-grave-human-rights-violations/>.

⁵⁰ See: Association Sherpa & European Center for Constitutional and Human Rights (ECCHR), "Etape importante dans l'affaire Lafarge en Syrie : Désignation de trois juges d'instruction," Business & Human Rights Resource Centre, 13 June 2017, <https://www.business-humanrights.org/en/latest-news/etape-importante-dans-laffaire-lafarge-en-syrie-d%C3%A9signation-de-trois-juges-dinstruction/>; [The case also lead to additional charges in the United States](#). In October 2022, Lafarge has also pleaded guilty to charges of conspiring to provide material support and resources to IS and al-Nusrah Front before a federal US court and agreed to pay \$778 Million in fines and forfeiture; see: U.S. Attorney's Office, "Lafarge Pleads Guilty to Conspiring to Provide Material Support to Foreign Terrorist Organizations," US Department of Justice, 18 October 2022, <https://www.justice.gov/opa/video/lafarge-pleads-guilty-conspiring-provide-material-support-foreign-terrorist-organizations>.

⁵¹ See: Weill 2019.

⁵² Interview with judicial expert, 10 November 2022.

charged with correctional AMT was heard before the Assize Court, as was the case with some female returnees who were prosecuted at the same time as their partner.⁵³

Finally, if a decision taken in the first instance is appealed by one of the parties, the case is heard again before the Court of Appeal (*Cour d'appel*). If the decision taken in this second instance is also appealed, the case is lastly heard before the Court of Cassation (*Cour de cassation*). Finally, other important actors in such cases include defense lawyers, witnesses, and subject matter experts.

Convictions, Criminal Offenses, and Penalty Rates

As of January 2023, 305 returnees—107 women and 198 men—have been prosecuted in France.⁵⁴ A total of 192 returnees have been convicted, including 156 men and 36 women. Of those, 146 individuals were convicted by the Assize Court and 46 by the correctional tribunal (TC) at the Paris Judicial Court as well as the Juvenile Court (TPE). 18 returnees—nine women and nine men—are currently awaiting their judgements in the first instance.⁵⁵ 80 returnees are still being investigated (*mis en examen*), including 54 women and 26 men. These individuals have not been charged yet. 12 cases have been dismissed (and did not lead to the pressing of charges). Two cases were acquitted, and the individuals were released. In one case, the individual passed away. Seven files were being treated by the Court of Appeal as of November 2022.⁵⁶ Between January and March 2023, three more women have been convicted.⁵⁷

Beyond correctional and criminal AMT, returnees have for example been prosecuted for (attempted) murder in relation with a terrorist enterprise, criminal AMT corresponding to a planned violent action, offenses concerning weapons or explosive in relation to a terrorist, incitement to commit acts of terrorism, apology for terrorism, death threats in relation to a terrorist enterprise, and non-consensual removal of a child from the other parent.⁵⁸

According to the French Minister of Justice, Éric Dupond-Moretti, 129 returnees, including 51 women, were in detention as of September 2022.⁵⁹ As of January 2023, at least 67 returnees are serving their sentence after the confirmation of their verdict. Of these, one returnee is serving a life sentence (*réclusion criminelle à perpétuité*, RCP), the remainder will be released between 2023 and 2034.⁶⁰ In addition, 43 legally convicted returnees are currently serving a sentence in an open detention (*en milieu ouvert*) and will be monitored for several years with these measures ending between 2023 and 2025, depending on the individual case.

Returnees have been sentenced to anything between one year suspended sentence (mostly for minors) and life sentences.⁶¹ The average prison sentence of returnees is difficult to determine, taking into consideration that some receive prison sentences and others suspended sentences or suspended sentences on probation. As of November 2019, the Ministry of Justice stated that returnees received on average a prison sentence of six years and eight months. This average is based on the sentencing of 76 percent of the then 283 adult returnees that had

⁵³ Interview with expert on French Counter Terrorism Justice, 2 February 2023.

⁵⁴ Interview with expert on French Counter Terrorism Justice, 2 February 2023.

⁵⁵ In March 2023, another source spoke of six women awaiting their judgement and 68 women being investigated; see: Seelow 2023a.

⁵⁶ Interview with expert at the French Ministry of Justice, 15 November 2022.

⁵⁷ Interview with Soren Seelow, 7 March 2023.

⁵⁸ Interview with expert on French Counter Terrorism Justice, 2 February 2023.

⁵⁹ See: Eric Dupond-Moretti 2022.

⁶⁰ Interview with expert on French Counter Terrorism Justice, 2 February 2023.

⁶¹ Interview with expert on French Counter Terrorism Justice, 2 February 2023.

been prosecuted at that time.⁶² According to an analysis by Sacha Belissa, the average prison sentence only increased slightly between 2014 and 2019, despite the introduction of criminal AMT with potential prison sentences of more than 10 years.⁶³ One reason might be that relevant investigations and court cases were still ongoing. In 2019, only four men had been convicted by the Assize Court. Four years later in 2023, 146 individuals have been convicted by the Assize Court.

