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The french government and the new challenges of the  
coming back of french jihadists : balancing between  
punishment and de-radicalization

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**Keywords:** foreign fighters, jihad, terrorism, de-radicalization, disengagement, rehabilitation, security

## Abstract

The aim of this Thesis is to focus on how governments can react towards the coming back of the foreign fighters from Syria and Iraq, and the French case will illustrate one of the possible state's behavior. Our central research question is stated as follows: What are the possible policies a state can implement in order to respond to the returnees crisis and to ensure its citizens' security ?

States are facing a new threat since the collapse of ISIS, the foreign fighters are starting to come back, and the authorities have to find quick solutions to face this challenge.

Governments are choosing between hard and soft measures or, to put in other words, between punishment and rehabilitation. Obviously, states are trying to find a balance between these two approaches, in order to fight the roots of the problem, namely radicalization, to ensure the security of the state, and also to respond to the pressure of the public opinion.

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# Chapter 1 Introduction

## 1.1 Introduction

The phenomenon of « foreign fighter » (FF) is not something new in history. The study of FF is complicated as there are no reliable numbers about how many FFs were involved in various conflicts abroad. Nonetheless, one may underline the fact that two cases attracted FFs : the one of Afghanistan between 1978 and 1992 knew between 5,000 and 20,000 FF. While the case of Iraq, in 2003, attracted between 4,000 and 5,000 FF. Nevertheless, it seems that before the 1980's, the phenomenon of the long-distance FF were rarer than nowadays, this is why the Syria crisis is really different (Hegghammer : 2010 : 54). The number of people who left their countries to join the Islamic State (ISIS) is quite unique in the modern history (Lister : 2015 : 1). More than 42,000 FF from more than 120 countries moved to Syria and Iraq between 2011 and 2016 and about 5 000 of them were from Europe (Ran : 2017 : 15). At the end of 2016, an estimated 15,000 FF were still located in Iraq and Syria (Reed, Pohl : 2017). It seems that FF are more willing to get involved in some types of struggles (« *inter-religious ones, very bloody ones, or blatant foreign invasions* »). Also, even if this variable can hardly be verified, the severity of the conflict could have an impact on the attraction, or not, of FF. A third variable could be the « *political status of the territory in which the conflict occurs* » (Hegghammer : 2010 : 66).

It is important to note that the majority of the FF is still unidentified. In May 2015, Interpol announced that 4,000 of them have been identified. If this number can seem significant, it represents only 18 % of the total FF (Lister : 2015 : 4). As Hegghammer underlines it, « *Syria will prolong the problem of jihadi terrorism in Europe by twenty years* » (Lister : 2015 : 2).

One should add that the foreign fighters have not been studied so much, mainly because they can be seen as a blurred category, somewhere between the local rebels and the international terrorists (Hegghammer : 2010 : 55).

A FF is someone who, according to David Malet, is a « *non-citizens of conflict states who join insurgencies during civil conflict* » (Lister : 2015 : 1). Also, the Security Council of UN defines a FF as

individuals of more than one nationality who travel to their states of nationality for the purpose of the perpetration, planning, preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, and urging States to take action, as appropriate, in compliance with their obligations under their domestic law and international law, including international human rights law.

(Security Council, Resolution 2178 : 2014)

Hegghammer also tried to define what a foreign fighter is, taking the work of David Malet as an example. To him, a FF is someone who

1 - has joined, and operates within the confines of, an insurgency,

2 - lacks citizenship of the conflict state of kinship links to its warring factions,

3 - lacks affiliation to an official military organization, and

4 - is unpaid.

(Hegghammer : 2010 : 58)

Nonetheless, the Counter-terrorism National Center of The Hague, underlines that without an official and agreed definition of the term « *Foreign Fighter* » it is a real challenge for the states to identify their FF (Bassou : 2017 : 14).

Since 2016, ISIS is facing defeats because of the anti-ISIS campaigns run by the the Kurdish forces, the international coalition head by the USA, the Assad

government and Russia. The terrorist group started to lose its territory over Iraq and Syria (Bassou : 2017 : 10) which raises the question of the FFs' future. The FF who want to leave ISIS – and hence not fight to their death - do not have plenty of choices : they can either move to another country which is facing tensions, violence and terrorism, or try to go back to their home country (Bassou : 2017 : 17).

FF are coming back for various reasons. Some of them are disillusioned and remorseful. Others are still involved in the jihadist ideology but want better living conditions. Some are coming back to commit attacks in their homeland, feeling they will be more useful in Europe than in Syria or Iraq. The last category is the ones who are captured and who have to come back against their will (Ran : 2017 : 15).

One may underline that the returnees do not represent an homogeneous group, which makes the implementation of policies towards them even more complicated (Ran : 2016 : 3). Omar Ramadan has identified different types of returnees :

- the one who will want to commit attacks when they will return,
- the victims,
- the ones who « *fall somewhere between victims and (potential) terrorists* »,
- the ones who do not want to use violence anymore (trauma for instance) (Ran : 2016 : 3)

Nonetheless, the returnees represent a major concern for the national security and this for several reasons. First, most of the time, the men have an experience of war, of the battlefield. Also, they have been trained to use weapons and they can now have serious connections within the terrorism networks. It is likely that most of them will suffer from post-traumatic stress disorder (Ran : 2016 : 7). In addition, the returnees followed religious classes, in order to legitimate the violence they used on the battlefield (Bassou : 2017 : 15), which means that they could reproduce the same actions after their coming back. Namely, because of the courses they attempted and the propaganda they integrated, violence is seen as normal and is tolerated.

Actually, research shows that no more than 11 % of the FF will be willing to commit a terrorist attack when they will be back to their country. According to Hegghammer, in the case of Syria, only one of 200 or even 300 returnees may become

a threat for the national security (Lister : 2015 : 2). Also, one FF out of nine will succeed to avoid being caught by the security forces. This means that if 1 000 FF are coming back, 111 of them will remain free. If we admit that to commit one terrorist attack 10 persons are needed, the 111 FF will be able to do 11 attacks. If only 5 persons are needed, they will commit 22 attacks. However, most of the time, 2.3 persons are enough to carry off an attack, which leads to a total of 50 terrorist attacks (Bassou : 2017 : 20). These numbers illustrate why the FF are such a threat for the national security and why the public opinion is so opposed to their coming back.

France is the country in the European Union with the highest number of departures for ISIS, with approximately 1,300 FF (Bindner : 2018 : 2), most of them traveling with their families (Thomson : 2016 : 20). In 2016, for the first time since the beginning of the Syria crisis, the departure of French citizens for ISIS stopped growing, but still, at least 700 French were on the ISIS territory, and half of them were women (Thomson : 2016 : 18). Also, the French returnees are the ones who commit the highest numbers of attacks when they come back to their country. Around 10.6 % of the French FF organize an attack, while this number is only 3 % for the other nationalities (Bindner : 2018 : 2). One could give the example of Mehdi Nemmouche, a French FF who came back to Europe, and who committed an attack in Brussels, killing four people (Lister : 2015 : 2).

Actually, France has all the characteristics to be an enemy of ISIS, explaining why the country is the target of so many attacks. France takes part in a coalition against extremists groups; and has been involved in Afghanistan and in Lebanon. The domestic policy of France tends not to be in favor of religions, because of its concept of laïcité (Bindner : 2018 : 4).

This research aims to show how governments can deal with the coming back of the FF, or to put in other words, how the policies are balancing between hard measures, and softer ones. To do so, the French case will be studied in order to illustrate these soft and hard approaches. In a second chapter, the thesis will allow us to shed light in the little-studied issue of FFs and mainly the challenges linked to their return. It will also demonstrate that there are different approaches in dealing with

returnees and the approach a particular state chooses is largely defined by the way this state frames the issue of terrorism, radicalized individuals and security in general. In a third chapter, the case of France will illustrate the use and limits of the soft and hard approach, as well as the difficulties of a government to find and apply solutions to a defined threat. In a fourth and last chapter, the French policy will be analyzed, in order to understand why France chose such an approach towards FF and terrorism.

