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Committee on Legal Affairs and Human Rights

Prosecuting and punishing the crimes against humanity or even possible genocide committed by Daesh

Replies to questionnaire

Rapporteur: Mr Pieter OMTZIGT, The Netherlands, the Group of the European People's Party

* Document declassified by the Committee on 5 September 2017.

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Questionnaire

Rapporteur, Mr Pieter Omtzigt (The Netherlands, EPP/CD), on “Prosecuting and punishing the crimes against humanity or even possible genocide committed by Daesh”

The present request is intended to provide information for the preparation of a report on how the international community can ensure that members of Daesh (ISIS) are most effectively brought to justice for the offences under international criminal law that they have committed in Syria and Iraq, Rapporteur: Mr Pieter Omtzigt (The Netherlands, EPP/CD).¹

The information obtained will be used to help formulate concrete policy recommendations by the Parliamentary Assembly to member States and other international organisations and to the Committee of Ministers of the Council of Europe.

1. How many persons from your country are known or suspected to have travelled to areas that are or have been under the control of Daesh, for the purpose of engaging in Daesh activities?² How many have returned?
2. What is your country's policy concerning the treatment of such returnees?
3. Have any such returnees been prosecuted for offences committed whilst engaged in Daesh activities abroad? If so, please indicate how many such prosecutions have taken place and provide details of the offences, the outcome of the prosecutions and any sentences imposed.
4. Have any persons been prosecuted for offences committed within your country relating to Daesh activities abroad?³
5. What is the position of your country concerning exercise of universal jurisdiction over offences under international criminal law?
6. Has your country taken position on the question of whether or not certain acts of Daesh constitute genocide, as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide? If so, what position has it taken, and in what institutional context(s) has this position been expressed?

¹ Further information on the background to the report and the Rapporteur's position can be found in his Introductory Memorandum at <http://website-pace.net/documents/19838/3115026/AS-JUR-2017-07-EN.pdf/282a11cc-db85-4171-8c3a-9e9b049fb95e>.

² The expression 'persons from your country' is intended to include citizens, nationals and permanent residents.

³ Examples of such offences would include public provocation to commit a terrorist offence, recruitment for terrorism, training for terrorism, financing of terrorism, participating in an association or group for the purpose of terrorism, receiving training for terrorism, travelling abroad for the purposes of terrorism, funding travelling abroad for the purpose of terrorism and organising or otherwise facilitating travelling abroad for the purpose of terrorism. For definitions of these offences, see in particular the 2005 Council of Europe **Convention on the Prevention of Terrorism, CETS no. 196 and the 2015 Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, CETS no. 217**.

AUSTRIA

Replies received on 30/06/2017

1. How many persons from your country are known or suspected to have travelled to areas that are or have been under the control of Daesh, for the purpose of engaging in Daesh activities? How many have returned?

Altogether 304 individuals are known/ suspected to have travelled or to have been prevented from travelling from Austria to areas under the control of Daesh for the purpose of engaging in Daesh activities. 104 are currently in the conflict zone, 53 were supposedly killed, 94 have so far returned and 53 were prevented from travelling.

2. What is your country's policy concerning the treatment of such returnees?

From a law enforcement authorities point of view the aim is to launch criminal proceedings and – where legal requirements are fulfilled – to bring charges against such returnees.

Of course deradicalisation and reintegration during and after imprisonment are also an important challenge to work on.

3. Have any such returnees been prosecuted for offences committed whilst engaged in Daesh activities abroad? If so, please indicate how many such prosecutions have taken place and provide details of the offences, the outcome of the prosecutions and any sentences imposed.

Yes, returnees have been prosecuted for offences committed whilst engaged in Daesh activities abroad. As the data and statistics which are available don't differentiate between returnees and other accused persons or Daesh and other terrorist associations, detailed answers to the questions are (unfortunately) not reasonable.

But the following example can be given:

In December 2014 the defendants (two couples) went with their minor children to Syria in order to join Daesh. They stayed there till early 2016. The children were raised after the requirements of and with the ideology of Daesh. The fathers were instructed in the Sharia, received military training and treated injured terrorist fighters. One father also participated in combats, partly as sniper, and instructed other terrorist fighters in the use of firearms.

By judgement of 2nd of June 2017 of the Regional Court for criminal law matters Graz the defendants were found guilty of the offences of criminal organization § 278a StGB, terrorist association § 278b Abs 2 StGB and one father also training for the purpose of terrorism § 278e StGB. They were sentenced to 9 years (one mother) and 10 years (the one mother, the two fathers) in prison. The judgement is not yet final.

4. Have any persons been prosecuted for offences committed within your country relating to Daesh activities abroad?

Yes, persons have been prosecuted for offences committed in Austria relating to Daesh activities abroad. Examples of these offences are recruitment for terrorism, financing of terrorism, participating in an association or group for the purpose of terrorism and travelling abroad for the purpose of terrorism. In Austria also a number of persons who are "not from our country" (for example Syrian refugees) and committed offences whilst engaged in Daesh activities abroad have been prosecuted as the application of Austrian criminal laws extends under special circumstances to offences committed abroad by foreign nationals.

5. What is the position of your country concerning exercise of universal jurisdiction over offences under international criminal law?

According to section 64 paragraph 1 of the Austrian Penal Code the application of Austrian criminal laws extends to (i.e. Austria has jurisdiction over) i.a. the following offences when committed abroad, irrespective of the laws of the place where these offences occurred:

„(...)

4c. torture (§ 312a), disappearance of a person (§ 312b), and offences under Division Twenty-five [of this Code: Genocide, Crimes against Humanity, War Crimes], if

- a) the perpetrator or the victim is an Austrian national,
- b) the offence has infringed on other Austrian interests, or returnees and other accused
- c) the perpetrator was, at the time of the offence, a foreign national who either has his or her place of habitual residence in Austria or who is present in Austria and cannot be extradited;

(...)

9. terrorist association (§ 278b) and terrorist offences (§ 278c) as well as offences under §§ 128 to 131, 144, 145, 223, and 224 if they are committed in connection with a terrorist association or a terrorist offence, training for the purpose of terrorism (§ 278e), and instructing to commit a terrorist offence (§ 278f), if

a) the perpetrator, at the time of committing the offence, was an Austrian national or if the perpetrator acquired Austrian citizenship after the offence and holds Austrian citizenship at the time criminal proceedings are instigated,

b) the perpetrator has his or her place of residence or habitual residence in Austria,

c) the offence has been committed to the benefit of a legal person based in Austria,

d) the offence has been committed against the National Assembly, the Federal Council, the Federal Assembly, the Federal Government, a State Parliament, a State Government, the Constitutional Court, the Administrative Court, the Supreme Court of Austria, another court or government agency, or against the people of the Republic of Austria,

e) the offence has been committed against an Austrian-based institution of the European Union or an entity established in accordance with the Treaties establishing the European Communities or the Treaty on European Union,

f) the perpetrator was, at the time of committing the offence, a foreign national who is present in Austria and cannot be extradited;

10. financing of terrorism (§ 278d), if

a) the perpetrator, at the time of committing the offence, was an Austrian national or if the perpetrator acquired Austrian citizenship after the offence and continues to hold Austrian citizenship at the time criminal proceedings are instigated,

b) the perpetrator was, at the time of committing the offence, a foreign national who is present in Austria and cannot be extradited;

(...).“

6. Has your country taken position on the question of whether or not certain acts of Daesh constitute genocide, as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide? If so, what position has it taken, and in what institutional context(s) has this position been expressed?

Austria has not taken position on that question.

The answer to question one was provided by the Federal Ministry of the Interior, all the other questions were answered by the Federal Ministry of Justice.

AZERBAIJAN

Replies received on 06/06/2017

According to your request of May 16, 2017 we would like to inform you that a number of changes have been made in the Criminal Code of the Republic of Azerbaijan in order to adapt the Law of the Republic of Azerbaijan No. 27-VQ dated December 4, 2015 on "Struggle against religious extremism" with the Law No. 365-VQD dated October 28, 2016.

So that, Articles 167-1.4 and 167-1.5 were added to the article 167-1 of the Criminal Code called coercion to the confession of religion or financing of these actions committed on the basis of the religious enmity, religious radicalism or religious fanaticism.

167-1.4. Actions considered in the article 167-1.1 of this Code when committed on the basis of religious enmity, religious radicalism or religious fanaticism – is punished by a fine from 7 000 to 9 000 manats or an imprisonment from 2 to 5 years.

167-1.5. Financing the actions committed on the basis of religious enmity, religious radicalism or religious fanaticism considered in the article 167-1.1 of this Code – is punished by an imprisonment from 2 to 5 years.

Besides, new article 167.3 was added to the Criminal Code in the following content:

"Preparation, keeping, spreading of religious extremist materials or financing of these actions

167-3.1. Preparation, keeping or spreading of religious extremist materials i.e. calling for implementation of religious extremist activity or justifying such activity or materials to substantiate the need for such activities – is punished by a fine from 8 000 to 10 000 manats or imprisonment from 2 to 5 years.

167-3.2. Financing of actions considered in the article 167-3.1 of this Code – is punished by an imprisonment from 2 to 5 years".

New article 214.2.6 called religious enmity, religious radicalism or religious fanaticism was added to the article 214 called terrorism:

New article 278.2 was added to the Code in the following content.

"278.2. Constitutional structure of the republic of Azerbaijan including violent change of its secular character or division of the territorial integrity or actions aimed to the violent seizure of power committed on the basis of religious enmity, religious radicalism or religious fanaticism – is punished by an imprisonment from 15 to 20 years".

In the same order the new article 279.1-1 was added to the article 279 in the following content:

"279.1-1. Creation of armed formations or groups or participation at the same formations or groups considered in the article 279.1 of this Code committed on the basis of religious enmity, religious radicalism or religious fanaticism – is punished by an imprisonment from 6 to 10 years".

Articles 283.1-1 and 283.3 were added to the article 283 called "national, racist, social or religious hatred and provocation of hostility" in the following content:

"283.1-1. Actions considered in the article 283.1 of this Code when committed on the basis of religious enmity, religious radicalism or religious fanaticism – is punished by an imprisonment from 3 to 5 years.

283.3. Financing of the actions considered in the article 283.1 of this Code committed on the basis of religious enmity, religious radicalism or religious fanaticism – is punished by an imprisonment from 3 to 5 years."

CANADA

Replies received on 30/06/2017

1. How many persons from your country are known or suspected to have travelled to areas that are or have been under the control of Daesh, for the purpose of engaging in Daesh activities? How many have returned?

According to a recent [report](#) prepared by [Public Safety Canada](#), as of the end of 2015 about 180 individuals that have “a nexus to Canada were abroad and suspected of engaging in terrorism-related activity”. Furthermore, “As of the end of 2015, the Government of Canada knew of about 60 extremist travellers who had returned to Canada”.

- Source: Public Safety Canada, “[2016 Public Report on the Terrorist Threat to Canada](#),” *Publications*.

2. What is your country’s policy concerning the treatment of such returnees?

There is no publicly available official policy concerning the treatment of such returnees in Canada. However, the [Royal Canadian Mounted Police \(RCMP\)](#) and the [Canadian Security Intelligence Service \(CSIS\)](#) monitor their activities in order to determine whether or not they are/will be a threat to security and safety.

Also, the Minister of Public Safety has very recently launched the [Canada Centre for Community Engagement and Prevention of Violence](#) which will be “a source of advice, research and funding [that will] work with youth, communities, academia and stakeholders to help prevent radicalization to violence in Canada”.

- Sources: Public Safety Canada, “[Canada Centre for Community Engagement and Prevention of Violence](#),” *Public Safety Canada – Home*.
Senate, Standing Committee on National Security and Defence, [Evidence](#), 1st Session, 42nd Parliament, 7 March 2016.

3. Have any such returnees been prosecuted for offences committed whilst engaged in Daesh activities abroad? If so, please indicate how many such prosecutions have taken place and provide details of the offences, the outcome of the prosecutions and any sentences imposed.

The following is an excerpt from the above-mentioned Public Safety Canada publication:

Twenty individuals have been convicted of terrorism offences under the Criminal Code since 2002. Another 21 have been charged with terrorism-related offences (including 16 since January 2015) and are either awaiting trial or have had warrants issued for their arrest.