While it is difficult to calculate the average prison sentence for returnees in France, experts estimate that prison sentences for terrorism-related offenses, including for returnees, are overall higher compared to those in other European countries.⁶⁴ For example, as of October 2022, the average prison sentence (including sentences on probation) for female returnees in Germany is three years and 10 months.⁶⁵ In Belgium, the average prison sentence for male returnees is six years and six months and for female returnees (prosecuted from 2015 onwards) slightly higher than five years.⁶⁶ The sentencing policy and practice in France has been criticized by criminal justice experts, for example, for “imposing highly severe punishment for relatively minor acts which necessitate little evidence and for which a defense is difficult to establish.”⁶⁷ One French expert argues that especially the possibility to criminalize AMT and hence mete out prison sentences of more than 10 years could be considered “symbolic,” punishing of FTFs for their “implicit complicity” as ISIS affiliates regarding the November 2015 attacks.⁶⁸

The duration of pre-trial detention of individuals charged with AMT has been prolonged considerably as well.⁶⁹ Since 2016, returnees can remain in custody for up to three years (when suspect of an offense) or four years (when suspect of a crime) before their trial with a potential extension of four months twice. In addition, once the investigation has been completed and the individual has been formally charged, he or she can stay in pre-trial detention for another year and this term can be prolonged twice for six more months. Usually, returnees remain in custody until the end of their trial, which ultimately means that “persons who are presumed innocent can be held in detention for an extremely long time.”⁷⁰ Finally, the time that some returnees have spent in camps or prisons in Northern Syria are not considered as a legal detention and can hence not be credited in the final sentence.⁷¹ However, there also seems to be little to no willingness to consider the time spent in camps or prisons (even in Iraq or Turkey) when deciding the prison sentence.⁷² In Germany, this time is not directly credited either, but taken into account when determining the punishment, similar to other factors such as the defendant’s behavior after the offense.⁷³ As more and more female returnees who spent time in Kurdish

⁶² See: CAT, “Compte-Rendu de la Conférence Internationale sur le Terrorisme. Quelles menaces et quels enjeux après la chute du califat?,” CAT & CEP, 7 November 2019, p.33, <http://cat-int.org/wp-content/uploads/2020/01/Compte-rendu-FR.pdf>.

⁶³ Ibidem.

⁶⁴ See: Sofia Koller, “Approaches to Female Returnees in the EU. Overview of existing expertise and experience with female returnees in Belgium, France, Germany, and the Netherlands,” Internal report for the International Centre for Counter-Terrorism (ICCT) for the Radicalisation Awareness Network (not publicly available), 2022c, p.12; Interview with expert on French Counter Terrorism Justice, 2 February 2023.

⁶⁵ See: Koller 2022b, p.13.

⁶⁶ See: Koller, 2022c, p.12.

⁶⁷ Weill 2019, p.232.

⁶⁸ Koller, 2022c, p.14.

⁶⁹ Interview with Céline Martelet, 28 April 2022; See: Weill 2019, p.229.

⁷⁰ Weill 2019, p.229.

⁷¹ Interview with expert on French Counter Terrorism Justice, 2 February 2023.

⁷² Interview with Céline Martelet, 28 April 2022.

⁷³ See: Koller 2022b, p.17.

camps are expected to be sentenced in France in 2023, the consideration of these circumstances may change in the future (see p.18).

While convicts who have served two thirds of their prison sentences can usually apply for a suspension of the remainder of their sentence, returnees are almost always assigned a so-called “safety period” (*période de sûreté*), which effectively hinders the adjustment of their prison sentence.⁷⁴ Convicted returnees are also—with few exceptions—systematically registered in the judicial file of terrorist offenders (*Fichier judiciaire des auteurs d’infractions terroristes*, FIJAIT).

The Role of International Criminal Law

In France, the prosecution of FTFs and returnees has largely focused on terrorism-related offenses. While charging returnees with core international crimes—such as crimes against humanity, war crimes against persons, or genocide—is possible, it has proven to be much more difficult.

In France, the unit for crimes against humanity (*crimes contre l’humanité*, CCH) was established at the end of 2011 in the context of the integration of the statute of the International Criminal Court (ICC) into French law.⁷⁵ The CCH unit was attached to the newly created PNAT in 2019. This unit consists of five prosecutors (soon to be six), supported by three specialized assistants and works with four specialized investigating judges and three specialized assistants.⁷⁶ Currently, around 80 preliminary investigations and 80 judicial inquiries are underway. In July 2021, the unit’s 150 active files included 24 preliminary investigations and 15 cases related to the Iraqi-Syrian context.⁷⁷ The majority of these cases, however, concern alleged crimes committed by the Syrian regime and “French investigations are still struggling to transform these investigations into trials.”⁷⁸

In 2016, the CCH unit had opened several investigations, including a “structural investigation against unknown persons to collect information and identify potential French perpetrators of genocide and crimes against humanity committed by ISIS against ethnic and religious minorities, specifically Christians and Yazidi in Syria and Iraq.”⁷⁹ As of January 2023, there are several ongoing cases within the CCH unit at the Paris Judicial Court, either separately or jointly with the counter terrorist unit.⁸⁰ Two procedures are followed by the war crimes unit for genocide and crimes against humanity for enslavement of Yazidis in parallel to procedures at the CT unit. Three procedures are jointly followed by the CCH unit and the CT unit. Of these, two procedures focus on cases of female returnees for crimes against humanity, genocide,

⁷⁴ Interview with expert on French Counter Terrorism Justice, 2 February 2023.

⁷⁵ See: Lena Bjurström, “In France, the lengthy Syrian Investigations,” Justiceinfo.net, 22 July 2021, <https://www.justiceinfo.net/en/80112-in-france-the-lengthy-syrian-investigations.html>.

⁷⁶ See: Jean Chichizola, “Jean-François Ricard: ‘Il faut se donner les moyens de juger ces crimes contre l’humanité’,” 8 May 2022, <https://www.lefigaro.fr/actualite-france/jean-francois-ricard-il-faut-se-donner-les-moyens-de-juger-ces-crimes-contre-l-humanite-20220508>.

⁷⁷ See: Bjurström 2021.

⁷⁸ Unlike for example Germany, the French justice does not have complete universal jurisdiction but usually only allows the prosecution of war crimes, genocide and crimes against humanity if a suspect is at least regular resident in France as well as the prosecution of crimes committed abroad only if a French national is involved, either as a victim or alleged perpetrator.