## **Chapter 2 Balancing between punishment and rehabilitation**

### **2.1 The hard and the soft approaches**

There is not only one approach to deal with the coming back of the returnees. Actually, one may underline that we could make a distinction between the « *hard approaches* » and the « *soft approaches* » (Reed, Pohl : 2017). Indeed, most of the Western states are opting for a « *hard approach* » (Lister : 2015 : 4), which implies, among others, trials abroad and, if the FF is allowed to come back, prison sentences. One may underline that prosecution seems to be a short term solution. Actually, it can also have an impact on the social circle of the FF, namely their families and friends will probably not inform the authorities of the departure of the FF, fearing the prosecution. Moreover, prosecution has a direct effect on the FF, the person will tend to look for other ways to live after the Syrian crisis : for instance the FF will likely stay in Syria and Iraq or leave for another country, instead of coming back to their home country and face heavy prosecution (Bartholin, Lucchese, Flores-Herrera : 2017 : 36). On the other hand, the soft options are most of the time linked to de-radicalization. Nowadays, it is very common to hear or read this word in the media. Nevertheless, if « *de-radicalization* » is the most used and probably the most well-known term, it is not the only one. « *Disengagement* » and « *rehabilitation* » also need to be taken into account. The Centre de Prévention des Dérives Sectaires liées à l'Islam (CPDSI) gave a definition of « *disengagement* » and « *de-radicalization* »,



We use the term « disengagement » to talk about the youth who parts with the jihadist group which he had previously trusted. We use the term « de-radicalization » to talk about the youth who parts with the ideology in which only divine law can save the world from corruption.

(Bouzar : 2017 : 610)

In other words, the International Centre for Counter Terrorism (ICCT) explains that « *disengagement* » implies a behavioral part (for instance to stop violent activities) while « *de-radicalization* » is linked to a cognitive element (for instance a change in the beliefs of the person) (Entenmann, Van Der Heide, Weggemans, Dorsey : 2015 : 11) (Hellmuth : 2015 : 13). The expert Khosrokhavar highlights the fact that in a democracy, the process of « *de-radicalization* » implies that the consciousness of the individual is respected (Khosrokhavar : 2014 : 175). This assumption includes that no one can impose a way of thinking to a FF in order to de-radicalized him or her.

A government can choose to deal with the returnees' threat in various ways, and this even at the very beginning of their return. For instance, the question of the return or not of the FF can be seen differently. A state can refuse to take back its FF, when these persons have been caught by the Iraqi or Syrian forces. By doing so, the FF will have to face a trial in the country of their detention. This hard approach can be explained because it is easier to judge and find evidences where the crimes have been committed and also because the main victim of the jihadists' actions is the local population (Keval, Sallonet, Seelow : 2018)

Nonetheless, even if a FF can face a trial abroad, some conditions need to be met. First, it is essential that the FF can have a fair trial, which is a basic human right, stated by the criminal law and by international and constitutional laws (De Graaf : 2011 : 5). Indeed, a fair trial

ensures the right of an individual to be informed of the measures taken, to be informed about the case against him or her, the right to be heard within a reasonable amount of time, the right to a fair and public hearing by a competent and independent review mechanism, the right to counsel with respect to all proceedings and the right to have his or her conviction and sentence reviewed by a higher tribunal according to the law.

(De Graaf : 2011 : 5)

Also, the home country needs to recognize the law of the state, in which its FF have been caught. For instance, in Iraq, the majority of the arrests are done under the Anti-Terrorism Law no. 13 of 2005. Nevertheless, the definition of terrorism is very broad and can lead to massive arrests (Mehra : 2017).

Every criminal act committed by an individual or an organized group that targeted an individual or a group of individuals or groups or official or unofficial institutions and caused damage to public or private properties, with the aim to disturb the peace, stability, and national unity or to bring about horror and fear among people and to create chaos to achieve terrorist goals.

(UNAMI / OHCHR : 2014)

Because of this definition, it puts all the detainees on the same level : they can be a fighter, a wife of a fighter, or just a taxi driver working for ISIS, they will face the same law (Mehra : 2017). This can « *lead to « irreversible miscarriages » of justice* » (Coker, Hassan : 2018). The number of terrorist detainees is not officially known, but some sources close to the regime and the court say that approximately 13,000 people are in jail, waiting for a trial. Human Right Watch estimated that around 20,000 people could be detainees and accused of having links with ISIS. The main critic against the Iraqi justice is that because of the high number of detainees and of the public opinion, there are no deep investigations on the cases. This leads to trials

of ten minutes with, most of the time, no access to lawyers. Since 2017, 98 % of these trials ended up with a conviction, that is to say the person was found guilty of terrorism. For the FF, the Iraqi Court is even stricter, assuming that they were the most fervent supporters of ISIS, mainly because they moved to join the terrorist group (Coker, Hassan : 2018). The court is dealing with up to fifty cases a day, seeming impossible to have a proper defense or accusation in such a trial marathon (Mehra : 2017).

The legitimacy of the Syrian government is more complicated, mainly because of its situation. Syria's legitimacy is not recognized by all states (European Parliament : 2018 : 53). Nonetheless, one should mention that Damascus actually has a definition of terrorism, which is,

every act that aims at creating a state of panic among the people, destabilizing public security and damaging the basic infrastructure of the country by using weapons, ammunition, explosives, flammable materials, toxic products, epidemiological or bacteriological factors or any method fulfilling the same purposes.

(Human Right Watch : 2013)

This definition is used in the counter-terrorism law no. 19 of 2012, which also led to the creation of a counter-terrorism court in Damascus (Mehra : 2017). As for Iraq, it is complicated to have the exact number of FF who have been caught and who are waiting for a trial.

The fate of FFs, who have been detained by Kurdish forces, is even more problematic because the Kurdish enclave resembles a de facto state but lacks international recognition. One can give the example of Ainissa, a city ruled by the Syrian Democratic Forces (SDF) in Northern Syria, where a school has been turned into a prison. In it live approximately 1,000 men; 593 of them coming from 47 countries. 80 of these FF are from Europe, and these men are becoming a serious

problem as their home countries are reluctant to take them back. Also, one should underline that Rojava is not considered a sovereign government, implying that even if Rojava is sentencing the FF, the decision will not be recognized. Actually, Rojava created « *ad hoc terrorism tribunals* » (Savage : 2018), known as « *The People's Defense Court* ». However, the only ones who can be prosecuted are Syrians who fought with ISIS. On the opposite, the FFs remain in detention. Although the death penalty was forbidden in these Courts, some serious problems remain : there are no lawyers to defend the suspected jihadists, the authorities are involved in the courts (creating a doubt about the independence of the justice) and the « *professional staff* » such as the judges and the magistrates cannot be considered as such because they did not follow an official formation. If the European states do not want to take back their FF, at some point, they will have to face a trial. The local officials in Northern Syria are aware that they first need to improve their judiciary sector in order to have fair trials and to judge the FF (Human Rights Watch : 2018). The spokesperson of the Democratic Union Party (PYD) brings the idea that the solution would be to create an international court in Syria. By doing so, the states that want to leave their FF abroad would be involved in the trials of their citizens. But facing the reluctance of the European states and the emergency of the situation, Shahoz Hussan<sup>1</sup> declared that if the FF are left in Syria, they will then have to face a trial in a local court, « *according to our own laws* » (Van Wilgenburg : 2018).

Moreover, a hard measure that can be taken to limit the coming back of the returnees is the deprivation of citizenship. On the first hand, the FF will not be able to freely enter into their country again and it will become harder for them to travel. On the other hand, if the FF already came back, by revoking his/her nationality, it can allow the state to expel him/her (Bartholin, Lucchese, Flores-Herrera : 2017 : 38). Nonetheless, this measure can be applied only if the person concerned possesses a dual citizenship and if he/she has committed a crime. Namely, the citizenship cannot be withdrawn without serious reasons (European Parliament : 2018 : 44). For instance, one may refer to the Universal Declaration of Human Rights, which states that « *Everyone has the right to a nationality* », meaning that a government cannot

create stateless people without impacted his/her basic human rights (Bartholin, Lucchese, Flores-Herrera : 2017 : 39).