In September 2015, the Ontario Superior Court of Justice sentenced two men for conspiring to derail a Via Rail train. Both received a sentence of life imprisonment for conspiring to murder persons unknown for the benefit of a terrorist group, a violation of section 83.2 of the Criminal Code. One received a second life sentence for conspiring to interfere with transportation infrastructure for the benefit of a terrorist group, also a violation of section 83.2. Each received additional sentences for multiple counts of participating in the activities of a terrorist group, a violation of section 83.18(1).

In December 2015, the Court of Quebec, Youth Division, found a 16-year-old male guilty of committing an offence for the benefit of, at the direction of, or in association with a terrorist group, a violation of section 83.2 of the Criminal Code. The Court also found him guilty of attempting to leave Canada to participate in the activities of a terrorist group, a violation of section 83.181. The youth was 15 at the time of the offences and had previously pleaded guilty to robbing a convenience store to help finance his departure to the Syrian conflict zone.

- Source: Public Safety Canada, “[2016 Public Report on the Terrorist Threat to Canada](#),” *Publications*.

Since the report from Public Safety Canada was published, the following charges/arrests have been made by the RCMP:

- [5 April 2017 - RCMP charge a man for leaving Canada to participate in activity of terrorist group](#)
- [18 November 2016 - RCMP lay criminal charges in hoax threat](#)
- [31 May 2016 - RCMP Integrated National Security Enforcement Team lays terrorism charge against Ayanle Hassan Ali](#)
- [29 March 2016 - RCMP Integrated National Security Enforcement Team lays terrorism charge against Kevin Omar Mohamed](#)

- [11 March 2016 - 28-year-old Gatineau resident charged with terrorism](#)

4. Have any persons been prosecuted for offences committed within your country relating to Daesh activities abroad?

Please refer to the answer to question 3.

5. What is the position of your country concerning exercise of universal jurisdiction over offences under international criminal law?

As stated on the website of [Global Affairs Canada](#), “Canada supported the ICC [International Criminal Court] effort from the very beginning and continues to support the ICC with crucial leadership, advocacy and resources. Canada played a pivotal role in the movement for the International Criminal Court and contributed to its development in a variety of important ways”.

When Canada adopted the *Crimes Against Humanity and War Crimes Act* in 2000, “it became the first country in the world to incorporate the obligations of the Rome Statute into its national laws”. This act incorporates several grounds of jurisdiction, including universal jurisdiction, “which allows Canada to prosecute any individual present in Canada for crimes listed in the CAHWCA - regardless of that individual's nationality or where the crimes were committed”.

- Sources: Global Affairs Canada, “[Canada and the International Criminal Court](#),” *Foreign Policy*. Global Affairs Canada, “[Canada's Crimes Against Humanity and War Crimes Act](#),” *Foreign Policy*.

Should this be of any interest to you, the Library of Parliament has published a paper on the ICC:

- Laura Barnett, [The International Criminal Court: History and Role](#), Publication no. 02-11-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 4 November 2008.

6. Has your country taken position on the question of whether or not certain acts of Daesh constitute genocide, as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide? If so, what position has it taken, and in what institutional context(s) has this position been expressed?

The website of Global Affairs Canada indicates the following:

On June 15, 2016, the Independent International Commission of Inquiry on the Syrian Arab Republic published its findings that Daesh has committed, and is continuing to commit, crimes of genocide, crimes against humanity and war crimes against the Yazidi population of Sinjar, a town in northern Iraq. In light of these troubling findings, Canada believes that genocide against the Yazidis of Sinjar is ongoing.

- Source: Global Affairs Canada, “[Canada calls on United Nations Security Council to address Daesh atrocities in Iraq and Syria](#),” *Global Affairs Canada – Home*.

Additionally, on 25 October 2016, the House of Commons adopted an opposition motion to recognize the genocide being committed against the Yazidi people.

- Source: House of Commons, [Debates](#), 1st Session, 42nd Parliament, 25 October 2016. House of Commons, “Opposition Motion – Genocide against the Yazidi People,” [Status of House Business](#), 1st Session, 42nd Parliament, 25 October 2016.

To date, Canada has not taken any other position concerning whether or not certain acts of Daesh constitute genocide.

Finally, the following links may also be of help to you:

- [Canadian Security Intelligence Service - What Comes After Daesh?](#)
- [Royal Canadian Mounted Police - Terrorism and Violent Extremism Awareness Guide](#)
- [Global Affairs Canada - Canada's response to Middle East crises and violent extremism](#)

CYPRUS

Replies received on 06/07/2017

1. How many persons from your country are known or suspected to have travelled to areas that are or have been under the control of Daesh, for the purpose of engaging in Daesh activities? How many have returned?

Based on the information available, no Cypriot citizens have been detected to have travelled to the warzones with the aim to join terrorist groups and fight in ISIL / DAESH territory.

2. What is your country's policy concerning the treatment of such returnees?

(a) Cyprus fully implements :

(i) Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (Official Journal (OJ) L164, 22.6.2002, p.3) as it was amended by Council Framework Decision 2008/919/JHA of 28 November 2008,

(ii) Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences

(iii) Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism

(iv) Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaida organizations.

(b) Cyprus has signed the Additional Protocol of the Council of Europe's Convention on the Prevention of Terrorism, that aims at preventing and limiting the flows of "foreign terrorist fighters" to countries such as Syria and Iraq, by criminalising participation in a terrorist group or travelling abroad for the purpose of terrorism, as well as training, organising or funding travel for that purpose.

3. Have any such returnees been prosecuted for offences committed whilst engaged in Daesh activities abroad? If so, please indicate how many such prosecutions have taken place and provide details of the offences, the outcome of the prosecutions and any sentences imposed.

No.

4. What is the position of your country concerning exercise of universal jurisdiction over offences under international criminal law?

Cyprus has signed and ratified the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Law.59/1980). Article VI of the said convention provides that "*persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction*".

Furthermore article 5 of the Penal Code (Chapter 154) provides that the Criminal Code and any other law constituting an offense are applicable to all offenses committed in any foreign country by any person if the offense is one of the offenses for which, under any International Treaty or Convention which binds the Republic, the law of the Republic is applied.

5. Has your country taken position on the question of whether or not certain acts of Daesh constitute genocide, as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide? If so, what position has it taken, and in what institutional context (s) has the position been expressed?

Cyprus has not taken position on this matter yet.

DENMARK

Replies received on 30/06/2017

Question 1 to 4 is answered by the Danish Ministry of Justice and question 5 and 6 is answered by the Ministry of Foreign Affairs of Denmark:

1. How many persons from your country are known or suspected to have travelled to areas that are or have been under the control of Daesh, for the purpose of engaging in Daesh activities?⁴ How many have returned?

According to PET's Assessment of the terror threat to Denmark of 7 February 2017, PET's Center for Terror Analyses (CTA) assesses that a minimum of 145 persons have left Denmark for Syria/Iraq since the summer of 2012. This number may be higher. CTA assesses that just below half of those who have left are now back in Denmark. Nearly one quarter remains in the conflict zone and one quarter is assumed killed.

CTA assesses that only very few persons have left within the last year and that the vast majority of these are younger women. Women now constitute approximately one third of the individuals from Denmark who are located in the conflict zone and nearly one in every eight of those who have travelled from Denmark to the conflict zone in total. The rest are mainly younger men.

The number of individuals who return to Denmark from Syria/Iraq has been declining since mid-2014. The vast majority of the male individuals who are located in the conflict zone, have been there for more than a year. CTA assesses that the military pressure on IS entails an increased risk that those who have gone to join the conflict will be killed, wounded or taken as prisoners. This development may have the consequence that more individuals will leave the conflict zone either to return to Denmark or to go to other countries.

CTA assesses that individuals who have been staying with militant Islamist groups like IS may be radicalised, brutalised and prone to violence when they return home. This influence may be greater if their stay has been lengthy. Having gained combat experience and undergone training, such individuals may have increased their capability to commit acts of terrorism and may have developed a high degree of security awareness. CTA assesses that such individuals may lead to an increased terror threat against Denmark or Danish interests abroad. This threat emanates from both men and women.

CTA assesses that returned foreign fighters may contribute to the radicalisation of groups and individuals in Denmark, including other prisoners while serving a sentence.

CTA assesses that returned Danish foreign fighters may have established links to other foreign fighters abroad and become part of transnational networks capable of contributing to the preparation and execution of terrorist attacks. Attacks that are prepared in one country but executed in another may be more difficult to uncover and prevent.

CTA assesses that the threat from returnees may become apparent within a very short time frame, but it can also remain dormant and not appear until later, e.g. following a triggering event. This may also become an issue in relation to minors who together with their parents have stayed with militant Islamists in the conflict zone.

2. What is your country's policy concerning the treatment of such returnees?

Denmark has taken appropriate measures against the threat from returning foreign fighters.

In 2015 the government established a special task force focusing on creating the best conditions for putting them on trial upon return.

Denmark has also, among other things, passed legislation on treason and raised the penalty for the recruitment to join a hostile force, which can now be punished by up to 16 years of imprisonment.

There has also been passed legislation that enables the government to ban people from travelling to and staying in certain conflict areas without prior permission. And thus an executive order was issued in September last year that covers the certain districts in Syria and Iraq.

⁴ The expression 'persons from your country' is intended to include citizens, nationals and permanent residents.

3. Have any such returnees been prosecuted for offences committed whilst engaged in Daesh activities abroad? If so, please indicate how many such prosecutions have taken place and provide details of the offences, the outcome of the prosecutions and any sentences imposed.

In Denmark currently one returnee has been convicted for offences committed whilst engaged in Daesh activities in Syria. The Person was convicted of violating the Danish Penal Code section 114 b, nr. 1, as read with art. 21, attempting to provide financial support to a terrorist group and section 114 c, para. 3, letting yourself be recruited to commit terrorist acts.

The returnee has been convicted by both the District Court and, following an appeal, by the High Court. The High Court sentenced him to six years imprisonment, loss of citizenship and expulsion from Denmark with a permanently ban from reentry.

Following a decision by the Appeals Decision Board the case is currently pending court proceedings at the Danish Supreme Court.

Further, six more persons have been indicted for violating the Danish Penal Code section 114 c, para. 3, letting yourself be recruited to commit terrorist acts and section 114 d, para. 3, letting yourself be trained to commit terrorist acts. All related to Daesh activities in Syria. These cases are still pending prosecution at the first instance court.

4. Have any persons been prosecuted for offences committed within your country relating to Daesh activities abroad?⁵

See answer to question number 3.

5. What is the position of your country concerning exercise of universal jurisdiction over offences under international criminal law?

The Danish penal code provides that Denmark has universal jurisdiction over offences where there under international law exists an obligation for Denmark to have jurisdiction.

6. Has your country taken position on the question of whether or not certain acts of Daesh constitute genocide, as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide? If so, what position has it taken, and in what institutional context(s) has this position been expressed?

The Danish government has not taken a formal position on this issue.

⁵ Examples of such offences would include public provocation to commit a terrorist offence, recruitment for terrorism, training for terrorism, financing of terrorism, participating in an association or group for the purpose of terrorism, receiving training for terrorism, travelling abroad for the purposes of terrorism, funding travelling abroad for the purpose of terrorism and organising or otherwise facilitating travelling abroad for the purpose of terrorism. For definitions of these offences, see in particular the 2005 Council of Europe **Convention on the Prevention of Terrorism, CETS no. 196 and the 2015 Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, CETS no. 217.**

FINLAND

Replies received on 29/06/2017

1. How many persons from your country are known or suspected to have travelled to areas that are or have been under the control of Daesh, for the purpose of engaging in Daesh activities? How many have returned?

About 80 persons (adults) have travelled to areas under control of Daesh and about 20 have returned.

2. What is your country's policy concerning the treatment of such returnees?

See the attached abstract of the report "Proposal for Arranging Cross-sectoral Cooperation on Managing Returnees from Conflict Zones" (29.3.2017). [Whole report](#) (in Finnish).

3. Have any such returnees been prosecuted for offences committed whilst engaged in Daesh activities abroad? If so, please indicate how many such prosecutions have taken place and provide details of the offences, the outcome of the prosecutions and any sentences imposed.

In Finland, there have been no cases related to returnees from conflict zones. (Source: The Office of the Prosecutor General).

4. Have any persons been prosecuted for offences committed within your country relating to Daesh activities abroad?

There have been no cases involving attacks committed within our country that would have been related to Daesh activities outside Iraq and Syria. (The Office of the Prosecutor General).

5. What is the position of your country concerning exercise of universal jurisdiction over offences under international criminal law?