⁷⁹ The Genocide Network, “Cumulative Prosecution of Foreign Terrorist Fighters for Core International Crimes and Terrorism-Related Offences,” Eurojust, May 2020, https://www.eurojust.europa.eu/sites/default/files/Partners/Genocide/2020-05_Report-on-cumulative-prosecution-of-FTFs_EN.PDF, p.21; Bjurström 2021.

⁸⁰ Interview with expert on French Counter Terrorism Justice, 2 February 2023.

and AMT as well as one procedure against a male returnee for war crimes, AMT, and assassination in relations to a terrorist enterprise. Four preliminary investigations are currently undertaken under the double qualification for terrorist offense and international crimes. Sabri Essid is the first case of a French FTF being prosecuted for both terrorism and a core international crime (see case study on p.22).⁸¹ So far, no returnee has been brought before court or was convicted in France for core international crimes.⁸² In comparison, at least 16 German returnees, including two men, have been convicted for offenses according to international criminal law (or VStGB) and several are currently standing trial.⁸³

Several factors have contributed to this lack of prosecution of core international crimes in France so far. First, France incorporated the Genocide Convention into its Penal Code in 1994 and only in 2010, France's criminal code was adapted to the ICC's Rome statute to include the legal categories of 'war crimes'.⁸⁴ This means that much less practical experience exists compared to the prosecution of terrorism-related cases.⁸⁵ In addition, the (partly self-inflicted) increase of judicial cases has led to an excessive demand on the criminal justice system, essentially hindering the development of more precise prosecution strategies.⁸⁶ For example, the CCH or war crimes unit at the Paris Judicial Court, responsible for prosecuting core international crimes, has seen "an exponential increase" in its litigation. Between 2015 and 2018, the amount of judicial information has increased by more than 400 percent.⁸⁷ Another factor has been the broad definition and "relatively little burden of evidence" of AMT in comparison to the complexity of collecting evidence to the necessary standards in war crimes cases.⁸⁸ For example, while investigative judges would have to collect evidence in Syria and Iraq and hear witnesses in war crime cases, AMT requires much less effort to prove in court but can still lead to relatively long prison sentences. In addition, the war crimes unit at the PNAT is much smaller than the CT unit and more investigating judges are specialized in terrorism cases than in international criminal law.⁸⁹ Hence, allocation of resources was and remains a real problem.⁹⁰ Also, unlike in Germany, which has been using core international crimes in the prosecution of female returnees since around 2018, critics say that this has not been a priority in France. One researcher criticized in 2019 that French FTF cases have "systematically" been referred to the CT investigation unit instead of the war crimes unit and that joint investigations of these units had also been avoided.⁹¹ Furthermore, one expert argues that CT specialists did not always have "that reflex to [also] look into international crimes."⁹² In returnee cases, regularly the CT unit and not the war crimes unit leads the investigation.

⁸¹ See: The Genocide Network, 2020, p.21.

⁸² Interview with Céline Martelet on 28 April 2022.

⁸³ Based on the author's own dataset of convicted ISIS returnees in Germany (2014-2022).

⁸⁴ See: Open Society Justice Initiative and TRIAL International, "Universal Jurisdiction Law and Practice in France," February 2019, <https://trialinternational.org/wp-content/uploads/2019/05/Universal-Jurisdiction-Law-and-Practice-in-France.pdf>; Chakée Adjemian, "The incorporation of the Genocide Convention in France and the UK. A grudging fight against impunity," LSE Law Review Blog, 13 March 2022, <https://blog.lselawreview.com/2022/03/incorporation-genocide-convention-france-uk-grudging-fight-against-impunity>.

⁸⁵ See: Nicole Atwill, "France. Law to Adapt France's Criminal Code to the International Criminal Court," Library of Congress, 20 September 2010, <https://www.loc.gov/item/global-legal-monitor/2010-09-20/france-law-to-adapt-frances-criminal-code-to-the-international-criminal-court/>.

⁸⁶ Interview with expert at the Ministry of Justice, 4 October 2022.

⁸⁷ Interview with Aurélie Devos, "Crimes contre l'humanité. Bilan du pôle du TGI de Paris", French Ministry of Justice, 17 October 2019, <http://www.justice.gouv.fr/justice-penale-11330/crimes-contre-lhumanite-bilan-du-pole-du-tgi-de-paris-31897.html>.

⁸⁸ Weill 2019, p.234.

⁸⁹ Interview with expert at the Ministry of Justice, 5 October 2022.

⁹⁰ Interview with expert at the Genocide Network Secretariat, 29 November 2022.

⁹¹ Weill 2019, p.234.

⁹² Interview with expert at the Genocide Network Secretariat, 29 November 2022.

Another expert insisted that the prosecution of core international crimes was not necessarily more complicated or lacked political, will but that such prosecutions had at first simply not been possible due to a lack of evidence that had only been unearthed later on.⁹³

In the past years, however, this approach has gradually been changing in France, similarly to developments in other European countries. Furthermore, the necessity of stronger cooperation between the CT and the war crimes unit has been discussed in France since around 2017. Since 2019, the two units are increasingly linked-up, albeit still on a relatively small scale.⁹⁴ While joint investigations for both terrorist and international crimes are not done systematically, there is reportedly a “dynamic” to explore potential joint prosecutions.⁹⁵