On the other hand, a softer approach of the threat could be the acceptance of a state to take back its FF. By doing so, some actions could be done earlier and so to encourage the process of de-radicalization, with for aim a rehabilitation. Nevertheless, one should underline that when FF are coming back, there is always a « *risk assessment challenge* ». Namely authorities need to evaluate or to understand if a FF is willing to be reintegrated to the society, or if he/she, on the other hand, wants to commit an attack in his/her country no matter what (Bakker, Paulussen, Entenmann : 2013).

De-radicalization and disengagement are part of the process of *rehabilitation*, which is

a purposeful, planned intervention, which aims to change characteristics of the offender (attitudes, cognitive skills and processes, personality or mental health, and social, educational or vocational skills) that are believed to be the cause of the individual's criminal behavior, with the intention to reduce the chance that the individual will re-offend.

(Entenmann, Van Der Heide, Weggemans, Dorsey : 2015 :

11)

As Preben Bertelsen wrote it, « *a citizen of a modern democratic state governed by law should be given the opportunity of rehabilitation and inclusion into society* » (Lister : 2015 : 7).

If a FF comes back, he/she will have to face a trial. Nonetheless, instead of losing time, the process of rehabilitation could start in the pre-trial phase. For instance, the suspected jihadist could wait for his/her trial at his/her home, instead of

in jail (Enternmann, Van der Heide : 2015 : 16). Some administrative measures can be achieved in order to allow the FF to stay home but to keep the situation under control without threatening the security of the other people and the one of the state. Namely, FF can face travel restrictions and house arrests. Their papers (identity card, passport or visa) can be taken away from them, in order to impeach them to travel and to leave the country. Also, when a person has to respect a « *house arrest* », it means that he/she has to stay home a certain number of hours per day, and that he/she has to go to the nearest police station several times a day as to prove she/he is not trying to escape. Besides, to strengthen these measures, a FF can be forced to wear an electronic tracking bracelet, hence controlling his/her movements (Bartholin, Lucchese, Flores-Herrera : 2017 : 34). By doing so, the returnees could avoid staying in jail for too long, where they will likely be inmates with other FF that they met in Syria and Iraq (Thomson : 2016 : 121). Actually, leaving the returnees in jail with other FF can lead to an increase of proselytism in prison, and therefore to more radicalization (European Parliament : 2018 : 46).

Nevertheless, these *soft* measures, even if they are less extreme than the hard ones, can have an impact on the FF's life. It can « *increase the risk of marginalization* » mainly because the returnee will have to stay in a confined place, here his/her home (Bartholin, Lucchese, Flores-Herrera : 2017 : 41).

Because the trial would not have happened yet, the participation to a rehabilitation program cannot be mandatory. However, if the FF shows motivation and interest, the process can begin. After the trial, the adhesion to a rehabilitation program should be compulsory, « *as a part of a prison sentence or an alternative to prison* » if no crimes have been committed. Nonetheless if the FF is facing a prison sentence, then following a rehabilitation program could allow the detainee to use his/her time in jail to work on his/her reintegration within the society. Also, this approach has better chances to work if prisons are not over-crowded, and that the detainees can have interactions with the prison staff (Enternmann, Van der Heide : 2015 : 19).

Nevertheless, even if the FF are allowed to come back to their home countries, it does not mean they will benefit from soft measures . At their arrival, they can face a

pre-trial detention, which can vary between two days and up to four years (European Parliament : 2018 : 44). Also, their trial can be completely different from the one of a person sentenced for another crime (which has no links to terrorism). This hard approach of the problem can be explained mainly because the trial of the FF are « *highly likely to turn into a show* ». There is this conception that the terrorists should not be judged by a popular jury, because the jury would not be able to give a proper sentence, and that a military court would be more efficient (De Graaf : 2011 : 3).

In most of the cases, it is extremely hard to find evidence against the returnees (Mehra : 2018). One of the main reasons is that they committed crimes abroad, in countries which are facing a war, making it complex to collect proof of their guilt. Indeed, most of the time, returnees are only guilty of having interacted with suspicious or guilty individuals, but one can wonder if this can seriously be considered enough to condemn someone for terrorism (Mégie, Jossin : 2016 : 55). Because of these superficial pieces of evidence, the Courts cannot condemn the returnees to heavy prison sentences (De Graaf : 2011 : 4). Also, the proof that can be found need to be cautiously studied. One can underline the fact that even if the Court possesses photos of the returnees in Syria, stating if they have been forced to go or if they were there willingly is an interpretation (Mégie, Jossin : 2016 : 57).

After the trial, in an hard approach, the FF are put in jail. Nonetheless, as mentioned earlier, an over-crowded prison can easily lead to an increase of the radicalization (Bartholin, Lucchese, Flores-Herrera : 2017 : 37). To avoid this phenomenon, states can reply by two very different solutions : dispersal or containment. The containment model aims at regrouping the FF together and to keep them separated from other prisoners, but with the will to « *deliver tailor-made programs by specialized staff* » (European Parliament : 2018 : 46) which could tend to a rehabilitation program, if possible. On the other hand, dispersal action aims to mix the FF with the general prison detainees (European Parliament : 2018 : 46). It will impeach the FF to be radicalized further by only being in contact with radicalized detainees. Nonetheless, the FF will not benefit from special measures which could lead them towards rehabilitation, as it is the case for the containment solution. A last

struggle with the dispersal action is that the FF could also radicalize the general detainees.

When faced with the return of FFs, a government can adapt its policies and use soft or hard approaches. Nonetheless, one may add that the policies are often a mix of soft and an hard responses to the threat caused by the FF. The public pressure to act swiftly and effectively, as well as the nature of the public discourse regarding the issue of returnees and security in general and the novelty of the threat largely define the combination of policies states choose.

## **2.2 The European paradigm**

After the terrorist attacks of Madrid in 2004, the European Union adopted the Declaration on combating terrorism, aiming at reinforcing the cooperation between the member states. Also, the role of the EU counter-terrorism coordinator has been created and, since 2007, this function is occupied by Gilles de Kerchove (Conseil Européen : 2015).

The question of the FF started to arise concern in the EU in 2012. Nonetheless, it was still the beginning of the phenomenon, and in 2015, after the Paris' attacks, the FF's return became a major issue for European Security. The EU Council made a declaration on the EU counter-terrorism policy, aiming at defining the actions the EU will take : « *assuring the security of the citizens, preventing radicalization and increase the cooperation with international actors* » (Conseil Européen : 2015).

Even if the EU sees the FF phenomenon as a serious threat, it was only in 2017 that the member states agreed on a definition of what a FF is. This is mainly due to the fact that member states have a different perception of the FF threat. For instance, Belgium, France, Germany and the United Kingdom are the ones that are having the highest numbers of FF. Also, member states have their own views on what can be the cause of terrorism and radicalization. Because of such different views towards the threat, the EU policy is balancing between hard and soft approaches.



In 2014, the Security Council adopted Resolution 2178 in order to find a balance between hard and soft measures to deal with the return of the FF (Global Center on Cooperative security : 2014 : 2). The EU tried to meet the requirements of the Resolution 2178 but as the resolution does not state proper actions, it allows the member states to understand it in various ways and different approaches can emerge. For instance, it is stated that state should involve nongovernmental actors in its struggle for de-radicalization, but how this should be implemented is not specified, giving to the member states a room for maneuver (Global Center on Cooperative security : 2014 : 6).

Also, it seems that the EU states are more willing to tend to a hard approach and prosecution than a softer one and rehabilitation (Bures : 2018 : 11). One should mention that the EU voted various laws aiming at controlling the return of the FF. For instance, the creation of the Passenger Name Record (PNR) enables the authorities to know if someone is considered as a terrorist during the border controls. Also, there has been a considerable increase of the information sharing linked to terrorism between the different member states. As it seems, the EU is willing to limit the coming back of the FF, with the 2017 Directive which states that « *traveling abroad to join a terrorist group and/or returning to the EU with the aim of carrying out a terrorist attack* » is considered as a crime (European parliament : 2018 : 7).