[In the Criminal Code of Finland](#), Chapter 1, Section 7 related to regional jurisdiction applies to international offences (the so-called universality principle). Pursuant to Section 7(1), Finnish law applies to an offence committed outside of Finland where the punishability of the act, regardless of the law of the place of commission, is based on an international agreement binding on Finland or on another statute or regulation internationally binding on Finland (international offence). Further provisions on the application of this section shall be issued by Decree. The related Decree on the application of Chapter 1, Section 7 of the Criminal Code of Finland refers to international conventions and EU instruments and offences specified in them that are subject to the universality principle. Section 1(1)(2) of the Decree refers to the Charter of Rome of the International Criminal Court and the Geneva Conventions and to offences referred to in these documents as stated in the section. Section 1(1)(3) of the Decree mentions genocide and the preparation of genocide referred to in the Convention on the Prevention and Punishment of the Crime of Genocide.

Pursuant to Chapter 1, Section 7(2) of the Criminal Code of Finland, regardless of the law of the place of commission, Finnish law applies also to a nuclear explosive offence or the preparation of an endangerment offence that is to be deemed an offence referred to in the Comprehensive Nuclear Test Ban Treaty.

Pursuant to Chapter 1, Section 7(3) of the Criminal Code of Finland, regardless of the law of the place of commission, Finnish law applies also to trafficking in persons, aggravated trafficking in persons and an offence referred to in Chapter 34(a) committed outside of Finland. Consequently, terrorist offences decreed punishable in Chapter 34(a) of the Criminal Code of Finland are international offences under Chapter 1, Section 7(3) of the Criminal Code of Finland that fall under Finland's jurisdiction regardless of the offender and the place of commission, among other things.

6. Has your country taken position on the question of whether or not certain acts of Daesh constitute genocide, as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide? If so, what position has it taken, and in what institutional context(s) has this position been expressed?

Finland has not taken a position on the question of whether certain acts of Daesh exhibit the essential elements of genocide.

Description sheet

Published by	Ministry of the Interior	29.3.2017	
Authors	Tarja Mankkinen, Head of Development, Ministry of the Interior/ Police Department, chair		
Title of publication	Proposal for Arranging Cross-sectoral Cooperation on Managing Returnees from Conflict Zones including a proposal for combining NGOs' services with the action of the authorities		
Series and publication number	Ministry of the Interior publications 11/2017		
Register number	SMDno-2017-306	Subject	Internal security
ISBN PDF	978-952-324-132-9	ISSN PDF	2341-8524
Website address (URN)	http://URN:ISBN:972-952-324-132-9		
Pages	48	Language	Finnish and English
Keywords	Cross-sectoral cooperation, conflict zones, returnees		
Abstract			
<p>An exceptionally high number of people from inside and outside Europe and from Finland have travelled to the conflict area in Syria and Iraq. While some have travelled to the area to participate in armed combat, others, at least at the time of their departure, may have had other motives. Some of the travellers are 'foreign terrorist fighters', but even women, children and entire families have travelled to the area. The returnees addressed by the report are Finnish citizens, people possessing both Finnish and another country's citizenship (dual nationals) or those holding valid residence permits in Finland. There are no legal grounds to prevent such people from returning to Finland. The report presents an operating model which aims to reduce the risk of violence associated with the returnees from the conflict zone and which is based on using criminal law measures and other means. The reasons for the risk of violence are diverse. Some of the returnees have received training for and participated in armed combat or have lived in a violent environment and witnessed violent action. Some may be traumatised or suffer from post-traumatic stress disorder. Children may have been indoctrinated into a violent ideology. The model is based on cross-sectoral cooperation which also includes the services provided by non-governmental organisations. The risk of violence regarding each returning individual will be assessed. Following this, the appropriate measures will be implemented.</p>			
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FRANCE

Replies received on 20/06/2017

1 - Combien y-a-t-il de personnes de votre pays dont on sait qu'elles se sont rendues (ou que l'on soupçonne de s'être rendues) dans une zone qui est (ou a été) sous le contrôle de Daech, afin de participer aux activités de Daech ? Combien de ces personnes sont revenues ?

Il est difficile d'obtenir des données précises, notamment en raison du fait que ces personnes se rendent en Syrie ou en Irak très majoritairement à partir d'Etats frontaliers.

Cependant, la commission d'enquête « sur la surveillance des filières et des individus djihadistes » de l'Assemblée nationale⁶ donnait en juin 2015 les informations suivantes :

« D'après les chiffres communiqués par le ministre de l'Intérieur le 19 mai 2015, 1 683 individus ont été recensés, ce qui représente un triplement depuis janvier 2014. Les chiffres communiqués à la date du 26 mai font état de 1 704 personnes impliquées.

Ce nombre recouvre des situations différentes et on distingue parmi ces personnes :

- 457 individus présents en Syrie ou en Irak, dont 137 femmes et 80 mineurs (dont 45 jeunes filles) ;
- 320 individus considérés comme en transit entre la France et la Syrie ;
- 278 individus détectés comme étant repartis de la zone, dont 213 sont revenus en France ; les autres sont principalement localisés en Turquie et dans les pays du Maghreb ; depuis les premières frappes de la coalition en septembre 2014, le nombre de volontaires ayant regagné la France est passé de 121 à 212, soit une progression de 57 % ;
- 105 présumés morts dont 8 dans des opérations suicides ;
- 2 détenus en Syrie ;
- 521 ayant des projets de départ. »

On notera que c'est, notamment, en raison de la sortie du territoire français d'un certain nombre de mineurs qu'a été rétablie l'autorisation de sortie du territoire pour ces derniers :

<https://www.interieur.gouv.fr/Archives/Archives-des-communiqués-de-presse/2017->

[Communiqués/Exigence-d-une-autorisation-de-sortie-du-territoire-pour-les-mineurs-a-compter-du-15-janvier-2017](https://www.interieur.gouv.fr/Archives/Archives-des-communiqués-de-presse/2017-Communiqués/Exigence-d-une-autorisation-de-sortie-du-territoire-pour-les-mineurs-a-compter-du-15-janvier-2017)

2 - Quelle est la politique de votre pays concernant le traitement de ces personnes qui sont revenues ?

Le rapport précité de la commission d'enquête de l'Assemblée nationale pointé en 2015 « la délicate gestion des retours du Jihad », relève que « les retours de djihadistes de la zone irako-syrienne sont l'un des facteurs importants de l'aggravation de la menace », et indique qu'« il est particulièrement difficile d'évaluer la dangerosité des djihadistes de retour sur notre territoire, notamment parce que certains peuvent avoir des stratégies de dissimulation ».

Le rapport indique que : « Très concrètement, c'est la DGSI⁷ qui à l'occasion des retours des zones de djihad, procède soit à l'interpellation des personnes pour lesquelles elle dispose d'éléments permettant de les « judiciariser » soit à des entretiens administratifs pour tenter de mieux cerner la personnalité des personnes concernées ».

La question de la dé-radicalisation (notamment de son coût et de son efficacité) a fait l'objet en février 2017 d'un bilan sans concessions de la mission d'information du Sénat, intitulée « désendoctrinement, désembrigadement et réinsertion des djihadistes en France et en Europe » (rapport 438 [joint à notre réponse](#))

3 - Certaines de ces personnes qui sont revenues ont-elles été poursuivies pour des infractions commises pendant qu'elles participaient aux activités de Daech à l'étranger ? Dans l'affirmative, veuillez indiquer dans combien de cas des poursuites ont été engagées et donner des précisions sur les infractions, sur l'issue des poursuites et sur les peines qui ont éventuellement été imposées.

Dans le cadre de cette commission d'enquête, la ministre de la justice a indiqué devant l'Assemblée nationale en 2015 qu'il y avait une « judiciarisation prioritaire » permettant de donner une suite pénale à certains retours en France (« 122 procédures sont en cours au pôle antiterroriste, dont 69 informations judiciaires et 53 enquêtes préliminaires. 170 personnes sont mises en examen, dont 105 ont été placées en détention provisoire et 65 sous contrôle judiciaire »).

⁶ Rapport n°2828 de la commission d'enquête sur la surveillance des filières et des individus djihadistes – [joint à notre réponse](#).

⁷ La DGSI (Direction générale de la sécurité intérieure) est un service de renseignement dépendant du ministère de l'intérieur. Son décret de création indique qu'« Elle est chargée, sur l'ensemble du territoire de la République, de rechercher, de centraliser et d'exploiter le renseignement intéressant la sécurité nationale ou les intérêts fondamentaux de la Nation ». <https://www.interieur.gouv.fr/Le-ministere/DGSI>.

4 - Des personnes ont-elles été poursuivies pour des infractions commises dans votre pays qui étaient liées à des activités de Daech à l'étranger ?

Le rapport précité de la commission d'enquête de l'Assemblée nationale indique en 2015 que :

« L'article 113-3 du code pénal, créé par la loi n° 2012-1432 du 21 décembre 2012 relative à la sécurité et à la lutte contre le terrorisme, prévoit que la loi pénale française s'applique aux crimes et délits qualifiés d'actes de terrorisme commis à l'étranger par un Français ou une personne résidant habituellement en France. Auparavant, les délits terroristes commis à l'étranger ne pouvaient être poursuivis en France que dans des conditions très strictes (réciprocité des incriminations, poursuites exercées à la requête du ministère public, plainte de la victime ou de ses ayants droit ou dénonciation officielle par les autorités du pays et respect de la règle non bis in idem).

Les différentes infractions terroristes définies par le code pénal peuvent être des crimes ou des délits. Constituent des crimes :

– les crimes de droit commun considérés comme des infractions terroristes en raison du but poursuivi, pour lesquels les peines encourues sont aggravées, ainsi que les délits punis de dix ans d'emprisonnement, qui deviennent des crimes punis de quinze ans d'emprisonnement ;

– le terrorisme écologique ;

– la direction d'une AMT⁸ ;

– l'AMT lorsqu'elle a pour objet la préparation de crimes d'atteintes aux personnes, de destructions par substances explosives ou incendiaires ou de terrorisme écologique susceptibles d'entraîner la mort de personnes.

Les autres infractions terroristes constituent des délits. Les délits terroristes en raison du but poursuivi sont punis de peines aggravées par rapport aux infractions de droit commun correspondantes.

S'agissant spécifiquement de l'AMT, la qualification criminelle est en fait très peu utilisée dans les dossiers concernant des djihadistes. Actuellement, sur les 69 informations judiciaires relatives aux filières irako-syriennes, 10 sont suivies sous des qualifications criminelles.

Cette situation s'explique par des difficultés relatives à l'administration de la preuve s'agissant des djihadistes qui ont participé à des exactions et se sont mis en scène sur internet ou sur les réseaux sociaux : en l'absence de cadavre ou de témoin, des déclarations auto-incriminantes ne sont en effet pas suffisantes et l'incrimination d'AMT délictuelle (passible de dix ans d'emprisonnement) est, dans les faits, privilégiée par rapport à celle d'AMT criminelle (passible de vingt ans). »

5 - Quelle est la position de votre pays concernant l'exercice de la compétence universelle à l'égard des infractions relevant du droit pénal international ?

La compétence universelle peut se définir comme la compétence exercée par un État qui poursuit les auteurs de certains crimes, quel que soit le lieu où le crime est commis, et sans égard à la nationalité des auteurs ou des victimes.

Elle est admise sous conditions par le code de procédure pénale dans les articles 689 à 689-13 disponibles sur le lien ci-dessous

https://www.legifrance.gouv.fr/affichCode.do;jsessionid=2CA12D9B072020927DD07C3310E01A55.tpdila11v_2?idSectionTA=LEGISCTA000006151920&cidTexte=LEGITEXT000006071154&dateTexte=20170609

L'article 689 du code de procédure pénale est ainsi rédigé :

« Les auteurs ou complices d'infractions commises hors du territoire de la République peuvent être poursuivis et jugés par les juridictions françaises soit lorsque, conformément aux dispositions du livre Ier du code pénal ou d'un autre texte législatif, la loi française est applicable, soit lorsqu'une convention internationale ou un acte pris en application du traité instituant les Communautés européennes donne compétence aux juridictions françaises pour connaître de l'infraction ».

On notera qu'avant même que l'attention se concentre sur cette procédure, en raison du contexte de terrorisme, les juridictions françaises ont déjà eu à appliquer leur compétence universelle. Ainsi, la Cour de cassation a estimé légale la compétence des tribunaux français pour juger un Mauritanien coupable de torture et barbarie en Mauritanie (Cour de cassation, Chambre criminelle, 23/10/2002, n° 02-85379).