Several factors have reportedly contributed to this development, mostly increased political will, judicial actors fighting for more resources for these complex investigations as well as very active Syrian organizations pushing for such prosecutions.⁹⁶ For example, the establishment of the PNAT—which has brought together CCH and CT units—has “facilitated synergies.”⁹⁷ In addition, international cooperation has been playing a crucial role. Eurojust is coordinating and supporting judicial cooperation. For example, in the context of the Genocide Network, hosted by Eurojust, French representatives are meeting with their European counterparts every six months in the Hague and discuss good practices, possible investigations (including potential cumulative prosecution), and exchange information on concrete files.⁹⁸ In October 2021 and with the support of Eurojust, France and Sweden set up a Joint Investigation Team (JIT; *équipes communes d’enquête, ECE*) to support the preliminary broad structural investigations concerning potential crimes committed against the Yazidi minority. This effort has the key objective to “avoid multiple interviews of the same victims” and hence avoid re-victimization.⁹⁹ This JIT has been renewed and extended to also include the Belgian Federal Prosecutor in October 2022.¹⁰⁰ Additional key partners for France concerning judicial cooperation include Germany, the Netherlands, Canada, and the United States. In general, the modalities of international mutual legal assistance (MLA) have been significantly simplified in the past seven years, as for example, a French investigation judge can directly inquiry with a German counterpart without sending a formal MLA request via the Foreign and Justice Ministries.¹⁰¹ In addition, the mandate of international organizations and formats for accessing and exchanging evidence like UNITAD (United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL) and IIIM (International, Impartial and Independent Mechanism), does not allow them to respond to requests for assistance on terrorism-related cases only.¹⁰² This limitation is motivating states to also “look into international crimes and

⁹³ Interview with judicial expert, 10 November 2022.

⁹⁴ Interview with expert at the Ministry of Justice, 25 August 2022.

⁹⁵ Interview with expert on French Counter Terrorism Justice, 2 February 2023.

⁹⁶ See: Bjurström 2021.

⁹⁷ Interview with expert on French Counter Terrorism Justice, 2 February 2023.

⁹⁸ See: Interview with Aurélia Devos, 2019.

⁹⁹ Eurojust, “Support to joint investigation team of Sweden and France targeting crimes against Yezidi victims in Syria and Iraq,” 7 January 2022, <https://www.eurojust.europa.eu/news/support-joint-investigation-team-sweden-and-france-targeting-crimes-against-yezidi-victims>.

¹⁰⁰ Interview with expert on French Counter Terrorism Justice, 2 February 2023.

¹⁰¹ Interview with judicial expert, 10 November 2022.

¹⁰² See: International, Impartial and Independent Mechanism (IIIM), <https://iiim.un.org/>; Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL (UNITAD), <https://www.unitad.un.org/>.

hence get access to this pool of information.”¹⁰³ Finally, like other European countries, France is relying heavily on evidence provided by the U.S.-operation Gallant Phoenix.¹⁰⁴

Gendered Differences

It is also worth considering how gendered differences play a role in the prosecution of returnees in France. While around a third of French FTFs were women, they were not systematically investigated and prosecuted until 2017.¹⁰⁵ As in other (European) countries, law enforcement agencies tended to consider women as naïve or ignorant, lured by their (male) partners to travel to Syria and, once in ISIS territory, as only fulfilling their role of housewives and mothers.¹⁰⁶ Female ISIS members were also much less visible—or identifiable—in ISIS propaganda, making investigations into potential criminal offenses even more challenging. Also, prosecutors would not necessarily have clarity which charges could be used against female ISIS affiliates. Finally, in general female travelers were not considered a potential threat and not arrested upon their return. Considering the legislative approach described above, the belated prosecution of female returnees partly explains the relatively low number of convicted female returnees compared to male returnees as of 2023.

Several factors contributed to a change in the perception of women in the Syrian-Iraqi context from 2015 onwards and consequently their prosecution.¹⁰⁷ First of all, the terrorist attacks in Paris in January (as well as November) 2015 led to several legislative adjustments. Hence, as mentioned above, anyone traveling or attempting to travel to Syria as well as individuals who stayed there after 2015 could be charged with criminal AMT, even if the person did not participate in combat or planning of attacks. This enabled the prosecution of female travelers as well. In addition, two French women, Inès Madani and Ornella Gilligmann, failed to detonate a car bomb in front of a restaurant’s terrace full of people near the cathedral Notre-Dame in Paris in September 2016.¹⁰⁸ For her crucial role in the planning and perpetration of this failed attack (referred to as *l’attentat bonbonnes de gaz*), Madani was sentenced to 30 years in prison in October 2019 and the verdict confirmed in June 2021, with the court adding a security detention of two thirds of her sentence.¹⁰⁹ Gilligmann was sentenced to 25 years in prison (verdict confirmed). The fact that the two women had previously tried to travel to Syria had not alarmed the security agencies ahead of the failed attack. This and other failed attacks in which female minors were involved clearly demonstrated that girls and women could also potentially plan and carry out terrorist attacks. This alerted law enforcement actors, who began to change

¹⁰³ Interview with expert at the Genocide Network Secretariat, 29 November 2022.

¹⁰⁴ Interview with judicial expert, November 10, 2022. (4); and see: Sofia Koller & Alexander Schiele, “Holding Women Accountable. Prosecuting Female Returnees in Germany,” CTC Sentinel, Volume 14, Issue 10, December 2021, <https://ctc.usma.edu/holding-women-accountable-prosecuting-female-returnees-in-germany/>.

¹⁰⁵ Interview with expert on French Counter Terrorism Justice, 2 February 2023; and see: Koller 2022c.

¹⁰⁶ Interview with expert at the French Ministry of Justice, 15 November 2022; and see: Koller 2022b; Edith Bouvier & Céline Martelet, “Un parfum de Djihad. Qui sont ces Françaises qui ont rejoint une organisation terroriste ?,” Plon, 22 March 2018, p.197.

¹⁰⁷ See: Commission d’enquête sur l’organisation et les moyens des services de l’État pour faire face à l’évolution de la menace terroriste après la chute de l’État islamique “Rapport,” No 639, Sénat, 4 July 2018, <http://www.senat.fr/rap/r17-639/r17-6391.pdf>, p.52.

¹⁰⁸ See: Yena Lee, “Frenchwoman appeals jail sentence for foiled attack near Notre-Dame Cathedral,” France24, 25 May 2021, <https://www.france24.com/en/france/20210525-frenchwoman-appeals-jail-sentence-for-foiled-attack-near-notre-dame-cathedral>.

