



**THE UNTAPPED RESOURCE: THE ROLE OF THE
CRIMINAL JUSTICE SYSTEM WHILE DEALING WITH
CHILDREN WHO SYMPATHIZE WITH TERRORIST
GROUPS AND/OR COMMITTED TERROR-RELATED
CRIMES. PREVENTION, PROSECUTION, AND RETURN.**

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Introduction

Our research project is about the role of the Criminal Justice System when dealing with children who sympathize with terrorist groups and/or have committed terror-related crimes. We focused on prevention, prosecution, and return.

It was essential for us to investigate how children who have been involved in terror-related crimes could best be held accountable for their actions, but at the same time protected, since they are minors. For example, in case they face a trial, how should the procedure be carried out, and what form of punishment should be applied? Which possible ways of prevention should not be left out of consideration? How can the Criminal Justice System co-operate with civil society to prevent minors from being radicalized?

Trying to answer this very complex questions, we concentrated mainly on three aspects of this problematic issue:

1. how do the Criminal Justice Systems of the EU Member States Austria and Italy co-operate with civil society when dealing with minors who are at risk of being radicalized by terrorist groups, or have already undergone the process of radicalization?
2. what are the national differences of prevention and de-radicalization measures in the two countries? And
3. which measures have proven effective, ensuring respect for the human rights of the child while countering terrorism?

Theoretical framework

Within the literature, we identified important theories, such as the **Criminal Justice System Theory of Hahn**, which encourages a proactive approach and introduces the so-called **three-pillar model** based on "expanded concepts of community policing, community-based corrections, and restorative justice."

Also, the work of **Brantingham and Faust** is one of the most cited among the latest researches about the topic. It identifies the **three main stages of prevention: primary, secondary, and tertiary prevention**. The first stage of prevention is closely connected to education and spreading information about the potential threats of crime; in the second stage prevention programs are developed specifically for certain groups at risk, whilst tertiary prevention targets "those who have already succumbed to either criminality or criminal victimization". This is the phase where the Criminal Justice System traditionally enters the stage.

But, the **Poststructuralist Securitization Theory** represents in our view the most appropriate framework to analyze the issue, since it identifies **terrorism as a socially constructed threat**, resulting in the States strengthening their ties both internally and externally to counter it. Signs of radicalization demand immediate attention and the implementation of both prevention and de-radicalization measures to protect children and their human rights by all available means.

International solutions

Moreover, when it comes to measures adopted at the international level, it is important to mention:

1. **The United Nations General Assembly Global Counter-Terrorism Strategy**

Adopted (unanimously by the General Assembly by its resolution 60/288) in 2006 and renewed every 2 years, which explicitly addresses prevention and underlines that social inclusion at every level, especially with regard to youth, could reduce marginalization and the subsequent sense of victimization that propels extremism and the recruitment of terrorists.

<https://www.un.org/counterterrorism/ctitf/en/un-global-counter-terrorism-strategy>

2. Security Council Resolution 2178 (2014)

Which makes the link between violent extremism and terrorism explicit, and calls upon all Member States, in accordance with their obligations under international law, to cooperate in efforts to address the threat posed by foreign terrorist fighters, including by preventing the radicalization to terrorism and recruitment of foreign terrorist fighters, *as well as children*.

http://www.un.org/en/sc/ctc/docs/2015/SCR%202178_2014_EN.pdf

3. Security Council Resolution 2250 (2015) on Youth, Peace and Security

Which defines youth as persons aged 18 through 29, and also urges Member States to consider setting up mechanisms that would enable young people to participate meaningfully in peace processes and dispute resolution.

<http://www.un.org/press/en/2015/sc12149.doc.htm>

4. Plan of Action to Prevent Violent Extremism

Presented by the Secretary-General to the General Assembly on 15 January 2016, it emphasizes the need to take a more comprehensive approach encompassing not only ongoing, essential security-based counter-terrorism measures, but also systematic preventive measures.

http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/674

State of the Art Analysis: Italy

The Italian Constitution does not contain any provision referring to the limitation of fundamental rights in order to face security challenges. However, when it comes to terrorism and international threats, the Parliament can enact a so-called “emergency legislation”. An important example of counter-terrorism legislation is the law-decree n. 144/2005 which facilitates detention of suspects, mandates arrest for crimes involving terrorism and expedites procedures for expelling persons suspected of terrorist activities.

Moreover, in 2015, the Government drafted a new legislation to amend the Criminal Code on counter-terrorism.

Concerning the rights of children, Italy constitutes a good example from a legislative point of view, especially with respect to the transposition of international standards. The principle of the “best interest of the child” appears to be the basis of the Italian Juvenile Justice System. Nevertheless, children above the age of criminal responsibility can be arrested, detained and imprisoned. This means that children are drawn at an early age into Criminal Justice Systems that can stigmatize them and damage their long-term prospects and opportunities.