6 - Votre pays a-t-il pris position sur la question de savoir si certains actes de Daech constituent un génocide, tel qu'il est défini dans la Convention de 1948 pour la prévention et la répression du crime de génocide ? Dans l'affirmative, quelle position a-t-il prise et dans quel(s) contexte(s) institutionnel(s) cette position a-t-elle été exprimée ?

Le fait que Daech soit un groupe organisé, et non un État, complique l'application de la Convention de 1948 sur ses crimes. Cependant, l'assemblée nationale a adopté en décembre 2016 une résolution « invitant le Gouvernement à saisir le Conseil de Sécurité de l'Organisation des Nations Unies en vue de

⁸ AMT : « Association de malfaiteurs en relation avec une entreprise terroriste ».

reconnaître le génocide perpétré par Daech contre les populations chrétiennes, yézidiennes et d'autres minorités religieuses en Syrie et en Irak et de donner compétence à la Cour pénale internationale en vue de poursuivre les criminels ».

Le texte complet de la résolution ainsi que les comptes rendus des débats figurent sur le lien suivant : http://www.assemblee-nationale.fr/14/dossiers/reconnaissance_onu_genocide_daech.asp

Cependant on rappellera que les résolutions n'ont aucune portée juridique mais ont pour objet de formaliser la position de l'Assemblée nationale à destination du Gouvernement⁹.

Voir

- [Rapport Fait Au Nom De La Commission D'enquête sur la surveillance des filières et des individus djihadistes](#)
- [Rapport d'information fait au nom de la commission des lois constitutionnelles, de législation, du suffrage universel, du Règlement et d'administration générale \(1\) sur la mission d'information « désendoctrinement, désembrigadement et réinsertion des djihadistes en France et en Europe », Par Mmes Esther BENBASSA et Catherine TROENDLÉ. Enregistré à la Présidence du Sénat le 22 février 2017](#)

⁹ L'article 34-1 de la constitution est ainsi rédigé : « *Sont irrecevables et ne peuvent être inscrites à l'ordre du jour les propositions de résolution dont le Gouvernement estime que leur adoption ou leur rejet serait de nature à mettre en cause sa responsabilité ou qu'elles contiennent des injonctions à son égard* ».

GERMANY

Replies received on 08/06/2017

1. Fragestellung

In Hinblick auf den bewaffneten Konflikt in Syrien und Irak stellt sich unter anderem die Frage, wie die dortigen Aktivitäten der Terrormiliz „Islamischer Staat“ (IS) auch strafrechtlich geahndet werden können.

Vor diesem Hintergrund wurden verschiedene Einzelfragen zum Umgang mit Rückkehrern aus der Region Syrien/Irak und zur strafrechtlichen Verfolgung von Taten in Zusammenhang mit Aktivitäten zur Unterstützung des IS gestellt. Zudem wurde um Erläuterung der Geltung des Weltrechtsprinzips in Deutschland und der Haltung Deutschlands zu der Frage, ob bestimmte Taten des IS als Völkermord zu qualifizieren sind, gebeten.

2. Behandlung von Rückkehrern aus der Region Syrien/Irak

Gefragt wird nach den Ausreisenden von Deutschland in die Region Syrien/Irak zur Unterstützung des IS (IS-Ausreisende) sowie nach den Rückkehrern (IS-Rückkehrer). Konkret geht es um die Anzahl der ausgereisten und zurückgekehrten Personen und um das Konzept, das in Bezug auf die Behandlung von IS-Rückkehrern verfolgt wird.

2.1. IS-Ausreisende und IS-Rückkehrer

Nach Angaben des Bundesamtes für Verfassungsschutz sollen seit dem Jahr 2013 bis April 2017 insgesamt 920 Personen von Deutschland aus in die Region Syrien/Irak gereist sein, um dort auf Seiten des IS an Kampfhandlungen teilzunehmen oder diese in sonstiger Weise zu unterstützen. Von den 920 IS-Ausreisenden sei etwa ein Drittel wieder nach Deutschland zurückgekehrt.

2.2. Behandlung von IS-Rückkehrern

Die Behandlung von IS-Rückkehrern hängt zunächst davon ab, ob hinreichende Tatsachen vorliegen, die die Vornahme von Strafverfolgungs- und Gefahrenabwehrmaßnahmen aufgrund der einschlägigen Straf- und Sicherheitsgesetze rechtfertigen. Zu berücksichtigen ist dabei, dass im Rahmen der umfangreichen Anti-Terrorgesetzgebung u.a. die rechtlichen Grundlagen dafür geschaffen wurden, die Strafbarkeit auf Vorbereitungsmaßnahmen auszudehnen (z.B. Ausbildung im Terror-Camp), Überwachungsmaßnahmen auszuweiten (z.B. elektronische Aufenthaltsüberwachung) und den Datenaustausch auf nationaler, internationaler und EU-Ebene zu verbessern. Einen besonderen Bezug zur Problematik der IS-Ausreisenden und IS-Rückkehrer weisen diejenigen Neuregelungen auf, die an Reisebewegungen zur Unterstützung von terroristischen Vereinigungen anknüpfen. So kann bereits die Ausreise in einen anderen Staat zur Vorbereitung einer schweren staatsgefährdenden Gewalttat strafbar sein (§ 89a Abs. 2a Strafgesetzbuch (StGB)¹⁰). Darüber hinaus dienen die Änderungen des Personalausweisgesetzes dazu, die Ausreise zur Unterstützung terroristischer Vereinigungen durch Entzug des Personalausweises zu verhindern (§ 6a Personalausweisgesetz).

Maßgeblich für die Behandlung von IS-Rückkehrern ist ferner, ob sie (auch) deutsche Staatsangehörige oder Ausländer sind. Soweit es sich bei den IS-Rückkehrern um Ausländer handelt, können aufenthaltsrechtliche Maßnahmen wie z.B. die Ausweisung, Abschiebungsanordnung oder Abschiebehäft greifen. Für deutsche IS-Kämpfer, die eine weitere ausländische Staatsangehörigkeit besitzen, wurde der Entzug der deutschen Staatsangehörigkeit diskutiert. Mit dem Entzug der deutschen Staatsangehörigkeit könnte man eine Wiedereinreise von IS-Kämpfern verhindern bzw. ihre Ausweisung anordnen. Die Überlegungen zum Entzug der deutschen Staatsangehörigkeit wurden allerdings nicht weiterverfolgt.

In Bezug auf staatliche Aussteigerprogramme zur Deradikalisierung von Islamisten ist auf das vom Bundesamt für Verfassungsschutz betriebene Aussteigerprogramm „HATIF“ hinzuweisen. Wegen geringer Resonanz wurde es jedoch im Jahr 2014 eingestellt. Seitdem bietet auf Bundesebene allein das Bundesamt für Migration und Flüchtlinge eine Beratung an („Beratungsstelle Radikalisierung“).

Darüber hinaus verweist die Bundesregierung in einer Antwort auf eine parlamentarische Frage vom August 2016 (Bundestagsdrucksache 18/9402) darauf, dass sich IS-Abtrünnige vereinzelt an die deutschen Auslandsvertretungen in der Türkei wenden. Sofern der Bundesnachrichtendienst von einer solchen Kontaktaufnahme Kenntnis erlange, werde im jeweiligen konkreten Einzelfall die Möglichkeit und

¹⁰ Das Gesetz ist in englischer Sprache abrufbar unter: https://www.gesetze-im-internet.de/englisch_stgb/index.html (abgerufen am 17.05.2017).

Zulässigkeit einer Befragung durch den Bundesnachrichtendienst mit dem Ziel der Informationsgewinnung über die Terrororganisation geprüft. Darüber hinaus prüfe die Bundesregierung die Möglichkeit, dass glaubwürdige Rückkehrer im Rahmen der Präventionsarbeit Gegendarstellungen über den IS abgeben.

3. Verfolgung von Straftaten in Zusammenhang mit Unterstützungshandlungen für den IS

Gefragt wurde, wie viele Ermittlungsverfahren gegen Rückkehrer aus der Region Syrien/Irak hinsichtlich Straftaten, die in Zusammenhang mit Aktivitäten zur Unterstützung des IS begangen worden waren, eingeleitet wurden, wie diese Verfahren zum Abschluss gebracht wurden und welche Urteile bislang ergangen sind. Zudem wurde um Auskunft gebeten, ob Ermittlungsverfahren wegen in Deutschland begangener Straftaten in Zusammenhang mit Aktivitäten zur Unterstützung des IS eingeleitet wurden.

Zunächst ist darauf hinzuweisen, dass bei der statistischen Erfassung von Straftaten nicht nach einzelnen terroristischen Organisationen unterschieden wird. Auch ob die Straftat von einem Rückkehrer aus Syrien begangen wurde oder der Tatort nur in Deutschland liegt, wird nicht im Einzelnen ausgewiesen.

Zudem ist zu berücksichtigen, dass die Verfolgung solcher Straftaten sowohl durch den Generalbundesanwalt beim Bundesgerichtshof (GBA, auch Bundesanwaltschaft genannt) als auch die Staatsanwaltschaften der Bundesländer erfolgt.

Der GBA übt das Amt des Staatsanwalts in allen schwerwiegenden Staatsschutzsachen aus, die die innere oder äußere Sicherheit in besonderem Maße berühren. Dazu gehören unter anderem Straftaten in Zusammenhang mit terroristischen Vereinigungen sowie bei bestimmten Straftaten in Fällen von besonderer Bedeutung (§ 142a Abs. 1 Gerichtsverfassungsgesetz (GVG)¹¹ in Verbindung mit § 120 Abs. 1 und 2 GVG). Der GBA ist darüber hinaus auch für die Verfolgung von Straftaten nach dem Völkerstrafgesetzbuch (VStGB)¹² (§ 120 Abs. 1 Nr. 8 GVG) zuständig. In bestimmten Fällen kann der GBA zudem Verfahren aus seinem Zuständigkeitsbereich an die Landesstaatsanwaltschaften abgeben oder Verfahren aus deren Bereich an sich ziehen. Soweit dem GBA eine Zuständigkeit nicht ausdrücklich zugewiesen ist, verbleibt es auch bei Delikten mit Staatsschutzcharakter bei der Zuständigkeit der Staatsanwaltschaften der Bundesländer (Art. 30 GG).¹³

Vor diesem Hintergrund ist eine detaillierte Aufstellung aller im Zusammenhang mit dem IS geführten Ermittlungsverfahren sowie erfolgten Anklageerhebungen und Verurteilungen an dieser Stelle nicht möglich.

3.1. Personenbezogene Ermittlungsverfahren in Bezug auf Einzeltaten

Nach Auskunft des Bundesministeriums der Justiz und für Verbraucherschutz (BMJV) führt der GBA derzeit rund 185 Ermittlungs- und Strafverfahren gegen rund 250 Beschuldigte, Angeschuldigte beziehungsweise Angeklagte in Zusammenhang mit dem Konflikt in der Region Syrien/Irak. Das erste Ermittlungsverfahren wurde im November 2013 eingeleitet. Seit Mai 2014 hat der GBA rund 35 Anklagen erhoben. Seit Dezember 2014 sind in diesen Verfahren 21 Urteile ergangen.

Der häufigste Vorwurf in den vom GBA geführten Verfahren ist die Mitgliedschaft in einer terroristischen Vereinigung gemäß §§ 129a, 129b Strafgesetzbuch (StGB)¹⁴. Der IS ist dabei die am weitesten häufigsten betroffene Vereinigung, gefolgt von Jabhat al Nusra/Jabhat Fath al-Sham, Junud Al-Sham, Ahrar al-Sham und Jaish al-Muhajirin wal-Ansar [JAMWA].

Knapp 25 der 185 Ermittlungsverfahren werden wegen Verstoßes gegen das Völkerstrafgesetzbuch (VStGB) geführt. Das VStGB stellt unter anderem Verbrechen gegen das Völkerrecht unter Strafe. Hierzu gehören Völkermord (§ 6 VStGB), Verbrechen gegen die Menschlichkeit (§ 7 VStGB) und Kriegsverbrechen (§§ 8 bis 12 VStGB).