¹⁰⁹ France24, “Attentat raté près de Notre-Dame. Inès Madani condamnée en appel à 30 ans de prison,” 7 June 2021, <https://www.france24.com/fr/france/20210607-attentat-rat%C3%A9-pr%C3%A9s-de-notre-dame-in%C3%A8s-madani-condamn%C3%A9e-en-appel-%C3%A0-30-ans-de-prison>.

their perception.¹¹⁰ Furthermore increased research into and evidence of the various roles of women within ISIS also contributed to a change in the threat assessment of female ISIS members and resulted in the systematic investigation of female travelers and, if possible, their detention and prosecution upon return. As one expert put it: “We succeeded in breaking the image of the woman as a victim.”¹¹¹

Important differences remain between the prosecution of male and female returnees. For example, female returnees had at first been charged with correctional AMT, punishable with up to 10 years in prison. This applied to women who had left for Syria before 2014 (the year when the so-called ‘caliphate’ was declared) or 2015 (the year when in January the *Charlie Hebdo* and in November the Paris attacks were carried out). Furthermore, in these cases, the women did not stay a prolonged period of time in ISIS territory before returning to France and did not participate in combat or financing of terrorism. According to a judicial expert, for a number of years already female returnees are no longer charged with correctional AMT, but their cases are classified in the same manner as is the case with male returnees (as cases of criminal AMT).¹¹² Other stakeholders agree however that, as women usually engaged in different activities in Syria and Iraq than men, they do receive different sentences.¹¹³ Other charges against female returnees have included ‘apology of terrorism’ as well as—unlike male returnees—child abduction (*soustraction d’enfant*) and child neglect (*délaissement de mineur*). Several repatriated women are currently also under investigation for core international crimes for their “extremely violent and sometimes even homicidal behavior.”¹¹⁴ However, no French male or female returnee has been convicted for core international crimes as of February 2023.

In terms of sentencing, female returnees that have been charged with correctional AMT have usually received a sentence of less than 10 years that can be adapted, which in all cases is shorter than prison sentences in comparable cases of male returnees.¹¹⁵ For example, a woman who had spent several years in Syria but credibly distances herself from ISIS ideology upon return as well as cooperates with government agencies upon her return could see her sentence reduced to around four years.¹¹⁶ While women usually return with at least one child (either taken to Syria or born abroad), they are separated from their child and placed in pre-trial detention. The French government also introduced a specific framework that enables multi-disciplinary support for returning minors, who are usually placed in host families after return.¹¹⁷

Hence, the female returnees who have been convicted in France so far left ISIS before its territorial decline and military defeat in Iraq in 2017.¹¹⁸ Recently, another chapter in the prosecution of female returnees in France “reopened”.¹¹⁹ In early 2023, the French counterterrorism judiciary initiated the first in what are likely many trials of those women who

¹¹⁰ See: CAT 2020, p.39.

¹¹¹ Interview with expert at the French Ministry of Justice, 15 November 2022.

¹¹² Interview with expert at the French Ministry of Justice, 10 November 2022.

¹¹³ For example, women involved in the preparation of a terrorist attack were treated like men; Interview with expert at the Ministry of Justice, 15 November 2022.

¹¹⁴ Interview with expert at the French Ministry of Justice, 15 November 2022.

¹¹⁵ See: Koller 2022c, p.13.

¹¹⁶ See: *ibidem*.

¹¹⁷ See: Le Premier Ministre, “Instruction relative à la prise en charge des mineurs à leur retour de zone d’opérations de groupements terroristes (notamment la zone irako-syrienne), Légifrance, 23 February 2018, <https://www.legifrance.gouv.fr/download/pdf/circ?id=43128>.

¹¹⁸ Wilhelm-Olympiou & Köse 2023.

¹¹⁹ See: Soren Seelow, “Au procès d’une « revenante » de l’Etat islamique, la conviction djihadiste au féminin,” 1 March 2023b, https://www.lemonde.fr/societe/article/2023/03/01/au-proces-d-une-revenante-de-l-etat-islamique-la-conviction-djihadiste-au-feminin_6163803_3224.html.

stayed “to the end.”¹²⁰ For example, Douha Mounib was sentenced by a specially composed Assize Court to 12 years in prison with a security detention of two thirds of her sentence for having traveled to ISIS’s ‘caliphate’ twice in 2013 and 2017.¹²¹ The Public Prosecutor stressed Mounib’s determination, and Mounib herself insisted that “it was she who convinced her two successive husbands to follow her [to Syria].”¹²² Mounib’s case also attracted attention since she had tried to escape from Fresnes prison during her pre-trial detention of almost six years.

Currently, the DGSi distinguishes between “repented,” “divided,” and “convinced” profiles of female returnees. Experts expect that “these women have a different profile than those who have been tried so far.”¹²³ According to a representative of the DGSi, it was “too soon to see whether the women who returned after 2016 have indeed repented.”¹²⁴

¹²⁰ Wilhelm-Olympiou & Köse 2023.

¹²¹ Seelow 2023b.

¹²² Ibidem.

¹²³ Ibidem.

¹²⁴ Ibidem.

Five Case Studies

The following five short cases of French male and female returnees are intended to give an impression of different profiles, charges, and sentencing of returnees in France.