Nevertheless, facing the difficulty of prosecuting the FF and the fact that not all of the returnees are a threat, member states started to implement a softer and more comprehensive approach. Such a perspective has been underlined by the President of Eurojust (Bures : 2018 : 6). Actually, one of the European country which is seen as a precursor in rehabilitation program is Denmark. Since 2013, Denmark is implementing the Aarhus Model. On the 300,000 inhabitants of the city of Aarhus, since 2013, 34 persons left for Syria and Iraq to join ISIS, and 5 of them are expected to be dead, while 16 came back to Denmark (Cobiella : 2015). As it is complex to find proof of the involvement of the returnees into terrorist activities, the Danish government put its focus on the counter-radicalization tool (Vidino, Snetkov, Pigoni, Wenger & Thränert : 2014 : 9). The model involves three elements :

- a) an early prevention and exit program
- b) prosecution of radicalized persons who have committed violent crimes (in Denmark or in a foreign country), including measures such as confiscation of passport,
- c) prevention and countering of threats to national security, by the Danish Security and Intelligence Service (PET).

(Bertelsen : 2015 : 241)

There is the will to help the FF to go back to a « *normal* » life in their home country and to leave behind any radicalized or violent behavior. Nonetheless, one may add that not all the returnees can take part to this exit program. The returnee does not need to have committed any crimes abroad; if he/she did so, he/she will be prosecuted as it is stated by the Danish law. Also, if the returnee is considered as a threat for the society, he/she cannot take part to the exit program (Bertelsen : 2015 : 245).

Also, the Aarhus Model is facing critics, as for instance the one of Martin Henriske, a Danish legislator who represents the far-right anti-immigration Danish People's Party, saying that « *[The program] sends a signal of weakness that instead of punishing the so-called holy warriors, they're given all the advantages of a welfare state* » (Cobiella : 2015).

As it seems, there is not a common EU policy concerning the coming back of the FF. Actually, even if the EU is trying to give directions and to harmonize the different policies that the member states can implement, there is still a lot of room for them to interpret the EU recommendations and to take actions according to their own situation towards the FF. Nevertheless, one should mention that some EU member states are making bilateral agreements in order to increase their struggle against terrorism and to control the coming back of their FFs. For instance, France and Belgium decided to deepen their bilateral relations on the security matter. In 2016, after the numerous terrorist attacks the two countries faced, they decided to increase their cooperation within the security sector (the police forces for example) but also in the judiciary field. To do so, the two governments chose to create a working group which focuses on different matters such as the radicalization in prison or how to

handle the coming back from Syria and Iraq of minors (Premier ministre : 2018). It seems logical for France and Belgium to take actions together against terrorism. Actually, one should mention that some of the jihadists who committed the Bataclan attacks, or the one of Charlie Hebdo were from Belgium (Le Monde : 2015).

## **Chapter 3 The French case**

### **3.1 The preponderance of an hard approach**

#### **3.1.1 The question of the return**

The French government is divided on the question of the coming back of the FF, balancing between an hard approach and a softer one. The ministry of the Army, Florence Parly, was explaining that if the French government cannot stop the coming back of its citizens who are suspected of terrorism, the most effective solution would be to « *pursue the operation until the end to neutralize as maximum as possible the French jihadists* » (Europe 1 : 2017). Actually, some newspapers<sup>2</sup>, stated that French special forces made a list of the French citizens (at least 30 names) who were involved in ISIS. The Iraqi forces would hunt them and kill them (El-Ghobashy, Abi-Habib, Faucon : 2017). Mrs Parly refused to comment this supposition (Europe 1 : 2017) and explained that, if the French jihadists could die during the fights it would be for the best and, on the other hand, if they would be caught by the Syrian forces, then they should depend on the Syria justice (Le Figaro : 2018). If she is clearly stating an hard response to the coming back of the FF, it also illustrates that the French state is not ready to take back its FF.

Nevertheless, her hard view is not shared by all members of the government, showing the difficulties for the state to decide what to do with its citizens suspected of terrorism. For instance, in November 2017, Emmanuel Macron and Mr Le Drian, Minister of Justice, declared that the French jihadists should be judged in Iraq, because it is a sovereign state and France recognizes its authority and legitimacy. Also, the President mentioned that concerning women and children, the situation

would be examined « *case by case* » (Le Figaro : 2018). Here, it seems that the French government was trying to apply both a hard and a soft approach : men will face an hard response while women and children a soft one, as they could be, maybe, authorized to come back. By doing so, it gives to the audience an image of dangerous men FF and on the other side women FF are seen as victims, which is not the truth. Nevertheless in January 2018, it seemed that the position of Macron evolved concerning women and children returnees and he harmonized his discourse towards the FF : only if the conditions for a fair trial are not meet, then he will not hesitate to use international conventions to have the FF back (Le Figaro : 2018). If a softer approach was considered as possible for the women and the children, it is not the case anymore. Nonetheless, Nicole Belloubet, the attorney general, underlined that if a French citizen is judged in Iraq and sentenced to death, the French state will intervene (Le Figaro : 2018). Even if the government presented the FF as a serious threat, the authorities cannot accept the death penalty for one of the French citizen. This can put the French state in an ambiguous situation : it wants to leave its FF abroad because of their dangerousness, but if they are sentenced to death, they will have to be taken back because of the France's values, namely that France is firmly opposed to the death penalty. In order to avoid the return of the FFs, the French authorities started to make judgment of « *absence presumption* », meaning that a FF can be judged even if she/he is not present at his/her own trial (Cat : 2018 : 19).

It is interesting to see that, if terrorism is nowadays a security matter in France after the numerous terrorist attacks, the subcategory of the FF is still a blurred concern. The government is presenting it as a potential threat, which legitimizes its will to leave the FF being judged abroad. Also, one may highlight that the government's choice to leave the FF abroad is made during the right time : namely after the several attacks that the French people had to face during the last years, the audience is much more willing to agree with the authorities' views. For instance, it is common to find online petitions, asking for a ban on FF's return, or, another example, a Facebook page called « *Stopdjihadistes* » which has 10 538 people « liking » it (@STOPdjihadistes). The city of Toulouse can illustrate this public fear and anger towards the FF, where the group « *les identitaires* » manifested in the streets, in order

to attract the attention of the mayor, Jean Luc Moudenc, about the danger the returnees could represent. People were laying down in the street, with fake blood around them, willing to remind the Bataclan's attack or the one of Nice. They created an online petition, asking the mayor to « *take a position in order to protect his citizens* » (Infos Toulouse : 2018). Their petition has been signed 277 times. People can leave comments, and most of the time, it is the same arguments that are coming back : the FF left France in order to fight against the French state and now they want to come back to enjoy some advantages (health insurance for instance). Some people are going even further, saying that not being opposed to the FF's return means being a « *collabo* » who wants a civil war and the « *destruction of the nation* ». (Courtet : 2018). In addition, the website Damocles wrote an article explaining that the French state is actually financing the jihadists (by giving them the family allowance after their departure for Syria). At the end of the article, another online petition, having already 110 693 signatures (Damoclès : 2018). It is important to add that Damocles is an association which is associated to the extreme right, or the « *patriosphère* » which create and share fake news widely (Herrerros : 2017).

### **3.1.2 Trials abroad**

As the French government is for now following an hard approach toward the FF who have been caught in Syria and Iraq, these FF will have to face their trial abroad.

The trials of some French women already took place in Iraq, as it is the case of Melina Boughedir. She has been captured in July 2017, and has been judged in February 2018. She claimed she has been forced to follow her husband to Syria. She has been sentenced to seven months of jail because she entered illegally in Iraq. Nonetheless, in Iraq, all the trials are examined twice. In June 2018, Mrs Boughedir had to attempt her second trial with, this time, a complete different accusation. If in February her only crime was that she entered illegally in Iraq, in June, she was suspected of having taken part in ISIS, while nothing has been added to the case, said her lawyers. She has been sentenced to twenty years of jail. This trial is seen as a

political move from France not to have its French citizens back (Sallon : 2018). Le Drian made a public declaration, just before the trial, saying that Mrs Boughedir was « *a terrorist from DAESH [ISIS] who fought against Iraq* » (FranceInfo : 2018). To her lawyers, Le Drian's declaration is an « *absolute violation of the presumption of innocence* » (Sallon : 2018).

Another example, the case of Djamila Boutoutaou, a French woman who has been arrested in Iraq too, shows the shifting position of the French government between a soft or a hard position towards the question of the coming back. She has been sentenced to jail. First, the Quai d'Orsay announced that Mrs Boutoutaou could ask to be sent back to France to do her prison sentence as it has been decided by the Iraqi Court. Nonetheless, only one day after this declaration, Nicole Belloubet stated another view : the French woman will have to do her sentence in Iraq (Blanquart : 2018).