Der GBA hat außerdem begonnen, Verfahren in Zusammenhang mit solchen terroristischen Vereinigungen, bei denen bereits rechtskräftige Verurteilungen von Mitgliedern erfolgt sind, in Sachen von

¹¹ Das Gesetz ist in englischer Sprache abrufbar unter: https://www.gesetze-im-internet.de/englisch_gvg/index.html (abgerufen am 17.05.2017).

¹² Das Gesetz ist in englischer Sprache (Stand 18.09.2002) abrufbar auf der Internetseite des Max-Planck-Instituts für ausländisches und internationales Strafrecht: <https://www.mpicc.de/files/pdf1/vstgbleng2.pdf> (abgerufen am 17.05.2017).

¹³ Der Generalbundesanwalt, Originäre und evokative Zuständigkeit des Generalbundesanwalts: <https://www.generalbundesanwalt.de/de/zust.php>, (abgerufen am 17.05.2017).

¹⁴ Das Gesetz ist in englischer Sprache abrufbar unter: https://www.gesetze-im-internet.de/englisch_stgb/index.html (abgerufen am 17.05.2017).

minderer Bedeutung (vgl. § 142a Abs. 2 N. 2 GVG) an die Staatsanwaltschaften der Bundesländer abzugeben. Mit Stand Mai 2017 wurden allein in Zusammenhang mit Syrien rund 150 Verfahren vom GBA an die Landesstaatsanwaltschaften abgegeben.

Schließlich verfolgen die Staatsanwaltschaften der Bundesländer in eigener Zuständigkeit Straftaten wegen Vorbereitung einer schweren staatsgefährdenden Gewalttat (§ 89a StGB), Aufnahme von Beziehungen zur Begehung einer schweren staatsgefährdenden Gewalttat (§ 89b StGB) und Terrorismusfinanzierung (§ 89c StGB). Die Anzahl der eingeleiteten Ermittlungsverfahren liegt hier im mittleren dreistelligen Bereich.

Für Details zu einzelnen Ermittlungs- und Strafverfahren wird auf die Pressemitteilungen des GBA sowie der Oberlandesgerichte verwiesen.

Beispiele für vom GBA erhobene Anklagen:

- Pressemitteilung des GBA vom 16.03.2017 - 26/2017¹⁵ Anklage gegen ein mutmaßliches Mitglied der ausländischen terroristischen Vereinigung „Islamischer Staat“ (IS) erhoben Die Bundesanwaltschaft hat am 28. Februar 2017 vor dem Staatsschutzsenat des Oberlandesgerichts Düsseldorf Anklage gegen den 23-jährigen deutschen Staatsangehörigen A. O. erhoben. Er ist hinreichend verdächtig, sich 2015 in Syrien als Mitglied an der ausländischen terroristischen Vereinigung "Islamischer Staat" (IS) beteiligt zu haben (§ 129a Abs. 1 Nr. 1, Abs. 2 Nr. 2, § 129b Abs. 1 StGB). In der Anklageschrift ist im Wesentlichen folgender Sachverhalt dargelegt: Im August 2015 reiste A. O. von Deutschland über die Türkei nach Syrien. Dort angekommen schloss er sich dem „IS“ an und wollte in dessen medizinischem Dienst arbeiten. Der Verantwortliche für das Gesundheitswesen des „IS“ entschied jedoch, dass der Angeschuldigte zunächst einige Wochen in Raqqa leben und sich eingewöhnen solle. In dieser Zeit erschreckte den Angeschuldigten die brutale Vorgehensweise der Terrororganisation gerade auch gegenüber Muslimen und eigenen Mitgliedern, weshalb er mehrfach zunächst allerdings vergeblich das Herrschaftsgebiet des „IS“ zu verlassen versuchte. Schließlich gelang es ihm im Januar 2016 in die Türkei zu fliehen. Im September 2016 kehrte A. O. aus der Türkei nach Deutschland zurück.

- Pressemitteilung des GBA vom 08.03.2017 - 24/2017¹⁶ Anklage gegen ein mutmaßliches Mitglied der ausländischen terroristischen Vereinigung „Islamischer Staat“. Die Bundesanwaltschaft hat am 6. März 2017 vor dem Staatsschutzsenat des Oberlandesgerichts Düsseldorf Anklage gegen den 31-jährigen tadschikischen Staatsangehörigen M. S. erhoben. Der Angeschuldigte ist hinreichend verdächtig, sich als Mitglied an der ausländischen terroristischen Vereinigung „Islamischer Staat“(IS) beteiligt zu haben (§§ 129a, 129b StGB). Des Weiteren werden ihm Verstöße gegen das Waffen- sowie das Kriegswaffenkontrollgesetz vorgeworfen. Zudem liegt dem Angeschuldigten zur Last, öffentlich zu Straftaten aufgerufen zu haben (§ 111 Abs. 1 und 2 StGB). In der nunmehr zu-gestellten Anklageschrift ist im Wesentlichen folgender Sachverhalt dargelegt: Spätestens im Februar 2015 begab sich der Angeschuldigte nach Raqqa/Syrien und schloss sich dort dem sogenannten „Islamischen Staat“ an. Er erhielt eine militärische Ausbildung an verschiedenen Waffen. In der Folgezeit wurde er an unterschiedlichen Orten im vom „IS“ eroberten Gebiet als Wachmann und in der „Verwaltung“ eingesetzt. Hierfür wurden ihm ein Sturmgewehr sowie eine halbautomatische Pistole zur Verfügung gestellt. Im Spätsommer 2015 lud der Angeschuldigte zudem mindestens fünf Videodateien auf das Internet-portal „YouTube“ hoch. Darin rief er dazu auf, sich dem „IS“ anzuschließen und sich am Jihad zu beteiligen.

Beispiele für ergangene Urteile:

- Pressemitteilung des Oberlandesgerichts Düsseldorf vom 20.06.2016 (Nr. 21/2016)¹⁷ Mehrjährige Haftstrafen wegen Unterstützung der ausländischen terroristischen Vereinigung "ISIG/IS"
Mit Urteil vom 20.06.2016 hat das Oberlandesgericht Düsseldorf K. S. (tunesischer Staatsangehöriger, 40 Jahre), M. R. (deutscher Staatsangehöriger, 41 Jahre), A. A. H. (deutsch/marokkanischer Staatsangehöriger, 29 Jahre) sowie Y. G. (russischer Staatsangehöriger, 29 Jahre) wegen des Vorwurfs der Unterstützung der ausländischen terroristischen Vereinigung "Islamischer Staat im Irak und Großsyrien (ISIG)" bzw. "Islamischer Staat (IS)" zu teils mehrjährigen Haftstrafen verurteilt. Zur Überzeugung des Senats haben die Angeklagten die genannte terroristische Vereinigung unterstützt, indem sie in wechselnder Tatbeteiligung zwischen Juli 2013 und Oktober 2014 Gelder zugunsten der Organisation überwiesen, Flüge für Mitglieder der Vereinigung buchten und Hilfestellung bei der Schleusung von

¹⁵ Der Generalbundesanwalt, Pressemitteilung vom 16.03.2017.

(<https://www.generalbundesanwalt.de/de/showpress.php?themenid=19&newsid=684>).

¹⁶ Der Generalbundesanwalt, Pressemitteilung vom 08.03.2017.

(<https://www.generalbundesanwalt.de/de/showpress.php?themenid=19&newsid=683>).

¹⁷ OLG Düsseldorf, Pressemitteilung vom 20.06.2016.

(http://www.oberlandesgericht-duesseldorf.de/behoerde/presse/archiv/Pressemitteilungen_aus_2016/20160620_PM_Urteilsverkuendung_Kamel_Ben_Yahia_S_/index.php).

Anschlusswilligen leisteten. Der Mittelsmann des Angeklagten S. in der Türkei bezeichnete ihn wegen seiner umfangreichen und wichtigen Aktivitäten für "ISIG/IS" als "Gouverneur" bzw. "Statthalter" in Deutschland. Die übrigen Angeklagten wurden vom Angeklagten S. in einzelnen Fällen in die Unterstützungshandlungen zugunsten des "ISIG/IS" eingebunden. Die Angeklagten haben sich daher der Unterstützung einer ausländischen terroristischen Vereinigung gem. 129a Abs. 5 i. V. m. § 129b Abs. 1 Satz 1 StGB schuldig gemacht.

- Pressemitteilung des Oberlandesgerichts Düsseldorf vom 22.04.2016 (Nr. 16/2016)¹⁸ Verurteilung wegen Mitgliedschaft in der ausländischen terroristischen Vereinigung "ISIG"

Mit Urteil vom 22.04.2016 hat das Oberlandesgericht Düsseldorf die jeweils 28-jährigen Deutschen M. C. und S. B. wegen Mitgliedschaft in der ausländischen terroristischen Vereinigung "Islamischer Staat im Irak und Großsyrien" (ISIG), später "Islamischer Staat" (IS), zu Freiheitsstrafen von 6 Jahren und 3 Monaten bzw. 4 Jahren und 6 Monaten verurteilt.

Zur Überzeugung des Senats sind die Angeklagten Mitte 2013 über die Türkei nach Syrien gereist und schlossen sich dort dem ISIG als Mitglieder an. Nach Ihrer Ankunft durchliefen sie zunächst eine mehrwöchige Ausbildung an Schusswaffen und wurden im Anschluss daran einer Kampftruppe zugeteilt, deren stellvertretender Anführer M. C. zumindest von September bis November 2013 war. Neben logistischen Aufgaben, wie dem Transport von Verpflegung an die Frontlinie, leisteten die Angeklagten Wachdienste und hielten sich für Kampfeinsätze bereit. Ende Oktober 2013 nahmen sie an einer größeren militärischen Operation des ISIG in der Nähe von ar-Raqqa teil, jedoch konnte nicht festgestellt werden, dass sie auch unmittelbar in Kampfhandlungen verwickelt waren. S. B. reiste im November 2013 nach Deutschland zurück. M. C., der zuvor aus nicht im Einzelnen bekannten Gründen wiederholt nach Deutschland gereist war, kehrte nach einer kurzzeitigen Inhaftierung wegen Spionageverdachts in einem Gefängnis des IS im September 2014 nach Deutschland zurück.

3.2. Strukturverfahren

Neben den personenbezogenen Ermittlungsverfahren führt der GBA gegenwärtig zwei sogenannte Strukturverfahren mit Bezug zur aktuellen Lage in Syrien und dem Irak. Es handelt sich dabei um die Ermittlung und Dokumentation von Sachverhalten, die über den Einzelfall hinausgehen. In diesen Verfahren werden alle relevanten Informationen gebündelt, die durch Zeugenvernehmungen erlangt werden oder aufgrund allgemein zugänglicher Quellen verfügbar sind. Dies dient primär der Beweissicherung; die so gewonnenen Erkenntnisse können für zukünftige in Deutschland zu führende Ermittlungsverfahren verwendet werden. Darüber hinaus können die vorliegenden Erkenntnisse im Rahmen der justiziellen Rechtshilfe auch anderen nationalen Justizbehörden und gegebenenfalls einem internationalen Gericht zur Verfügung gestellt werden.¹⁹

Eines dieser Verfahren befasst sich mit den Verbrechen des IS.²⁰ Das zweite Verfahren bezieht sich auf die weiteren Konfliktparteien in Zusammenhang mit dem Syrien-Konflikt.²¹

4. Geltung des Weltrechtsprinzips in Bezug auf Völkerrechtsverbrechen

Das 2002 in Kraft getretene Völkerstrafgesetzbuch (VStGB) stellt unter anderem Verbrechen gegen das Völkerrecht unter Strafe. Wie oben bereits dargestellt gehören hierzu Völkermord (§ 6 VStGB), Verbrechen gegen die Menschlichkeit (§ 7 VStGB) und Kriegsverbrechen (§§ 8 bis 12 VStGB).

Gemäß § 1 VStGB gilt für alle Verbrechenstatbestände der §§ 6 bis 12 VStGB das Weltrechtsprinzip (Universalitätsprinzip). Danach unterliegen diese Taten ungeachtet des Tatorts und der Staatsangehörigkeit des Täters dem deutschen Strafrecht. Die Staatsanwaltschaft ist grundsätzlich nach dem Legalitätsprinzip zum Einschreiten verpflichtet, auch wenn die Tat im Ausland verübt wurde und keinen Bezug zu Deutschland aufweist. Dies ermöglicht generell die Strafrechtspflege im Interesse der Weltgemeinschaft.²² Die Strafverfolgung solcher Völkerrechtsverbrechen obliegt in Deutschland dem GBA (§ 142a Abs. 1 GVG iVm § 120 Abs. 1 Nr. 8 GVG).