Jihane Makhzoumi, Long(est) Prison Sentence for Female Returnee

Makhzoumi (38 years old as of 2019) traveled to Syria in August 2014 together with her partner Eddy Leroux and four young children (three of them her own) and joined ISIS.¹²⁵ She later claimed that she soon realized they “were sold a dream”¹²⁶ and wanted to return by the end of 2014. Her partner is believed to have been killed in combat in July 2015. Makhzoumi was arrested upon her return in October 2016 at Charles de Gaulle airport with her three children. Her case received more public interest since Jana, her partner’s child from a first marriage, remains missing. In November 2019, Makhzoumi was convicted for criminal AMT, child abduction, and child neglect and sentenced to 14 years in jail. This is one of the longest sentences for a female returnee in France. The Assize Court highlighted her “informed participation in a criminal enterprise” and described her behavior as “bloodthirsty.”¹²⁷

Kevin Guiavarch and Salma O., Requested vs. Handed Down Sentence

Guiavarch (29 years old as of 2022) had been one of the first French nationals to travel to Syria in early 2013 together with his wife, Salma O.¹²⁸ After fighting alongside the Al-Nusra Front in Syria, Guiavarch joined ISIS and was hence listed on the ISIL (Da’esh) and Al Qaida Sanctions List of the United Nations Security Council (sanctions list reference number: QDi.341).¹²⁹ Facilitated by the couple, three young French women also traveled to Syria in 2013 and 2014 to marry Guiavarch.¹³⁰ After their arrest by Turkish authorities in June 2016, Guiavarch, his four partners and six children were expelled from Turkey to France in January 2017 and arrested upon arrival.¹³¹ He was charged with criminal AMT for his leadership function and for terrorist financing. In March 2022, Guiavarch was convicted to 14 years in prison with two-thirds of the time to be served in security detention. With this sentence, the court stayed below the 18 years demanded by the PNAT.¹³² The prosecutors had argued that within this family, most responsibility rested with the “inseparable duo” O.-Guiavarch who made all their decisions together.¹³³ However, the court sentenced Salma O. to six years in prison—as opposed to the requested 14 years—which she can serve at home, while wearing an electronic bracelet and supported by a socio-judicial follow-up for a duration of five years. So far, courts had largely followed requested sentence times in terrorism cases.

¹²⁵ See: RFI, “Radicalised French woman who left child in Syria sentenced to 14 years,” 22 November 2019, <https://www.rfi.fr/en/international/20191122-Radicalised-French-woman-sentenced-14-years-jail-leaving-child-Syria-ISIS>.

¹²⁶ Timothée Boutry, “Disparition de Jana en Syrie. Deux mères face-à-face au procès d’une djihadiste française,” 18 November 2019, <https://www.leparisien.fr/faits-divers/disparition-de-jana-en-syrie-deux-meres-face-a-face-au-proces-d-une-djihadiste-francaise-18-11-2019-8196252.php>.

¹²⁷ The New Arab & agencies, “French Islamic State mother ‘with no capacity for empathy’ sentenced to 14 years in prison,” 23 November 2019, <https://www.newarab.com/news/french-islamic-state-mother-jailed-terrorism-child-abandonment>.

¹²⁸ See: Christophe Ayad, “Procès de Kevin Guiavarch. Dix-huit ans de réclusion requis contre le djihadiste polygame,” *Le Monde*, 25 March 2022a, https://www.lemonde.fr/police-justice/article/2022/03/25/proces-de-kevin-guiavarch-dix-huit-ans-de-reclusion-requis-contre-le-djihadiste-polygame_6119043_1653578.html.

¹²⁹ See: United Nations Security Council, “Kevin Jordan Axel Guiavarch,” United Nations, 27 August 2017, https://www.un.org/securitycouncil/sanctions/1267/aq_sanctions_list/summaries/individual/kevin-jordan-axel-guiavarch.

¹³⁰ See: Ayad 2022a.

¹³¹ See: United Nations Security Council 2017.

¹³² See Christophe Ayad, “Kevin Guiavarch, djihadiste revenant de Syrie, est condamné à quatorze ans de réclusion,” *Le Monde*, 26 March 2022b, https://www.lemonde.fr/police-justice/article/2022/03/26/kevin-guiavarch-djihadiste-revenant-de-syrie-est-condamne-a-quatorze-ans-de-reclusion_6119218_1653578.html.

¹³³ Ayad 2022a.

Amandine Le Coz, From a Dream to a Nightmare in Syria

Amandine Le Coz (32 years old) is the most recent case of a female returnee convicted in France.¹³⁴ Le Coz belongs to the group of French women who had stayed with ISIS (almost) up until the military defeat of the ‘caliphate’ and often spent time in Kurdish camps before returning to France. According to observers, Le Coz is “very immature” and admits to lacking self-confidence. Her profile seems to fit that of a naïve and easily influenced person who radicalized and became a victim of her husband’s physical violence in Syria. After having been deported together with her child from Turkey in December 2019, Le Coz was placed in pre-trial detention in France and has stayed in a special unit for radicalized inmates called QPR (*Quartier de prise en charge de la radicalisation*) at the prison for women in Rennes. On March 3, 2023, Le Coz was convicted by the specially composed Assize Court in Paris for having traveled to Syria and lived several years with ISIS. She was sentenced to 10 years in prison with a security detention of two thirds of her sentence and seven years of socio-judicial follow-up.

Kahina El H., a Repatriated Female Returnee Charged with Criminal AMT and Apology of Terrorism

El H. (born in January 1997) is known as the widow of Samy Amimour, one of the assailants in the Bataclan attack in November 2015. In October 2014, at the age of 17, she had traveled to Syria to join Amimour.¹³⁵ In a video, El H. threatened to return to France to “slaughter the unbelievers” and expressed joy after the *Charlie Hebdo* attacks. One month before the November 2015 attacks, she had reportedly written to her former teacher and stated that “soon, France and the whole coalition will know what war is. You kill us, we kill you, the equation is simple.” Following the Bataclan attacks, she wrote, “I envy my husband so much, I wish I could have been with him to jump too.” El H. was repatriated from camp Roj with her three children in July 2022. Upon return, she was charged with criminal AMT as well as public apology of a terrorist attack and placed in pre-trial detention.