Although the principle of non-discrimination is formally and extensively recognized in the Italian legal system, both in the Constitution and in legislation, its actual implementation is less consistent. In but in some circumstances, children suffer discrimination precisely because they

are “under age”: for example, when they are not granted the opportunity to be listened to in respect of decisions which affect them directly.

One of the main challenges faced in the implementation in Italy is the fragmentation of competencies and functions between different institutions working with and for children.

State of the Art Analysis: Austria

According to Austria's Federal Office for the Protection of the Constitution and Counter-Terrorism, approximately 259 Austrian foreign fighters have been estimated until the end of 2015, with 79 having returned to Austria, and hundreds of people, including juveniles under the age of 18, have been accused of being members and/or active supporters of terrorist organizations. By taking over the Chairmanship of the OSCE in 2017, Austria becomes a key player in facing challenges relating to conflict prevention, post-conflict rehabilitation and the fight against transnational threats to peace and security. In this regard, the country has deepened the general effort in establishing and improving security, legislative and preventive measures in order to provide capacity building and legal assistance in the global fight against terrorism.

Following the Post-2015 Development Agenda of the UN, the rights and needs of children are taken into account in all activities and programs of the country, with special emphasis on the protection of children and juveniles within the Criminal Justice System. In the context of terrorism and radicalization, the protection of young people ultimately addresses the prevention of radicalization among minors as well as the re-socialization of young foreign fighters and sympathizers of violent extremist groups. This includes a special valuation and treatment of youth crimes, resulting in the maximum prison sentence for terrorist association, instruction and provocation to commit terrorist acts as well as the approval of terrorist activities usually being cut in half if the suspect is between 14 and 18 years old and, therefore, considered a “juvenile” under Austrian law. In addition, the Austrian Parliament passed a counter-terrorism legislation in December 2014 which, for instance, states that minors are not allowed to leave the country when suspected of voluntarily participating in violent extremist activities abroad.

The main focus of the adopted legislative and security measures is to provide professional support and the re-settlement into the social environment before, during and after detention in order to guarantee the minors’ safety. In practice, however, they often pose challenges to the rule of law as well as the implementation of human rights and thus must be improved in ways in which they comply with human rights standards, specifically with the rights of the child.

Methodology

Due to the possibility of approaching experts from different fields within the time available, the EU Member States Austria and Italy were chosen to be focused on in this research. Overall four interviews were conducted in each country, with most of the interviewees being engaged in a variety of organizations and institutions related to security and counter-terrorism, whereas others are members of civil society organizations and/or actors who are involved in de-radicalization and prevention work, including advice offices, NGOs and schools.

Based on the Qualitative Content Analysis, the main themes of the proposed interviews were categorized in a way in which the similarities and differences of implemented countermeasures in each country could be highlighted. In addition, the categories address the extent to which the adapted laws and legislations of the Criminal Justice System have been put into practice at national level.

Interview Analysis

Radicalization

A vital factor and recurring theme during the interviews was the process of radicalization. The interviewees elaborated on it without exception, which leaves no doubt that understanding the undercurrents of radicalization processes is of crucial importance when dealing with minors who are at risk or have already been involved in terror-related crimes.

Risk factors and main tendencies

In the case of Austria, some of the most common factors contributing to the radicalization of minors are social exclusion, marginalization, a deep-rooted identity crisis as well as the lack of a sense of belonging. According to the experts interviewed, tremendous threat lies in not making efforts to guarantee that all young people receive the same opportunities regardless of their ethnic and social background. It was, however, stressed that motives for radicalization can slightly differ depending on gender. For instance, many young women join violent extremist groups in order to marry a jihadist, whom they consider a hero in this regard, whereas young men are often driven by the possibility of experiencing heroism on their own and committing acts of violence without limitations, as it is deemed legitimized in their radical ideology.

Based on the interviews carried out with Italian experts, the children of migrants and refugees are considered one of the most vulnerable groups when it comes to radicalization. On the one hand, it is due to their young age and the fact that in many cases they are unaccompanied; on the other hand, even if they arrive with their families, there is a great amount of instability to face in their lives, such as the lack of education and repeatedly interrupted studies due to their constant movement. As a result, migrants and refugee children might not be able to receive the support of the community, which is crucial at such an early phase of the human development and otherwise provided by the educational system.

Offered opportunities and a sense of belonging

Apart from underlining the role of external factors which contribute to the radicalization of minors, many of the experts drew attention to the importance of identifying the motives of young people for turning towards radical groups. In many cases, young people, who feel socially excluded and marginalized, have little to no access to meaningful further education and employment and are struggling with finding their place in society. It is this problematic situation which violent extremist groups take advantage of, offering a sense of belonging to a significant collective, and social, political and economic opportunities in order to satisfy the youth's needs and to recruit them.