¹⁸ OLG Düsseldorf, Pressemitteilung vom 22.04.2016.

(http://www.olg-duesseldorf.nrw.de/behoerde/presse/archiv/Pressemitteilungen_aus_2016/20160422_PM_Urteil-Musafa-C_u_a_/index.php).

¹⁹ Frank/ Schneider-Glockzin, NSTZ 2017, 1, 5.

²⁰ Frank/ Schneider-Glockzin, NSTZ 2017, 1, 5.

²¹ Frank/ Schneider-Glockzin, NSTZ 2017, 1, 5.

²² Frank / Schneider-Glockzin, NSTZ 2017, 1, 2 f ; s. a. Entwurf eines Gesetzes zur Einführung des Völkerstrafgesetzbuches, BT-Drs. 14/8524, S. 37.

§ 1 VStGB passt die deutsche Strafverfolgung von Völkerstraftaten in ein Völkerstrafjustizsystem ein. Dabei besteht jedoch eine gestufte Zuständigkeitspriorität: in erster Linie sind zur Verfolgung der Straftaten der Tatortstaat und die Heimatstaaten von Täter und Opfer sowie ein gegebenenfalls zuständiger internationaler Gerichtshof berufen. Die an sich gegebene Zuständigkeit der deutschen Staatsanwaltschaft ist demgegenüber als Auffangzuständigkeit zu verstehen, die die Straflosigkeit schwerster Menschenrechtsverletzungen verhindern soll.²³ Gleichzeitig soll einer Überlastung der personellen und sachlichen Ermittlungsressourcen der Strafverfolgungsbehörden insbesondere durch Verfahren, die keinen Bezug zu Deutschland aufweisen und bei denen die Aufnahme von Ermittlungen auch keinen nennenswerten Aufklärungserfolg verspricht, vorgebeugt werden.²⁴

§ 153f Abs. 1 Strafprozessordnung (StPO)²⁵ sieht daher vor, dass die Staatsanwaltschaft von der Verfolgung einer im Ausland begangenen Tat, die nach dem VStGB strafbar ist, absehen kann, wenn sich der Beschuldigte nicht im Inland aufhält und ein solcher Aufenthalt auch nicht zu erwarten ist. Dies gilt bei einem Beschuldigten, der Deutscher ist, jedoch nur, wenn die Tat vor einem internationalen Gerichtshof oder durch einen Staat, auf dessen Gebiet die Tat begangen oder dessen Angehöriger durch die Tat verletzt wurde, verfolgt wird. Es handelt sich um eine Ermessensentscheidung der Staatsanwaltschaft.

In der Praxis führt der GBA von Amts wegen initiierte oder durch Strafanzeigen veranlasste Ermittlungen auf völkerstrafrechtlicher Grundlage daher in der Regel nur durch,

- wenn entweder ein Inlandsbezug gegeben ist, weil ein Täter oder Opfer sich in Deutschland aufhält oder deutscher Staatsangehöriger ist,
- wenn in absehbarer Zeit mit einem Gerichtsverfahren in Deutschland gerechnet werden kann
- oder die (antizipierte) Beweissicherung, etwa für den Internationalen Strafgerichtshof oder für ein drittes Land, erforderlich erscheint.²⁶

5. Qualifizierung und Verfolgung von Verbrechen des „Islamischen Staates“ als Völkermord

Eine offizielle Stellungnahme der Bundesregierung, hinsichtlich der Einstufung von Verbrechen der Terrororganisation IS als „Völkermord“ iSd Völkermordkonvention von 1948, hat es nach Auskunft des Auswärtigen Amtes vom 23. Mai 2017 bislang nicht gegeben. Die Taten des IS würden regelmäßig als schwere Menschenrechtsverletzungen oder Verbrechen gegen die Menschlichkeit iSd Römischen Statuts des Internationalen Strafgerichtshofs bezeichnet. Eine Verharmlosung der IS-Verbrechen könne darin nicht gesehen werden. Oftmals sei die Verwendung des Völkermordbegriffes an bestimmte politische Erwartungen geknüpft, die jedoch rechtlich nicht einlösbar seien. Bei der Prüfung der Voraussetzungen des Tatbestandes Völkermord, sei zu bedenken, dass Völkermord in subjektiver Hinsicht, die Absicht voraussetzt, eine nationale, ethnische, rassische oder religiöse Gruppe als solche ganz oder teilweise zu zerstören. Das Feststellen dieser subjektiven Kriterien erfordere konkrete Anhaltspunkte, die auf eine Absicht des IS schließen ließen, ein Volk jedenfalls teilweise zu eliminieren. In Ermangelung entsprechender Äußerungen und Stellungnahmen des IS, könne die Darlegung eines solchen Willens bislang nicht mit hinreichender Deutlichkeit festgestellt werden. Auch die Art und Weise der durch den IS begangenen weltweiten Taten zeuge von einer nahezu wahllos vorgenommenen Tötungsabsicht an Menschen jeglicher Abstammung und Religionszugehörigkeit und weniger von einem systematischen, sich gegen eine bestimmte Volksgruppe richtenden Vernichtungswillen.

In der wissenschaftlichen Literatur wird im Zusammenhang mit den vom IS begangenen Verbrechen an dem Volk der Jesiden die Frage diskutiert, ob diese als Völkermord zu qualifizieren sind.²⁷

Auch einzelne Äußerungen von Regierungsmitgliedern zeugen von der innerstaatlichen Auseinandersetzung mit dem Thema. So äußerte sich ein Vertreter des Auswärtigen Amtes auf einer Regierungspressekonferenz vom 31. März 2017 mit den Worten „...und das andere ist der Aspekt, dass wir Waffen an die Kurden geliefert haben, damit sie in der Lage sind, den Völkermord an Jesiden zu verhindern“. Ferner sprach der Bundesminister für wirtschaftliche Zusammenarbeit und Entwicklung, Dr. Gerd Müller, in seiner Rede vor dem Deutschen Bundestag am 12. Mai 2016 von „Völkermord an den Jesiden“.

²³ Ambos, in: Münchner Kommentar zum StGB, 2. Aufl. 2013, VStGB § 1, Rn. 1; Diemer, in: Karlsruher Kommentar zur Strafprozessordnung, 7. Aufl. 2013, § 153f, Rn. 4.

²⁴ Frank/ Schneider-Glockzin, NSTz 2017, 1, 3; s.a. Entwurf eines Gesetzes zur Einführung des Völkerstrafgesetzbuches, BT-Drs. 14/8524, S. 37.

²⁵ Das Gesetz ist in englischer Sprache abrufbar unter: https://www.gesetze-im-internet.de/englisch_stpo/index.html (abgerufen am 17.05.2017).

²⁶ Frank/ Schneider-Glockzin, NSTz 2017, 1, 3.

²⁷ Berster/Schiffbauer, Völkermord im Nordirak?, ZaöRV 2014, S. 863.

Sawsan Chebli (SPD), stellvertretende Sprecherin des Auswärtigen Amtes, erklärte auf einer Regierungspressekonferenz am 18. März 2016: „...wenn man sieht, was da passiert [...] dann kann man das Völkermord nennen. Es ist aber nicht an uns, das so amtlich festzustellen“.

In einem Verfahren der Generalbundesanwaltschaft gegen ein IS-Mitglied wurde ein Haftbefehl wegen Mordes und Kriegsverbrechen, nicht jedoch wegen Völkermordes erlassen (3. Januar 2017 Az. 2/2017).

HUNGARY

Replies received on 21/06/2017

1. How many persons from your country are known or suspected to have travelled to areas that are or have been under the control of Daesh, for the purpose of engaging in Daesh activities? How many have returned?

According to the briefing of Ministry of Interior:

“On February 2 2016 an investigation was ordered by the National Bureau of Investigation because of preparation of terrorist act. The investigation was finished and was handed over to the competent prosecutor’s office. The case was conducted because two Hungarian men wanted to join ISIS and take part in terrorist actions abroad. One managed to travel to Turkey, but Turkish authorities captured and deported him back to Hungary. The other did not succeed in travelling to Turkey due to personal reasons. Both were captured in Hungary. The subjects were inspired by religious reasons and personality disorders. They also tried to convince others to join them without any success. Internet was used for threatening people and staying connected with each other and with ISIS as well. For further information, please feel free to contact the Hungarian National Bureau of Investigation.”

2. What is your country’s policy concerning the treatment of such returnees?

According to The Hungarian Prosecution Service, Hungary doesn’t have fully developed procedure and policy, because until now the Hungarian authorities have had only two cases related to these returnees and activities. Besides that, The Hungarian Prosecution Service, the Hungarian law enforcement and judicial authorities are firmly determined to fight against all types of terrorism

3. Have any such returnees been prosecuted for offences committed whilst engaged in Daesh activities abroad? If so, please indicate how many such prosecutions have taken place and provide details of the offences, the outcome of the prosecutions and any sentences imposed.

No. We don’t have information about such persons and procedures.

4. Have any persons been prosecuted for offences committed within your country relating to Daesh activities abroad?

According to the briefing of the Prosecution Service, until now The Hungarian Prosecution Service has laid a charge against only two person for offences committed relating to Islamic State (IS) activities. This happened on 1 June 2017. According to the text of the accusation one of them, the first degree defendant tried to join to the IS in Syria, but the authorities in Turkey arrested and returned him to Budapest in March 2015. The other person, the second defendant also wanted to follow the first defendant but he couldn’t afford the travel costs to Syria. Nevertheless after that he anticipated several terrorist activities and gave advices on the Facebook about the possibilities of joining to the IS.

The accusation procedure is based on the below published sections of The Hungarian Criminal Code ([Act C of 2012 on the Criminal Code](#)).

Act C of 2012 on the Criminal Code

Chapter XXX

Acts of terrorism

Section 314

(1) Any person who commits a violent crime against the persons referred to in Subsection (4) or commits a criminal offense that endangers the public or involves the use of arms in order to:

a) coerce a government agency, another State or an international body into doing, not doing or countenancing something;

b) intimidate the general public;

c) conspire to change or disrupt the constitutional, economic or social order of another State, or to disrupt the operation of an international organization;

is guilty of a felony punishable by imprisonment between ten to twenty years or life imprisonment.

Section 315

(1)²⁸ Any person who instigates, suggests, offers, joins or collaborates in the commission of any of the criminal acts defined in Subsection (1) or (2) of Section 314 or any person who is involved in aiding and

²⁸ Enters into force as under Subsection (18) of Section 318 of Act CCXXIII of 2012.

abetting such criminal conduct by providing any of the means intended for use in such activities is guilty of a felony punishable by imprisonment between two to eight years.

(2)²⁹ Any person who is engaged in the conduct referred to in Subsection (1) or in the commission of any of the criminal acts defined in Subsection (1) or (2) of Section 314 in a terrorist group, is punishable by imprisonment between five to ten years.

(3) The perpetrator of a criminal act defined in Subsection (1) or (2) shall not be prosecuted if he confesses the act to the authorities first hand and unveils the circumstances of the criminal act.

Section 316³⁰

Any person who:

a) threatens to commit a terrorist act, or

b) travels from or through the territory of Hungary with intent to join a terrorist group, is guilty of a felony punishable by imprisonment between two to eight years.

5. What is the position of your country concerning exercise of universal jurisdiction over offences under international criminal law?

According to the briefing of Ministry of Foreign Affairs and Trade, Hungary supports all initiatives aiming at preventing the most serious crimes against humanity, including all efforts to ensure accountability. Hungary supports the work of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic (IIIM), and hopes that the data collected by the IIIM will be useful for criminal courts (be it national or international) to determine the bearings of each case and qualify them accordingly.

6. Has your country taken position on the question of whether or not certain acts of Daesh constitute genocide, as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide? If so, what position has it taken, and in what institutional context(s) has this position been expressed?

According to the briefing of Ministry of Interior:

“The Hungarian Parliament in its resolution 36/2016. (XII.19.) condemns acts of genocide in the Middle East and Africa committed by terrorist organizations, including the Islamic State. Hungary supports all initiatives aiming at preventing the most serious crimes against humanity, including all efforts to ensure accountability. Hungary supports the work of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic (IIIM), and hopes that the data collected by the IIIM will be useful for criminal courts (be it national or international) to determine the bearings of each case and qualify them accordingly. Until now the Hungarian courts have not had cases related to crimes committed by Daesh.”