Sabri Essid, the First French FTF Cumulatively Prosecuted for Both Terrorism and Core International Crimes¹³⁶

As a fighter, Essid (born in 1984) allegedly participated in the ISIS attack on Sinjar, a Yazidi stronghold in Northern Iraq, in August 2014.¹³⁷ French prosecutors opened a case in October 2019 for crimes against humanity and genocide. Two female Yazidi witnesses identified and incriminated Essid as the one who had purchased, detained, and raped them in Syria. According to the prosecutors, Essid’s statements on Yazidis and his participation in ISIS propaganda directed against the Yazidi community in combination with his position within the ISIS chain of command indicated the specific intent to commit genocide.¹³⁸ In February 2020, an international arrest warrant was issued and in 2021, Yazidi witnesses were heard by the investigating judges.¹³⁹ Essid’s whereabouts remain unknown.

¹³⁴ See: Seelow 2023a.

¹³⁵ See: RMC, “La veuve d’un terroriste du Bataclan a été rapatriée de Syrie en France,” BFM, 14 September 2022, https://rmc.bfmtv.com/actualites/police-justice/la-veuve-d-un-terroriste-du-bataclan-a-ete-rapatriee-de-syrie-en-france_AN-202209140060.html.

¹³⁶ See: The Genocide Secretariat 2022, p.21-22.

¹³⁷ See: TRIAL International, “Sabri Essid,” 1 April 2022, <https://trialinternational.org/latest-post/sabri-essid/>.

¹³⁸ See: The Genocide Secretariat 2022, p.21-22.

¹³⁹ See: TRIAL International, “Universal Jurisdiction. Annual Review 2022,” p.31, https://trialinternational.org/wp-content/uploads/2022/03/TRIAL_International_UJAR-2022.pdf.

Challenges

French security actors and the criminal justice system continue to face significant pressure due to the ongoing terrorist threat. Nevertheless, France's CT measures have repeatedly been criticized as being overly security-focused and repressive. In this context, the French approach to the prosecution of FTFs and returnees encounters several challenges listed below.

Limited Resources: Due to the high number of terrorism-related cases, including (returned) FTFs, the French criminal justice system faces “an unprecedented situation.”¹⁴⁰ This accumulation of criminal procedures and trials has led to a “massification” effect and a counterterrorism litigation “factory.”¹⁴¹ In addition, as public prosecutors have systematically appealed if the length of sentence stayed below their original demands, the Court of Appeal has experienced a heavy caseload as well.¹⁴² Specialization and centralization measures, such as the establishment of the PNAT and recruitment of additional staff, including specialized assistants, have been important responses to this situation. Although the number of cases has decreased in recent years, capacity remains a problem. Especially potential cumulative charges for terrorism-related offenses and core international crimes against French nationals that have been or will be repatriated from Syria will require resource-intensive investigations.¹⁴³

Difficult Access and Use of Evidence: Similar to investigations in other European countries, access to evidence is cited among the key challenges when prosecuting returnees in France. While prosecutors need to identify as precisely as possible the crimes that returnees have potentially committed in Syria or Iraq, accessing evidence in a (former) war zone and, in the case of Syria, a country that has no formal diplomatic relations with France and other European countries is an exceptionally difficult endeavor. Also, specific evidence is needed in court. For example, to prove that an individual was involved in the preparation of a terrorist attack using an explosive device, prosecutors would need fingerprints or DNA on the remnants of the respective explosive device.¹⁴⁴ In addition, cases that involve core international crimes, such as genocide, are even more complex. On the other hand, critics argue that especially since 2016 a preventive prosecution policy (see below) has enabled a practice where little evidence is needed to punish relatively minor offenses with long sentences, making an effective defense of the accused increasingly difficult.¹⁴⁵ It is important to mention that international cooperation to access and use evidence, including so-called battlefield or military evidence,¹⁴⁶ has been significantly strengthened in the past years. Exchange formats have enabled learning how evidence has been used in court in other states for specific cases.¹⁴⁷ However, these efforts will need to be continued.

Lack of Prosecuting International Crimes: Another key challenge in France remains the prosecution of returnees for core international crimes, such as war crimes, crimes against humanity, and genocide. As discussed above, returnee cases have been systematically referred to the public prosecutor's CT unit and investigations of core international crimes have reportedly received less resources than would normally be required for such complex cases

¹⁴⁰ Mégie 2019.

¹⁴¹ Mégie, 2019; Interview with Céline Martelet, 28 April 2022.

¹⁴² See: Interview with Céline Martelet, 28 April 2022.

¹⁴³ Interview with expert at the Genocide Network Secretariat, 29 November 2022.

¹⁴⁴ Interview with judicial expert, 10 November 2022.

¹⁴⁵ See: Weill 2019, p.232.

¹⁴⁶ See: Counter-Terrorism Committee Executive Directorate (CTED), “Guidelines to facilitate the use and admissibility as evidence in national criminal courts of information collected, handled, preserved and shared by the military to prosecute terrorist offences (“Military Evidence Guidelines”),” 2021, https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/battlefield_evidence_final.pdf.

¹⁴⁷ Interview with expert at the Genocide Network Secretariat, 29 November 2022.

and therefore were “marginalized.”¹⁴⁸ So far, the judicial approach to returnees in France has seemingly focused on French national security instead of also ensuring accountability for crimes committed by ISIS members against the Yazidi community. While there are several factors that explain this situation and while the approach is gradually changing, the relevant crimes have occurred several years ago, making investigations increasingly difficult. Even as joint investigations between the CCH and CT units are increasing, it remains challenging to bring cases to court, as the procedures are complex and “follow different procedures and rhythms” in each unit.¹⁴⁹ Continued national and international cooperation will be crucial to enable access to and use of relevant evidence.¹⁵⁰ Finally, in preparation of the first of these cases that will be heard in French courts, stakeholders should make sure that adequate witness support mechanisms and an effective communication strategy are developed. This could entail, ensuring that affected communities such as the Yazidis have access to interpretation during public trials or are provided with translated judgements.