The situation in Syria is different. French women and their children have been caught by the Kurds, and are now detainees. The main question is to know if France will follow its hard approach and leave the Kurds judge its FF or if they will be taken back to France. Actually, the Kurds do not have any political legitimacy (Keval, Sallonet, Seelow : 2018) they do not have a state, so the trial cannot be equitable. French women in Syria do have lawyers who are fighting for their repatriation. They decided to file a complaint against the French State because of failure to assist a person in danger, concerning mainly the children of the detainees. Besides, they refer to the article 432-5 of the penal code which condemns that a person depositary of the public authority knows a arbitrary detention is happening and voluntarily refuses to end it (Licourt : 2018).

### **3.1.3 Trials in France**

The FF who are judged in France are not the ones who have been caught in Syria and Iraq, because the government does not want them back. This means that some FF succeed to leave ISIS and to come back by their own means. They can be

caught on the national ground after their arrival or they can contact directly from ISIS the French consul of Turkey, asking for help. If they manage to cross the border and to arrive to Turkey, most of the time they will stay in jail for some weeks and then the FF will be expelled to France (Thomson : 2016 : 20).

France is suing its returnees based on the active nationality principle, namely that a criminal offense has been done by its nationals (Mehra : 2018).

Again, when it is about trials, France is also applying hard responses. Trials for terrorism have a specialized Court, localized in Paris, which is called « *14<sup>e</sup> section du parquet* »<sup>3</sup>. Trials are particular because there is not a popular jury, instead, the jury is composed of professional magistrates. This *14<sup>e</sup> section du parquet* has been created by the law of September 1986, after the trial of Action Directe, because its members threaten the popular jury, which led to the refusal of the majority of the popular jury to give a sentence, fearing a reprisal (Trévidic : 2010 : 49).

Since this law of 1986, the legal framework knew various evolutions, in order to be able to respond to the new forms of threat (Quéméner : 2015 : 47). Since 2014, following the terrorist attack of November 2013 and the promulgation of the state of emergency, at least two laws per year are created (Cat : 2018 : 7). The law n° 2012-1432 of December 2012 can be applied to the FF's cases because it states that the criminal French law has to be applied to crimes and infractions which are qualified as terrorist acts and which are committed abroad by a French, or by someone who used to live on the French territory (Legifrance).

Facing an increase in terrorism trials, the justice is more strict towards the returnees. Since 2015, it is stated that no one can ignore that ISIS (or the Front al Nosra, Fatah al Sham, Hayat Tahrir al-Sham) is an organization which aims at committing terrorist attacks. Also, this implies that every French citizen who left for Syria or Iraq after January 2015 to join ISIS can be sued for « *association of malefactors in relation to a terrorist enterprise* ». They can also be judged for having left for Syria and Iraq, or just even for having planned to go, or for financing terrorist networks (Cat : 2018 : 2). This will to strengthen sentences against returnees is illustrated with the law n° 2016-987 of the 21st July 2016, stating that French returnees could risk up to thirty years of prison (Keval, Sallonet, Seelow : 2018).

Nonetheless, the average sentence in 2017 was about 7 years and 1 month of jail. But one may add that condemnation has increased since 2014, the average sentence was around 3 years and 8 months (Cat : 2018 : 27).

One may give the example of Christine Rivière, who has been sentenced to ten years in jail. The woman to Syria three times, between 2013 and 2014, in order to visit her son, Tyler Vilus, who had a high position within ISIS. Besides, Mrs Rivière played a role in the departure of young women to Syria as she wanted them to marry her son. If Mrs Rivière has been sentenced to such a heavy punishment it is mainly because the Court had evidence against her as, for instance, discussions on Internet between the mother and the son, or photos of her wearing the hijab and holding weapons, such as a kalashnikov (Le Monde : 2017) (Seelow : 2017).

Nonetheless, this hard approach has its limits and failures. First of all, the saturation of the courts is a real threat. If in 2013 the counter-terrorism public prosecutor department of Paris had to deal with 26 cases, in 2015 this number was about 136, and only one year later, in 2016, there were 324 cases (Mégie, Jossin : 2016 : 54). It seems relevant to mention that in December 1997, a law was promulgated, allowing the delocalization, if necessary, of the specialized jurisdictions to simplify the trial of terrorism acts (Vie Publique : 2018). Nevertheless, it appears that returnees are attending their trials only in Paris, which can explain this threat of a Courts' saturation. This leads to a waiting time between the judiciary control and the trial of two years and two months (Cat : 2018 : 4).

Between 2014 and 2017, France knew 76 trials which were linked with the jihad in Syria and Iraq. One may notice that the number of trials per year is increasing : two trials happened in 2014, two trials in 2015, twenty in 2016 and up to fifty-two in 2017. During these four years, a total of 238 persons have been judged (209 men, 19 women and 10 minors). A minor can face a judiciary process only if he/she is above thirteen years old. When they are younger, they will have to enroll to an educative program which aims at reintegrating them (Cat : 2018 : 18). The age that matters is the one the person had when he/she committed the crime. For instance, in 2016, there has been in France the first trial of minors FF, it took place in the juvenile court and,



because of this, the maximal sentence they could face was 5 years of jail for a « *participation to a terrorist group* ». They left in 2014, when they were 15 and 16 years old (Borredon : 2016).

Also, out of these 238 people, only 14 were discharged and the other 224 faced a sentence. In addition, 83 of them were returnees, including 74 men, 5 women and 4 minors. The majority of them has been judged in 2017. People who were not returnees have been judged because they planned to go to Syria, or because they were giving a financial help to the terrorist groups or because they wanted to commit terrorist attacks (Cat : 2018 : 29).

Trials of the FF are following three phases in order to show the guiltiness - or not - of the defendant. First, a focus is put on the departure of the person, if he/she had joined a network. Then, it is important to know if in Syria or Iraq, the person has followed a military training to learn how to use weapons. The last part is to understand why the individual came back to France (if he/she has been captured, if it is because of disillusionment etc) (Mégie, Jossin : 2016 : 55).

The case of Zakaria Chadili and Ziyeid Soueid can illustrate the difficulty caused by the trial of returnees and why a hard approach cannot be fully efficient. The two men decided to go to Syria at the beginning of 2014. Mr Chadili said he wanted to help the local population against Bashar El Assad, and he chose to join a camp to be trained. But soon, after some months, Zakaria Chadili decided to leave ISIS for the United Kingdom, where he has been arrested in June 2014. On the other hand, Mr Soueid is still in Syria, and is apparently helping ISIS to attract FF. Mr Chadili has been sentenced to six years in jail, while Ziyeid Soueid will have to stay ten years in prison. Nonetheless, one may underline the fact that Soueid has been judged while he was still in Syria. The legitimacy and the importance of the sentence can be put into question : even if a warrant for arrest has been issued for him, one can wonder what is the point to judge people who are not even back, and who may never be (Le Monde : 2016). These judgments of « *absence presumption* » are mainly done against FF that are suspected to be dead on the battlefield - even if it is very complex to prove it.

Nonetheless, it allows France to still look for them (in case they are alive) by using warrants for arrest (Cat : 2018 : 27).

Another serious failure regarding the French trials for returnees is directly linked to the judiciary sector itself. Specialized magistrates have to change of position every ten years (Thomson : 2016 : 124), as stated by the Article 28-3 of the law n° 2003-153 of the 26 February 2003 (Legifrance). This law is applied to all the specialized judges (not only the ones for terrorism), its aim was to promote the mobility of the magistrates, and to avoid that a magistrate could become too involved in his/her cases and geographical area (Sénat.fr). This law brings a fragility in the process of the FF's return. For instance, Marc Trévidic, one of the most famous counter-terrorism judge who was even respected by the jihadists themselves (Thomson : 2016 : 124) cannot be into counter-terrorism cases anymore, as he did it for ten years. This can be seen as a real paradox while he was expected to have a relevant experience because of his numerous previous cases.