Parliamentary resolution No. 36/2016 (XII.19) on condemning the persecution of Christians and acts of genocide in the Middle East and Africa, as well as providing support for those persecuted.

1. The Hungarian National Assembly expresses its solidarity with all minorities across the world which are persecuted on grounds of religion – and especially with Christian communities in the Middle East and Africa, the members of which are currently being subjected to devastating acts of terrorism, or whose very existence is in danger. The barbarous and inhuman crimes committed in Syria and Iraq by the terrorist organisation which calls itself “Islamic State” and other terrorist organisations and militia represent the most serious violations of human rights and humanitarian rights in recent decades. These crimes – taking place in countries ravaged by civil war – have claimed the lives of not only Christians, but also of members of other religious and ethnic minorities.

2. The Hungarian National Assembly condemns the many crimes which have been committed and are being committed by the terrorist organisation which calls itself “Islamic State”, as well as those committed by other terrorist organisations and militias. It condemns their attacks on civilian populations, the resulting devastation and their undermining of stability. It is an abhorrence for people to lose their lives for remaining true to their religion, or for disagreeing with the ideology of a terrorist organisation.

3. The National Assembly welcomes the participation of the Government of Hungary in the provision of humanitarian aid, as well as in all measures taken in support of the restoration of peace and order in the affected regions.

4. The National Assembly urges the Government to make use of all available forums in order to call for effective action against organisations persecuting Christians and other religious communities and minorities.

²⁹ Enters into force as under Subsection (18) of Section 318 of Act CCXXIII of 2012.

³⁰ Established by Section 63 of Act LXIX of 2016, effective as of 17 July 2016.

5. *The National Assembly urges all the nations of the world – especially those countries with Christian traditions – to take a courageous and effective stand in defence of those suffering persecution.*
6. *All forms of terrorism endanger peace and security. All acts of terrorism are unjustifiable crimes, regardless of their motives or perpetrators, and regardless of the date, time or location of their commission.*
7. *The National Assembly expresses its gravest concern in relation to the current situation. The brutal, violent and aggressive acts of the extremist followers of the terrorist organisation which calls itself “Islamic State”, and of other such organisations, cause devastating human suffering. As a result of their activities countries can become destabilised, leading to humanitarian catastrophes. The number of adherents of the terrorist organisation which calls itself “Islamic State” and other such organisations is increasing, and divisions between faith communities are also deepening. The National Assembly underlines its concern about a possible deterioration in the situation if no comprehensive solution for managing the problems on the spot emerges in the near future.*
8. *The National Assembly utterly condemns all crimes committed by the members of the terrorist organisation which calls itself “Islamic State”, by individuals and groups linked to it, by members of other such organisations and militias, and by individuals and groups linked to them. It thus expressly condemns murder, unlawful imprisonment, torture, the kidnapping of women, exploitation and abuse of children, sexual harassment, forcing people into slavery, deportation, forced relocation of population, and forced marriage. The National Assembly further condemns all deliberate and unlawful attacks on cultural assets, religious monuments or objects of archaeological value.*
9. *The National Assembly condemns all acts which seek to force people to convert to another religion.*
10. *The National Assembly utterly condemns the massacre of members of Christian, Yazidi and other religious groups living in Syria and Iraq.*
11. *The terrorist organisation which calls itself “Islamic State” and other terrorist organisations represent a threat and a danger to international peace and security.*
12. *The atrocities committed by the terrorist organisation which calls itself “Islamic State” and other such organisations and militias shall be considered to be acts of genocide, crimes against humanity and war crimes; therefore the countries of the world have an obligation to put an end to such crimes and put those responsible for them on trial before a court of law.*
13. *This Resolution shall enter into force on the day after it is published.*

IRELAND

Replies received on 30/06/2017

1. How many persons from your country are known or suspected to have travelled to areas that are or have been under the control of Daesh, for the purpose of engaging in Daesh activities?³¹ How many have returned?

Total number of FTF originating from Ireland since 2011: **19**

Number who have died in Syria/Iraq since 2011: **9**. There are indications of one possible further death.

Returnees: **2**

The figures are limited to suspected fighters, all male, some of whom were accompanied by families.

2. What is your country's policy concerning the treatment of such returnees?

Persons here whose activities in support of extremism give rise to concern are monitored closely by An Garda Síochána, Ireland's national police force, and all appropriate measures are taken.

If there is a suspicion supported by credible evidence that an offence has been committed, it is investigated by the Garda authorities. In general terms, decisions on prosecution are matters for Ireland's Director of Public Prosecutions who acts independently on the basis of evidence presented by An Garda Síochána.

Given the numbers involved, Ireland does not have a separate, overarching programme of supports in place for the reintegration of large numbers of returnees, but focuses instead on combining the existing integration and child and family support measures, supported by An Garda Síochána's involvement, and targeting supports to respond to specific needs.

3. Have any such returnees been prosecuted for offences committed whilst engaged in Daesh activities abroad? If so, please indicate how many such prosecutions have taken place and provide details of the offences, the outcome of the prosecutions and any sentences imposed.

No.

4. Have any persons been prosecuted for offences committed within your country relating to Daesh activities abroad?³²

A prosecution is pending against one person for terrorist financing believed to have been in support of extraterritorial Daesh activities.

5. What is the position of your country concerning exercise of universal jurisdiction over offences under international criminal law?

Irish law (Criminal Justice (Terrorist Offences) Act 2005, specifically Sections 5 and 6) criminalises certain extraterritorial terrorist activities.

6. Has your country taken position on the question of whether or not certain acts of Daesh constitute genocide, as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide? If so, what position has it taken, and in what institutional context(s) has this position been expressed?

A June 2016 report by the UN Commission of Inquiry on Syria concluded that Daesh "seeks to destroy the Yazidis in multiple ways, as envisaged by the drafters of the 1948 Genocide Convention". Ireland has referred to this assessment in responses to Parliamentary Questions and other public statements.

³¹ The expression 'persons from your country' is intended to include citizens, nationals and permanent residents.

³² Examples of such offences would include public provocation to commit a terrorist offence, recruitment for terrorism, training for terrorism, financing of terrorism, participating in an association or group for the purpose of terrorism, receiving training for terrorism, travelling abroad for the purposes of terrorism, funding travelling abroad for the purpose of terrorism and organising or otherwise facilitating travelling abroad for the purpose of terrorism. For definitions of these offences, see in particular the 2005 Council of Europe **Convention on the Prevention of Terrorism, CETS no. 196 and the 2015 Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, CETS no. 217**.

LITHUANIA

Replies received on 30/06/2017

1. How many persons from your country are known or suspected to have travelled to areas that are or have been under the control of Daesh, for the purpose of engaging in Daesh activities?³³ How many have returned?

No such persons are known to Lithuanian authorities.

2. What is your country's policy concerning the treatment of such returnees?

N/A

3. Have any such returnees been prosecuted for offences committed whilst engaged in Daesh activities abroad? If so, please indicate how many such prosecutions have taken place and provide details of the offences, the outcome of the prosecutions and any sentences imposed.

N/A

4. Have any persons been prosecuted for offences committed within your country relating to Daesh activities abroad?³⁴

No.

5. What is the position of your country concerning exercise of universal jurisdiction over offences under international criminal law?

See below Article 7 of the Criminal Code³⁵.

Article 7. Criminal Liability for the Crimes Provided for in Treaties

Persons shall be liable under this Code regardless of their citizenship and place of residence, also of the place of commission of a crime and whether the act committed is subject to punishment under laws of the place of commission of the crime where they commit the following crimes subject to liability under Treaties:

- 1) crimes against humanity and war crimes (Articles 99-113¹)³⁶;
- 2) trafficking in human beings (Article 147);
- 3) purchase or sale of a child (Article 157);
- 4) production, storage or handling of counterfeit currency or securities (Article 213);
- 5) property laundering (Article 216);
- 6) bribery (Article 225);
- 7) trading in influence (Article 226);
- 8) graft (Article 227);
- 9) piracy (Article 251¹);
- 10) acts of terrorism and crimes related to terrorist activity (Article 252⁽¹⁾(1) and (2);
- 11) unlawful handling of nuclear or radioactive materials or other sources of ionising radiation (Articles 256, 256⁽¹⁾ and 257);
- 12) the crimes related to possession of narcotic or psychotropic, toxic or highly active substances (Articles 259-269);
- 13) crimes against the environment (Articles 270, 270¹, 270², 270³, 271, 272 and 274).

³³ The expression 'persons from your country' is intended to include citizens, nationals and permanent residents.

³⁴ Examples of such offences would include public provocation to commit a terrorist offence, recruitment for terrorism, training for terrorism, financing of terrorism, participating in an association or group for the purpose of terrorism, receiving training for terrorism, travelling abroad for the purposes of terrorism, funding travelling abroad for the purpose of terrorism and organising or otherwise facilitating travelling abroad for the purpose of terrorism. For definitions of these offences, see in particular the 2005 Council of Europe **Convention on the Prevention of Terrorism, CETS no. 196 and the 2015 Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, CETS no. 217.**

³⁵ English version:

<https://eseimas.lrs.lt/portal/legalAct/lt/TAD/04d3aa62d16911e59019a599c5cbd673?positionInSearchResults=0&searchModelUUJD=6ba35ac1-7427-42bc-a22d-fe0901ca99aa>

³⁶ Includes crime of genocide (Art. 99)

6. Has your country taken position on the question of whether or not certain acts of Daesh constitute genocide, as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide? If so, what position has it taken, and in what institutional context(s) has this position been expressed?

Yes. On 15 December 2015, the Seimas adopted the **Resolution on the Genocide of Christians and Other Religious Minorities in the Middle East and North Africa**:

„The Seimas of the Republic of Lithuania,
having regard to:

Article 18 of the Universal Declaration of Human Rights and Article 18 of the International Covenant on Civil and Political Rights stating that everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance; the United Nations Human Rights Committee believes that pursuant to the principle of freedom of religion and belief, the protection of all beliefs, including theistic, non-theistic and atheistic beliefs, should be ensured;

United Nations Human Rights Council Resolution No 28/34 of 7 April 2015 defining ‘complex situations that might lead to genocide’, recognisable from ‘possible warning signs [...] such as the existence of groups at risk, the massive, serious and systematic violation of human rights, the resurgence of systematic discrimination and the prevalence of expressions of hate speech targeting persons belonging to national, ethnic, racial or religious groups, especially if they are uttered in the context of an actual or potential outbreak of violence’ and ‘condemning impunity for genocide, war crimes and crimes against humanity, and emphasizing the responsibility of States to comply with their obligations under relevant international instruments to end impunity and, to that end, to thoroughly investigate and prosecute persons responsible for genocide, crimes against humanity, war crimes or other massive, serious or systematic violations of human rights and international humanitarian law in order to avoid their recurrence and to seek sustainable peace, justice, truth and reconciliation’;

The European Parliament Resolution of 10 October 2013 on recent cases of violence and persecution against Christians, notably in Maaloula (Syria), Peshawar (Pakistan) and the case of Pastor Saeed Abedini (Iran) (2013/2872(RSP)); the European Parliament Resolution of 12 March 2015 on recent attacks and abductions by Da’esh in the Middle East, notably of Assyrians (2015/2599(RSP)); the European Parliament Resolution of 28 April 2015 on the persecution of Christians around the world, in relation to the killing of students in Kenya by terror group Al-Shabaab (2015/2661 (RSP)), which bring to the foreground the cases of killing and persecution on religious grounds in the Middle East, North Africa and other countries;

United Nations General Assembly Resolution No 69/323 of 11 September 2015 proclaiming 9 December as the International Day of Commemoration and Dignity of the Victims of the Crime of Genocide and of the Prevention of This Crime;

stating that:

for thousands of years, Christians of the Middle East and North Africa and other religious minorities have been an integral part of the region’s culture;

the so-called ‘Islamic State’ (Da’esh) and other extremist militant groups in the Middle East, particularly in Iraq and Syria, and North Africa are currently exerting systematic violence against Christians and representatives of other religious minorities, who have been the target of such violence already since 2003, and millions of representatives of such minorities have been forced to leave their ancestral home and to become refugees;