Prevention/ De-radicalization

Our second main category is related to the prevention/deradicalization process whose importance was highlighted many times during the interviews. Five main components were identified within this category, the first being the cooperating actors.

In Austria, there is significant amount of cooperation between the Criminal Justice System, civil society organizations education authorities and schools. The established prevention programs provide professional advice by the federal ministries' Extremism Information Centre as well as a large number of workshops to assist prison chaplains, police officers, teachers, youth and social workers.

In Italy, cooperation happens mainly between the executive and judiciary branches. Apart from that, there is collaboration between schools with a significant number of children with migration background as well as refugee centers which collaborate with first aid and the judicial system.

Target groups

Regarding the target groups, in Austria prevention methods are designed in a way that not only youth at risk of being radicalized, but their family members and relatives are involved in the process as well. Furthermore, citizens and other relevant actors have opportunity to get educated about radicalization. In Italy, schools mainly focus on minors and young adults, while the Criminal Justice system monitors returnees accused of having committed terror-related crimes and suspects who are still minors receive permanent support especially.

Prevention

Concerning the prevention approaches, in Italy there is a tendency to recognize migrants as the most vulnerable group, therefore prevention is based on the integration of migrants of all generations. In Austria, not only the vulnerable group, also the Austrian population as a whole is a central element. Efforts are made to reduce stereotypes and prejudices regarding the Muslim community through inter-religious and inter-cultural dialogue.

As for the preferred means to achieve goals, Austria aims to reduce radicalization of children by offering economical perspectives, proper education, protection, supervision, therapy and permanent support. Also, there is a daily helpline offering professional advice by phone or in person, if needed. In Italy integration through school is being achieved by opportunities to take part in theatre and dance classes, language courses, workshops, counselling and cultural mediation. Apart from that, recent updates in the criminal code increase prison terms for recruiters and those who organize, finance or promote travel for terrorism-related purposes.

Difficulties and gaps

With regard to the identified difficulties and gaps, in both countries there is a lack in funding and financial support from the government. A longer-term care for minors is also needed as well as a more gender-specific approach, as measures mainly focus on young male migrants, making it difficult for young women to be involved in the prevention process. Lastly, a more holistic approach is needed, one that focuses not only on Islamic but all types of extremism and radicalization.

Human rights of the child

When it comes to human rights, no cases of violated children's rights have been reported in Austria. However, experts say that the right of privacy as well as protection against violence can be at stake as the act of arresting itself can be violent. In Italy, there is a risk of indirectly committing torture because of the practice that a suspected terrorist can be sent back to their country of origin where law enforcement is well-known for not respecting human rights.

Conclusion

In conclusion, we can summarize that one of the main challenges detected is the fragmentation of competencies and functions between different institutions working with and for children. There is a crucial need of the involvement of civil society throughout the whole de-radicalization and prevention process. Moreover, significant gaps in terms of funding were

recognized, especially regarding training programs for teachers and police in Italy and for long-term support for minors in Austria.

One aspect which appears to be rather overlooked is the gender-specific approach of prevention measures, even though the reasons of young men and women being radicalized can differ significantly. In addition, there is a need to focus on all types of extremism and radicalization and be directed on all kinds of social groups. The problem is that preventative measures tend to target young men with migration background, which is the biggest limitation of prevention programs, especially since the tendency of targeting young male migrants itself could lead to feelings of social exclusion and discrimination and, therefore, foster radicalization.

In order for prevention and de-radicalization measures to be effective, all relevant actors shall be equally involved: the government, the police, civil society organizations, the institutions focusing on the protection of children, youth and social workers, schools and families. Moreover, more training programs and workshops shall be implemented and carried out, as education plays a key role in dealing with this issue.

Even if both Austria and Italy have implemented international norms effectively, the problem cannot be tackled only at a national level. A global effort and international dialogue is necessary in order for prevention and de-radicalization measures to be successful. De-radicalization measures are essential to help minors who have been imprisoned to re-integrate into society, offering them alternatives to satisfy their needs and, most importantly, relationships and networks after their prison sentence. Taking care of them during their trial and prison sentence is not enough; permanent and continuous support afterwards is also needed.

It emerged that integration at schools is the most effective if various learning modules are offered, what however depends on the funding. With better funding, schools can offer children language courses in their own mother-tongue, keep the school open during the summer holidays or at late hours, and provide training programs for teachers.

After carrying out the interviews, it was clear that prevention measures should focus on all young people - Muslims or not, men or women, rich or poor - need to be taken into consideration equally when trying to prevent them from turning towards radicalization and terrorism. Only through inter-cultural dialogue between all minorities and the majority of the population, these young men and women can feel fully integrated and acknowledged as part of the same society, which also includes education of society in order to remove the prejudices and stereotypes.