Actually, it seems that France is limited by its hard approach towards the FF : they have to face a trial, to be judged for what they did and most of the time they end up with a jail sentence. But the country is not ready to face such a high number of FF, it leads to a Court saturation. After these trials, the FF are send to jail where, again, the solutions taken by the government are blurred and unstable.

### **3.1.4 The French prison**

There are different types of prison in France. First of all, there are the « *Maison d'arrêt* » (house of arrest), where the people are waiting for their trial with detainees who have been sentenced to least than two years of jail. It is the *maisons d'arrêt* which are the most crowded. Then, there are the establishments which are accommodating the persons who have been sentenced to more than two years of jail. Also, there are different categories within these establishments : there are 25 detention centers (for detainees who have the better chances of reintegration), 6 « *maisons*

*centrales* » (central house) where are regrouped the most dangerous detainees, 11 centers of semi-freedom and 43 penitentiary centers, which are the biggest structures and which can also combined a « *maison centrale* » (Vie Publique : 2014).

One should note that information regarding returnees and where they are incarcerated are complicated to be found. Most of the time, it is mentioned « *radicalized detainees* » linked to terrorism acts but it does not mean that it refers only to returnees.

In November 2017, Gérard Collomb, who was the Interior minister, has been asked by the deputy Gosselin what were the government's actions towards returnees, how many FF came back, and where they are. This intervention is a clear illustration of how blurred the situation is, that the threat is identify but actions that have to be taken are not defined. To Collomb, France is not facing a massive return : 178 men came back, and 120 of them are in jail. The ones who are not incarcerated are under the surveillance and control of the DGSI (general direction of the interior security). The DGSI has been created in 2014, as a part of the national police, and is considered as an intelligence service. It has to collect informations about matters that could have an impact on the national security. In the case of FF, the DGSI has to make sure they will not try to commit an attack or to leave again (Interieur.gouv).

On the other hand, 167 women are considered returnees, and only 15 of them are in jail, while the others are, as for men, under the DGSI's surveillance. Collomb also indicated that 59 minors are returnees, but they are not in prison. He ended his speech affirming that FF who have committed criminal acts in Syria and Iraq are incarcerated (Assemblée Nationale : 2017). Actually, 505 persons are in jail for events linked to islamic terrorism. But on this number, only 123 men are returnees, and 15 women. Another 1150 persons are convicted for radicalization (Loisy : 2018).

As mentioned earlier, this hard approach is facing important failures : since some years, French prisons are enduring a problem of over-population. There are 58 000 places in all France, but jails are over-occupied at 117 %. Actually the prison's population knew an increase of 54 % during the last fifteen years, while the French population increased of 7 % (Delarue : 2017 : 37). Regarding to the jail population, it is illegal to ask the religion of inmates in order to established statistics, but islam is

considered as the first religion in the French jails. Also, more than half of the detainees have immigrant roots, while they represent only 8 % of the French population (Loueslati : 2015 : 26).

The hard policy of France towards its FF and radicalized person combines with the over-population problem in jail leads to a new threat : the radicalization of other detainees. One may add that prisons around Paris are more exposed to this phenomenon because Courts where the terrorism trials are happening are based in Paris (Senat : 2018). The number of detainees who are at first sentenced for minor crimes and who slowly become radicalized is constantly increasing. For instance, the authorities are currently looking for 1 177 inmates who can potentially being considered as « *radicalized* » (Senat : 2018). To face this problem, the government is for now using the containment solution, namely to regroup FF together and to keep them separated from other prisoners.

Nevertheless, the case of Steven illustrates the limits of this hard approach. He came back from Syria and has been incarcerated one year in the prison of Fleury-Mérogis. There, he said that he met people with who he was in Syria, they were all together. He mentioned that most of the returnees in this jail were people who came back voluntarily, but they were far from reformed. They were radicalizing each other even more. Some of the detainees were saying they will commit an attack as soon as they will be out of prison and some of them were going even further, claiming they were willing to commit an attack during their incarceration (Thomson : 2016 : 121).

Because of the high number of French citizens who left for Syria and Iraq, the government was more focused on radicalization, how to impeach it and then on the potential return of FF. The question of the FF in jail is just another sub-category of a bigger threat which is the radicalization of French people. If at first the solution presented by the government, namely the prosecution of the FF, was satisfying the audience, it seems that it is not the case anymore. The public opinion is well aware of radicalization in jail and the limits of the hard approaches. This leads to the experimentation of softer measures, also in jail, even if for now FF do not seem to be fully incorporated in them.

## **3.2 Towards an implementation of soft measures**

Gilles de Kerchove, the EU Counter-terrorism coordinator, promoted the use of rehabilitation and reintegration as tools, in order to avoid numerous trials for the returnees (Entenmann, Van Der Heide, Weggemans, Dorsey : 2015 : 5). One may add that after the attacks in Madrid in 2004 and in London in 2005, none of the soft programs to fight radicalization was implemented in France. Namely, France was one of the few European states which did not raise its concerns on soft programs. Actually, until 2014, « *the foreign fighter dilemma (...) was thus treated as a terrorism-related crime and answered by means of repressive and judicial measures* » (Hellmuth : 2015 : 5). To the French authorities, terrorism was seen only as a crime that had to be punished by the law (Schwarzenbach : 2018 : 23).

### **3.2.1 The de-radicalization center**

From 2014 to 2016, the Interior Ministry asked the CPDSI to determine what are the first indicators of radicalization (Bouzar : 2017 : 600). This center was lead by Dounia Bouzar. The CPDSI had to prepare and train the law enforcement professionals in order to understand and to fight the phenomenon of radicalization, and also to help the families whom have relatives involved in ISIS. Nonetheless, one may underlines that the sample used by the CPDSI in order to make its conclusions was composed of 809 young people that « *were stopped at the border either by law enforcement agencies or by their own parents* » (Bouzar : 2017 : 601). It seems that the French government put its concern more on the French citizens who were trying to leave the country and who were radicalized, than on the returnees. One might bring the thought that maybe the government considered that it was already too late for the FF, that they crossed a line by fighting with ISIS, namely that de-radicalization, disengagement or rehabilitation would be risky and unsure. Or, another explanation could be that, as the journalist Thomson showed it, the common view was to think that the French people involved in ISIS would not come back, that they left in order to die in Syria or in Iraq (Thomson : 2016 : 18).

The Pontourny center (CPIC, centre de prévention, d'insertion et de citoyenneté) has been created in September 2016. Its aim was to receive radicalized persons who were not concerned by a judiciary case. It was seen as an opportunity to help radicalized people who could not be sent in jail (because they were just radicalized they did not commit any crimes) but who could represent a danger (who could prepare a violent action for instance). The Pontourny center was a test, and if it would have been successful, the French government had planned to open another 13 similar ones. The center could welcome up to 25 persons even if it never happened : it only had 9 persons maximum and in February 2017, the center was already empty. The people who could be enrolled in that center were selected. Namely, only men considered as « *not too dangerous* » were able to take part to the program. The selection was done under the UCLAT supervision. The UCLAT (Unité de coordination de la lutte antiterroriste) has been created in 1984 and since 2014, it is considered as one of the main actor against the terrorist threat. It has different aims : to evaluate the terrorist threat, it regroups informations about the persons considered as radicalized, it created a counter-speech in order to fight against the jihadist propaganda (Police nationale : 2018). Nonetheless, these information is strictly confidential while it could be used to identify a « profile type » or to work on which tools could be efficient to fight against radicalization. Researchers are denouncing this problem, stating that the French government is loosing an opportunity to improve its de-radicalization tools (Sénat : 2017 : 40).

In the end, 59 persons were considered serious candidates, but UCLAT decided that six of them did not fit the criteria, hence only 17 persons out of 59 were accepted in the center. Nonetheless, just before the start of the program, some people decided to cancel, which leads to such a few number of participants. The Pontourny center was a real failure. None of the radicalized person followed the program until the end. But even worst, it seems that the persons were radicalizing each others. This failure can be explained mainly because the program was relying on volunteering, namely the radicalized persons had to want to be « de-radicalized » which seems to be a paradox. Also, the participants were coming from all France, they were away from

their everyday lives, families and friends, which did not set up the good conditions to start such a program (Benbassa, Troendlé : 2017 : 27).