Preventive Prosecution: In a climate of a continuous terrorist threat, political and public pressure to prevent further terrorist attacks is very high. In this context, increasingly French CT legislation has allowed judicial authorities to intervene ever earlier, potentially prosecuting an individual long before an actual act is committed. For example, the AMT charge allows for FTFs to be convicted “solely for joining a terrorist group in Syria and receiving training, whether they participated in combat or not.”¹⁵¹ In addition, the high sentences have been criticized for being “imposed not only for acts committed, but also as a preventive measure, for acts that could potentially be committed.”¹⁵² This “hybridization” allowed for a problematic confusion of repressive and preventive measures.¹⁵³ Jurists like Mireille Delmas-Marty or Olivier Cahn have criticized this trend towards preventive prosecution and argued that cases are almost impossible to defend. It is the defendant who has to prove that he or she did *not* want to carry out a specific act. Critics argue that this leads to a problematic distribution of roles between defendant and prosecutor and to the softening of legal standards.¹⁵⁴ In 2019, the investigation judge at the Paris Judicial Court Marc Trévidic acknowledged that “the real question then was whether individuals were judged for what they intended to do or for what they had already done?”¹⁵⁵

Prison Capacity and Recidivism Risk: Another key challenge is the prison management concerning returnees before, during, and after their trials, for example, penitentiary intelligence and security, risk assessment, and individual support. These can have an impact on legal proceedings.¹⁵⁶ The high case load in combination with a repressive prosecution approach and long sentences have further strained the already overloaded prison system. In France, investigations can take more than three years, resulting in long periods between arrest and trial.¹⁵⁷ After the investigation is concluded, the accused might have to wait another year (with a possible extension of six months twice) before the trial starts. In this context, Sharon Weill argues that, “the notion of AMT serves the purpose not only of securing convictions but also

¹⁴⁸ Weill 2019, p.235.

¹⁴⁹ Interview with expert on French Counter Terrorism Justice, 2 February 2023.

¹⁵⁰ See: CAT 2020, p.35; Interview with expert at the Genocide Network Secretariat, 29 November 2022.

¹⁵¹ Weill 2019, p.223.

¹⁵² Weill 2019, p.234.

¹⁵³ Weill 2019, p.212.

¹⁵⁴ Adrien Chevrier, “Episode 1/4: Exercer le droit, mesurer le danger,” France Culture, 19 September 2022, <https://www.radiofrance.fr/franceculture/podcasts/lsd-la-serie-documentaire/exercer-le-droit-mesurer-le-danger-5074160>.

¹⁵⁵ CAT 2020, p.35.

¹⁵⁶ Interview with expert on French Counter Terrorism Justice, 2 February 2023.

¹⁵⁷ See: Bjurström 2021.

of justifying and prolonging pre-trial detention.”¹⁵⁸ In addition, suspended sentences have been the exception even for women. In January 2022, the first female returnee was handed a suspended sentence of five years.¹⁵⁹ There is also an awareness of the potential risk that female inmates may pose as some women are more active proselytizing than male inmates.¹⁶⁰ With more than 71,678 incarcerated individuals (and almost 169,700 individuals in open detention), French prisons are currently operating at 117 percent capacity. This situation resulted in France being condemned by international organizations such as Amnesty International and the European Court on Human Rights for its chronic overpopulation and calls to end its “undignified detention conditions.”¹⁶¹ Observers fear that these prison conditions could hinder rehabilitation and in some cases have a negative impact, increasing the risk of recidivism.¹⁶² These challenges not only refer to returnees but also ‘frustrated travelers’, who had been intercepted before leaving the country. In general, French authorities are concerned about a growing number of released terrorist offenders (often referred to as *les sortants*) who will require resource-intensive, individualized follow up and support during their social reintegration.¹⁶³

Lack of Repatriation and Returning Minors: While recent repatriations of adult women and minors from Northeast Syria indicate a policy change in France, more than 200 men, women, and children remain in the conflict zone.¹⁶⁴ According to experts of the French justice system, all identified French adults remaining abroad have international arrest warrants pending against them, and the justice system rightly demands to be able to execute them and enable prosecution.¹⁶⁵ However, political stakeholders are the ones deciding on repatriations. Apart from the inability to prosecute these individuals for the crimes that they potentially committed, the longer these individuals remain abroad, the more challenging their disengagement, deradicalization, rehabilitation, and reintegration could be. This is especially true for returning minors. While the French government has set up a centralized support system after their return to France, some experts have voiced concern that the experiences and activities in Syria and Iraq of certain minors could lead to future challenges as they are growing up.¹⁶⁶

¹⁵⁸ Weill 2019, p.229.

¹⁵⁹ Interview with Céline Martelet, 28 April 2022.

¹⁶⁰ Interview with expert at the French Ministry of Justice, 15 November 2022.

¹⁶¹ 20minutes & AFP, “Prisons.Le nombre de détenus encore en hausse au 1er juin, au-delà des capacités carcérales,” 1 July 2022, <https://www.20minutes.fr/societe/3319315-20220701-prisons-nombre-detenus-encore-hausse-1er-juin-dela-capacites-carcerales>; Ministère de la Justice, “Les chiffres clés de l’administration pénitentiaire,” June 2022, <http://www.justice.gouv.fr/prison-et-reinsertion-10036/les-chiffres-clefs-10041/>.

¹⁶² Weill 2019, p.234.

¹⁶³ Interview with experts at the French Ministries of Interior and Justice, 27 April & 15 November 2022.

¹⁶⁴ See: Sofia Koller, Carlotta Sallach & Alexander Schiele 2022.

¹⁶⁵ Interview with judicial expert, 10 November 2022.

¹⁶⁶ Interview with expert on French Counter Terrorism Justice, 2 February 2023.