Even if the government finally took some measures to implement soft programs to fight against radicalization, the process and even the notion of de-radicalization are facing critics. For instance, Esther Benbassa, who has been charged to write a rapport for the Sénat about the efficiency of de-radicalization in France, said that « *de-radicalization does not exist : no one can believe today that a human being can de-ideology another human being in some months. It is an illusion, which has been maintained because there was a need to reassure the population after the terrorist attacks* ». Also, she is denouncing that when it is about religion, it is really complex to de-radicalize someone. Is it possible to explain to someone that his/her islam is not the « right » one and to propose him/her another one ? (Benbassa, Troendlé : 2017 : 30).

Besides, it seems that de-radicalization needs to be defined not to become a threat for the individuals. Namely, one can highlight that by wanting to reinsert the returnees, the state is interfering within the intimate sphere of the individual, trying to redefine what religion should be and how it should be practiced (Hanne : 2016 : 48). This is even more a concern in France, where the principe of *laïcité* is perceived as one of the core value of the state.

After the failure of Pontourny, the government decided to create another project : the RIVE program (Research and Intervention in extremist violence). This program was kept secret in order to avoid reproducing the Pontourny's mistakes. RIVE is directed by APCARS (Association of Applied Criminal Policy and Social Reinsertion). The RIVE program concerned 14 persons (all adults and from the Paris' area) and was this time compulsory. These persons were forced by a judge to attempt it (for instance, it could have been compulsory to follow the RIVE program while they were under judiciary control). Apparently two returnees are also involved, while it was not the case for Pontourny. On the 14 persons, there were 8 men and 6 women, and 10 of them were still waiting for their trials (France Inter : 2017). Also, it is

important to mention that this program did not take place in prison, in order to avoid even more radicalization. They were under judiciary control, but they could have an electronic tag or to be placed under house arrest. Besides, this time the authorities were not talking about de-radicalization anymore, but about disengagement, showing the will of the French government to move forward after Pontourny. If for now it is too early to say if RIVE was a success or not, one should mention that none of the 14 persons went back to jail for now (Hubert : 2017). Nonetheless, because of the novelty of the program and because the government tried to keep it secret, there is for now not enough documentation about the RIVE project.

### **3.2.2 Actions in prison : UPP, UPRA and QER**

The government created many different programs in order to face the problem posed by the returnees and the radicalized persons who could do proselytism in prison and so bring even more detainees into radicalization.

In 2014, a first action has been done by the government, as a test which took place in the prison of Fresnes. The authorities created a « *Unité de Prévention du Prosélytisme* » (UPP) to contain the radicalization of the inmates, mainly due to the over-population of the jail. The government decided to create five more UPP in other jails : two UPP to evaluate the detainees, and three UPP with specific programs, mainly in the Paris area and in the North of France. First, the detainees had to be evaluated in order to define their profiles, then they would be sent in one of the three other UPP, to follow an adapted program. Nonetheless, one may add that for the inmates who were considered as the most dangerous, the will of the authorities was to isolate them from the other radicalized detainees, because the situation would have been too dangerous. Also, this brings another concern : can radicalization be quantified ? Most of the time, inmates are using the technique of « *dissimulation* » - or *taqiya* -, namely they are behaving differently, so that to hide their radical beliefs (Hellmuth : 2015 : 28).

In these UPP, there were only 20 places, detainees were in individual cells to avoid any risks of proselytism. If these UPP could have looked like an isolation



area, the authorities claimed it was not the case. The persons in the UPP were the ones who had been sentenced for acts linked to islamic terrorism or inmates who were considered as radicalized and who were claiming for a violent action.

In 2015, Adeline Hazan, the controller general of places of deprivation of liberty (CGLPL), put into question the interest of regrouping radicalized people, claiming it was dangerous.

These UPP stopped existing and have been replaced by the Unité de Prévention de la Radicalisation (UPRA, unity of radicalization prevention) system in 2016, as it was stated in the *Plan de lutte anti-terroriste* (PLAT) of 2015 (Benbassa, Troendlé : 2017 : 25).

In 2017, 390 persons were sentenced for acts linked to islamic terrorism and another 1329 detainees would be, apparently, heading for radicalization. The detainees who were considered as the most dangerous and most radicalized were sent to the UPRA of Lille-Annoeullin, because the building was the most secured. Nonetheless, the UPRA experience ended quickly. First of all, few limits have been underlined : some detainees were pleased to be regrouped with other inmates who were sharing their ideas, concern which had been expressed earlier by Mrs Hazan. Then, in September 2016, a detainee violently attacked two guardians, he had passed « tests » to estimate his radicalization degree, and was not considered as dangerous. Here, it is a clear example of the *taqiya*, and how it seems impossible to quantify radicalization. For this reason, in October 2016, the government established a new plan, and the UPRA disappeared to become the « *quartier d'évaluation de la radicalisation* » (QER, district of radicalization evaluation) (Benbassa, Troendlé : 2017 : 20).

Nowadays, after his/her trial, a person convicted for terrorism has to be evaluated in order to determine in which prison he/she should be affected, according to his/her level of radicalization. There are three QER in France for now : one in the prison of Fleury-Mérogis, one in Osny and the last one is in Fresnes. The future detainees have to spend four months in one of these centers (Loisy : 2018).

In the QER, there are a limited number of places : for instance, in Fleury-Mérogis, only twenty places are available. This small number can be explained by the

measures that have to be taken to welcome these convicted persons. Actually, they have an individual cell in an isolated area. These detainees need more attention than the other ones, for instance, for twenty inmates linked to terrorism, there are fifteen guardians, while for the rest of the prison, there are only 150 workers for 800 detainees (Loisy : 2018).

The chief of the QER of Fleury-Mérogis has been interviewed, and she mentioned that some of the persons who were in the QER were coming back from Syria. This means that the returnees are mixed with radicalized person who never left France (Loisy : 2018). Nonetheless, one may add that only men are sent to the QER, women do not have to follow such a process (Joahny : 2018), even if in the rapport for the Sénat, it was stipulated that a QER for women should be created (Benbassa, Troendlé : 2017 : 21).

The French case is a clear example of how it is almost impossible to quantify an ideology or a behavior. As it seems, the authorities were willing to face radicalization by estimating it. Nonetheless, this process is useless : the government changed several times the name of the special structures implemented in jail (namely the UPP, the UPRA and then the QER), but one can wonder what really changed. It seems that the process stayed the same, with at the core of it, an evaluation of the radicalization degree. This will to continue in this way is even more incomprehensible after the attack of the two guardians by a detainee in 2016.

### **3.2.3 Actions in prison : the Muslim chaplain**

Radicalization occurs even more in prison. Nonetheless, one should mention the role of the Muslim chaplain in jail, action which seems to be efficient. In 2012, in the French prisons,

there were 1,249 « ministers of religion » (intervenants culturels) in the French prisons : 397 salaried, 689 « benevoles » or voluntary (unpaid), and 163 assistants of the religious ministers (auxiliaires d'aumônerie).

(Khosrohavar : 2014 : 2)

Within this number, there were 151 Muslim chaplain (Khosrohavar : 2014 : 2). These chaplains are a paradox in the French society. The law of 1905 established the separation of the state and religion. Nonetheless, in jail, chaplains are paid by the French state. Actually, the law of 1905 cannot be applied in the places of deprivation of liberty : because the people are detainees, they are not free to follow their religions as they would do, so the state has to find a way to counterbalance this.

The Muslim chaplain has to pass an exam on the concept of *laïcité*. This measure taken by the state aims to chose the imams who will be able to become a Muslim chaplain, and also to be sure that they will not increase radicalization among the inmates (de Gaulmyn : 2017). Furthermore, the approval of the Interior Ministry and the one of the jail's authorities are needed in order to hire a Muslim chaplain (A. Beckford, Joly, Khosrohavar : 2018).

Mohamed Loueslati is a Muslim chaplain for more than ten years now. In 2015, he decided to write a book, *L'Islam en prison « Moi, aumônier musulman des prisons françaises »* to expose his daily life, the challenges he has to face with the detainees, and how, to him, the government could fight even more against radicalization in prison. The majority of the Muslim detainees has a « *do-it-yourself islam* » namely, they prefer to renounce to all the principles and conditions that they find difficult to follow in order to affirm their authority. They reproduce the « *banlieue islam* » (suburb islam) which is tarnished by violence. The detainees have learnt religion by self proclaimed imam. To minimize this phenomenon, the government started to acknowledge the role of the Muslim chaplain. Their purpose is to impeach the jihadists to indoctrinate the other detainees. One could give the example of Farid Benyettou, a « *djihadiste repentant* »<sup>5</sup>. In an interview, he explains he was considered as a celebrity in jail, because he was a incarcerated for terrorism which « awards » him respect from the other inmates. A lot of « new » or « small » jihadists wanted to be in the same building as him, to see him, to talk with him (Bui : 2017). When facing such a phenomenon of fame, or even adoration towards a

jihadist, the role of the Muslim chaplain is crucial. He is maybe the only one who could be able to stop this fascination that detainees can have for the jihadists.

Nonetheless, there is a crucial lack of means. As the phenomenon is quite new, Mr Loueslati explains that the Muslim chaplains took example on the christian organization so that to be more efficient. But again, they are facing difficulties. For instance, for the Friday weekly pry, the number of Muslim detainees is too important, so they have to constitute several small groups. Because of security reasons, it is forbidden to have a group with more than fifty detainees. Also, a Muslim chaplain can meet a detainee when the person needs it, but the prisoners has to make a written demand, which has to be accepted by the prison's administration. Such a procedure takes time, and is not really flexible in case of emergencies. Another concern is that there is not enough Muslim chaplain. In some prison, when there is no Muslim chaplain at all, Mr Loueslati explains that he sends religious book to the christian chaplain, asking him to at least give the books to the Muslim detainees. This lack of chaplain gives enough room to the self proclaimed imam, increasing the chances of radicalization (Loueslati : 2015 : 57). It seems obvious that the number of Muslim chaplain should be three times superior (Khosrohavar : 2014).

## **Chapter 4 Analyze of the French policy**

### **4.1 Laïcité and history : at the roots of the French policy**

The French government chose to follow mainly a hard approach towards the FF even if, lately, some softer means have been integrated. This hard position can be explained by various factors. As mentioned earlier, the law of 1905 stated the concept of *laïcité* and the separation between the state and religion. It is seen as one of the roots of the French state. Nonetheless, the meaning of *laïcité* evolved : if in 1905 *laïcité* was the neutrality of the state towards religion, in 2018 it brings the idea of a religious neutrality of the individuals. This new understanding can become a threat to

the equality between people, because Muslims are mainly the ones who are suffering from this new approach. The change came slowly, but it seems more obvious since 1989, mostly because of the Algerian civil war (Baubérot : 2017 : 95).

In Algeria, the legislative elections of 1991 bring the emergence of a new party : the Front Islamique du Salut (FIS), an islamic party (Zerrouky : 2002 : 32). The current government was led by the Front de Libération National (FLN) and, as the FLN had the support of the French state, it feared the victory of the FIS. After the FIS' dissolution, the Groupes Islamistes Armées (GIA) have been created, aiming at committing attacks in Algeria and in France, in order to weaken the FLN but also to pressure the French authorities to stop supporting the Algerian government. Between July and October 1995, France knew a wave of bombs attacks led by the GIA in Paris and Lyon. The French government managed to fight against the GIA and soon, the attacks stopped (Gregory : 2010 : 133). Such events shaped the French policy towards islamist terrorism, and the authorities decided to use an hard approach in order to fight the threat,

The back-cloth to this response, which to an extent has facilitated its success, is a citizenship which often readily accepts the compromise of individual liberty for the collective good (...) and a political context in which a degree of vigor by the forces of the state is widely, though of course not universally, seen as a necessary price for continued security and order.

(Gregory : 2010 : 134)

Actually, the French counter-terrorism institutions (such as UCLAT) have emerged in the 1980s and are still used nowadays (Gregory : 2010 : 134). The way how the French state is dealing with radicalization and the FF is shaped by its previous experiences.

Actually, one should mention that after the 9/11 attacks, a various number of countries faced an increase of « anti-Islamic racism ». If France knew the same

impact, these « *Islamophobic attitudes* » started earlier, with the Algerian war. Also, between 2001 and 2004, several attacks took place in France against the Muslim community (the most common actions were graffiti telling that the Muslims should « *go home* »). It is obvious that the French government was having tense relationships with the Muslim community, and that the public opinion already tended to separate themselves from the Muslims (Geisser : 2010 : 43). Furthermore, several laws that have been passed by the French authorities had a serious impact on the perception of the Muslims. For instance, a law of 2004 forbid any religious symbols in school. This measure can be perceived as a mean to stop the Muslims girls of wearing a headscarf. And later, in 2010, the niqab became forbidden (Lequesne : 2016 : 308). In addition, since 1981, several riots took place in the « *banlieues* » (suburbs) of France, which leads to the riots of 2005 which lasted three weeks. It seems that the Muslims were suffering from discrimination acts (a mosque has been attacked for instance) and constant fights with the police, so the youth decided to protest (Pierre : 2013).

As seen earlier, the notion of *laïcité* evolved and has been impacted by the GIA attacks. Moreover, one should add that *laïcité* is linked to two fears that have to be taken into account in the context of the FF's return. The identity fear has its roots in the perception of the minorities as a threat (Baubérot : 2017 : 102). To go further, Pierre Tévanian, a philosopher, explains what he calls a « *cultural racism* ». To him, in France, Islam is perceived as a « *totalizing culture* » which could be a threat for the « *Western civilization* » (Geisser : 2010 : 44). On the other side, the republican fear, is connected with the idea that France has to stick to its heritage (the Revolution and the Enlightenment), and that religious values would not allow this (Baubérot : 2017 : 102). Namely that France still has this « *complex of a « republican purity* » ». This means that French (and mostly the elites) believe they have a role to play to free the Muslims, or to put in other words to emancipate them. The French case is quite complex and paradoxical : while Islam is « *institutionalized* », there are still strong fears about Muslims, which tends to Islamophobia (Geisser : 2010 : 45).

In fact, one could say that there are two visions of *laïcité* nowadays : a « *strict implementation of the principle of secularism* », which aims at keeping the religion hidden in the private sphere and, on the opposite, the « *open secularism* » which

wants to highlight the dark side of a strict secularism, namely that it could stir even more radicalism up (Lequesne : 2016 : 309).

The FF's threat became more obvious with Merah's case in Toulouse, in 2012, under the Sarkozy's government. The president decided to react by fighting the jihadist propaganda (online and in jail), but also by condemning every people who would go abroad in order to learn radical believes (RFI : 2012). Merah's attack happened only some months before the presidential election, Sarkozy did not have enough time to pursue his hard policy towards jihadism and FF. He did not hesitate to use the fear of the minorities, namely that these minorities could become a threat for France and its *laïcité* (Baubérot : 2017 : 97). This fear deeply rooted led to the implementation of hard responses towards the FF.

In 2012, after Hollande's election, the hard approach towards the FF that Sarkozy started to implement continued and it had been reinforced in January 2015, after the Charlie Hebdo attack and the implementation of the state of emergency (Hollis-Touré : 2016 : 219). One should add that the law which states the State of Emergency has been voted in 1955, meaning that this law cannot fit the actual context (Lequesne : 2016 : 307). Even if the government was leftist - unlike the Sarkozy's one- the policy remained quite the same.

The hard approach that has been followed by the French government did not change with the elections of new presidents. Sarkozy's government, Holland's government and Macron's one all led a similar policy, namely they all wanted to keep the FF away from France and were more focused on how to prevent radicalization than on how to reintegrate the FF. It seems that France was not prepared to face such a threat and the government tried to implement the easiest action in order to respond to the pressure of the people. For instance, France started to take measures against the FF and radicalization only after the happening of terrorist attacks on the French soil.

One can say that the roots of the France's position towards the FF are in the French values and past. Now that FF are coming back, the government is facing a new challenge and has to find new responses : the ones of 1995 cannot be applied anymore and the concept of *laïcité* has to adapt to the actual situation. It is probably for this

reason that the authorities started implementing soft measures so lately in comparison to the other EU states, and that the de-radicalization programs knew failures and have been remodeled.



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