Christians and other religious minorities in this region were and are being killed and kidnapped, suffered and continue to suffer serious bodily and mental harm, also sexual slavery and other forms of violence, and that all of this is done consciously and on purpose, resulting in a breach of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide adopted in Paris on 9 December 1948 (hereinafter: the ‘Convention’);

such atrocities are pursued with a specific goal, namely, to eradicate and to expel from the region Christians and other religious minorities, destroy their cultural heritage, thus resulting in a breach of the Convention;

genocide is a crime under international law for which the persons committing it are punished, whether they are constitutionally responsible rulers, public officials or private individuals, as stipulated in Article 4 of the Convention;

Article 1 of the Convention emphasises that ‘the Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.’;

Article 2 of the Convention specifies that ‘in the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;

- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.’;

Article 3 of the Convention establishes that ‘the following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.’;

on 10 July 2015 Pope Francis, the leader of the Roman Catholic Church, announced that Christians of the Middle East are suffering genocide which needs to be ‘denounced. In this third world war, waged piecemeal, which we are now experiencing, a form of genocide – and I stress the word genocide – is taking place, and it must end.’;

in its report of 27 March 2015 the Office of the United Nations High Commissioner for Human Rights stated that ‘ethnic and religious groups targeted by ISIL include Yezidis, Christians, Turkmen, Sabea-Mandean, Kaka’e, Kurds and Shia’ and that, in the light of reliable information about the acts of violence perpetrated against civilians because of their affiliation to an ethnic or religious group, ‘it is reasonable to conclude that some of those incidents may constitute genocide. Other incidents may amount to crimes against humanity or war crimes.’;

states that atrocities against Christians and representatives of other religious minorities which are targeted in the Middle East, particularly in Iraq and Syria, and North Africa solely on religious grounds can be considered as genocide and, by this Resolution, treated as the crime of genocide under international law;

reminds all the Contracting Parties to the Convention, particularly those states whose governments and citizens in one way or another are engaged in and support genocide, of their legal obligations under the Convention;

draws governments’ and international organisations’ attention to the fact that crimes against humanity perpetrated on religious grounds and war crimes which can be treated as the crime of genocide must be condemned;

calls on the United Nations and the United Nations Secretary-General to take clear political leadership and recognise the atrocities being committed in the Middle East and North Africa as the crimes of genocide, crimes against humanity and war crimes;

invites the United Nations Member States, in particular members of the African Union, the Arab League, the Gulf Cooperation Council and the Organisation of the Islamic Conference, to support this Resolution, take measures to prevent further conduct of criminal persecution that may be treated as genocide and cooperate in developing international and national tribunals to punish persons responsible for genocide and in ensuring their effective functioning;

expresses gratitude to the governments of the Iraqi Kurdistan region, the Hashemite Kingdom of Jordan, the Republic of Lebanon and other states for their efforts to shelter and protect Christians and other religious minorities until they can safely return to their homes in Iraq and Syria;

emphasizes that Christians and other religious minorities have the right to safe and stable life on the historic lands of their ancestors and practice of their faith without fear of persecution, deportation or death“.

LUXEMBOURG

Replies received on 28/08/2017

1. Combien y a-t-il de personnes de votre pays dont on sait qu'elles se sont rendues (ou que l'on soupçonne se s'être rendues) dans une zone qui est (ou a été) sous le contrôle de Daech, afin de participer aux activités de Daech³⁷ ? Combien de ces personnes sont revenues ?

Le Luxembourg compte moins d'une dizaine de personnes qui ont quitté le territoire national pour se rendre en Syrie dont trois personnes sont retournées au Luxembourg.

2. Quelle est la politique de votre pays concernant le traitement de ces personnes qui sont revenues ?

Les personnes qui se sont rendues dans une zone de combat pour participer aux activités de Daech peuvent faire l'objet de poursuites pénales. Est pénalement poursuivie, toute personne qui, à partir du territoire luxembourgeois, se rend ou qui s'est préparée à se rendre dans un autre Etat dans le dessein de commettre, d'organiser, de préparer ou de participer à une infraction terroriste (Art.135-15 du Code pénal). Des poursuites pénales peuvent être lancées pour toute personne ayant séjourné à l'étranger sur un théâtre d'opérations de groupes terroristes et qui détient, recherche, se procure ou fabrique des explosifs, des armes à feu ou d'autres armes ou substances nocives ou dangereuses ou qui détient, recherche ou se procure des renseignements sur d'autres méthodes et techniques spécifiques de nature à contribuer à la préparation ou à la commission d'une infraction terroriste (Art. 135-14 du Code pénal).

Il y a lieu de souligner en outre que les personnes en question peuvent obtenir un soutien psychologique.

3. Certaines de ces personnes qui sont revenues ont-elles été poursuivies pour des infractions commises pendant qu'elles participaient aux activités de Daech à l'étranger ? Dans l'affirmative, veuillez indiquer dans combien de cas des poursuites ont été engagées et donner des précisions sur les infractions, sur l'issue des poursuites et sur les peines qui ont éventuellement été imposées.

Non.

4. Des personnes ont-elles été poursuivies pour des infractions commises dans votre pays qui étaient liées à des activités de Daech à l'étranger³⁸ ?

Non.

5. Quelle est la position de votre pays concernant l'exercice de la compétence universelle à l'égard des infractions relevant du droit pénal international ?

Le Luxembourg a toujours préconisé de ne pas conférer une compétence universelle aux juridictions pénales luxembourgeoises, alors que cette compétence constitue une exception au principe général de la procédure pénale du « lien de rattachement » requis entre l'infraction commise et le Luxembourg. Ce principe général est fortement ancré dans la procédure pénale luxembourgeoise et des exceptions y afférentes devraient uniquement être prévues pour des motifs concrets et tenant spécifiquement compte de la situation du Luxembourg par rapport au sujet en cause.

6. Votre pays a-t-il pris position sur la question de savoir si certains actes de Daech constituent un génocide, tel qu'il est défini dans la Convention de 1948 pour la prévention et la répression du crime de génocide ? Dans l'affirmative, quelle position a-t-il prise et dans quel(s) contexte(s) institutionnel(s) cette position a-t-elle été exprimée ?

Le Luxembourg n'a pas pris position sur la question de savoir si certains actes de Daech constituent un génocide au sens de la Convention de 1948 pour la prévention et la répression du crime de génocide.

³⁷ Par « personnes de votre pays », il faut entendre les citoyens, les nationaux et les résidents permanents.

³⁸ Parmi ces infractions figurent la provocation publique à commettre une infraction terroriste, le recrutement pour le terrorisme, l'entraînement pour le terrorisme, le financement du terrorisme, la participation à une association ou à un groupe à des fins de terrorisme, le fait de recevoir un entraînement pour le terrorisme, le fait de se rendre à l'étranger à des fins de terrorisme, le fait de financer des voyages à l'étranger à des fins de terrorisme et le fait d'organiser ou de faciliter par quelque autre manière des voyages à l'étranger à des fins de terrorisme. Ces infractions sont définies notamment dans la Convention du Conseil de l'Europe pour la prévention du terrorisme (STCE n° 196, de 2005) et dans le Protocole additionnel à la Convention du Conseil de l'Europe pour la prévention du terrorisme (STCE n° 217, de 2015).

MONTENEGRO

Replies received on 04/07/2017

At the 74th meeting, held on 18 December 2014, the Parliament of Montenegro's *Committee on Political System, Judiciary and Administration* considered and supported by majority of votes the Proposal for a Law on Amendments to the Criminal Code of Montenegro, submitted to the Parliament of Montenegro by the Government of Montenegro. The proposal envisaged the introduction of a new criminal offence "Participation in Foreign Armed Formations". This law proposal was adopted on 26 February 2015. The said changes to the law stipulate the following:

"Participation in Foreign Armed Formations" Article 449b

(1) Whoever, contrary to the law, other regulations or rules of international law, enlists, recruits, prepares, organizes, manages, transports or arranges the transport of or trains an individual or a group of people with the intention of them joining or taking part in a foreign armed formation operating outside of Montenegro, shall be punished by a prison term of two to ten years.

(2) Whoever, contrary to the law, other regulations or rules of international law departs in view of joining or taking part in, or joins or takes part in a foreign military formation operating outside of Montenegro, individually or in organized groups, shall be punished by a prison term from six months to five years.

(3) Whoever either directly or through a third person offers, gives, provides, seeks, collects or conceals financial assets, funds, material assets or equipment which is, in whole or in part, intended for the commission of offences referred to in paras. 1 and 2 of this Article shall be punished by a prison term from one to eight years.

(4) Whoever publicly calls for others to commit offences referred to in paras. 1, 2 and 3 of this Article shall be punished by a prison term from six months to five years.

(5) The person referred to in paras. 1 to 4 of this Article who reports an individual or a group and thus prevents the commission of a criminal offence, shall be punished by a prison term from six months to three years and his/her penalty may also be remitted.

(6) A foreign armed formation, within the meaning of this Article, shall be a terrorist organisation, foreign army or police, foreign paramilitary formation or para-police formation organized contrary to law, other regulations or rules of international law.

Furthermore, the Criminal Code of Montenegro ("Official Gazette of Montenegro", N^o 040/08, 025/10, 073/10, 032/11, 064/11, 040/13, 056/13, 014/15, 042/15, 058/15), within 35th Chapter, envisages CRIMINAL OFFENCES AGAINST HUMANITY AND OTHER VALUES GUARANTEED BY INTERNATIONAL LAW.

In addition, the Parliament of Montenegro at the sitting, held on 9 July 2013, adopted the Law on Amendments to the Law on International Legal Assistance in Criminal Matters. This law enabled the efficiency of implementation of the legal assistance in criminal proceedings with an international element. The Parliament's Committee on Political System, Judiciary and Administration does not possess statistical data requested in your questionnaire.

NETHERLANDS

Replies received on 27/06/2017

1. How many persons from your country are known or suspected to have travelled to areas that are or have been under the control of Daesh, for the purpose of engaging in Daesh activities?³⁹ How many have returned?

According to the latest figures by our National Coordinator for Security and Counterterrorism 280 people travelled to ISIS territory. 45 died and 50 returned

2. What is your country's policy concerning the treatment of such returnees?

https://www.nctv.nl/binaries/Factsheet%20NCTV%20Terugkeerders_tcm31-244727.pdf
https://www.nctv.nl/binaries/a5-nctvjihadisme-nl6-lr_tcm31-30092.pdf

3. Have any such returnees been prosecuted for offences committed whilst engaged in Daesh activities abroad? If so, please indicate how many such prosecutions have taken place and provide details of the offences, the outcome of the prosecutions and any sentences imposed.

Since 2012 from the 50 returnees 15 have been prosecuted. In 3 cases this led to a conviction because of involvement in Daesh activities.

<https://brandpunt.kro-ncrv.nl/brandpuntplus/om-slechts-drie-teruggekeerde-syrie-gangers-veroordeeld-voor-deelname-aan-jihad/>

4. Have any persons been prosecuted for offences committed within your country relating to Daesh activities abroad?⁴⁰

https://www.nctv.nl/binaries/jihadistisch-terrorisme-in-nederland_tcm31-30171.pdf

Since 2015 13 persons were convicted for offences relating to terrorist activities, recruiting or financing in the Netherlands.

5. What is the position of your country concerning exercise of universal jurisdiction over offences under international criminal law?

The Dutch Government advocates the UN treaties combating terrorism and international crimes and is host to the International Criminal Court.

6. Has your country taken position on the question of whether or not certain acts of Daesh constitute genocide, as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide? If so, what position has it taken, and in what institutional context(s) has this position been expressed?

The Government states that Daesh commits very serious crimes that can maybe be classified as Genocide. However, the exact classification will be up to the Courts.

³⁹ The expression 'persons from your country' is intended to include citizens, nationals and permanent residents.

⁴⁰ Examples of such offences would include public provocation to commit a terrorist offence, recruitment for terrorism, training for terrorism, financing of terrorism, participating in an association or group for the purpose of terrorism, receiving training for terrorism, travelling abroad for the purposes of terrorism, funding travelling abroad for the purpose of terrorism and organising or otherwise facilitating travelling abroad for the purpose of terrorism. For definitions of these offences, see in particular the 2005 Council of Europe **Convention on the Prevention of Terrorism, CETS no. 196 and the 2015 Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, CETS no. 217.**

NORWAY

Replies received on 30/06/2017

1. How many persons from Norway have travelled to areas that are or have been controlled by Daesh for the purpose of engaging in Daesh activities? How many have returned?

The Norwegian Police Security Service assumes that around 100 persons have travelled to Syria from Norway with the purpose of engaging in Daesh activity, and assumes that around 40 have returned.

2. What is Norway's policy concerning the treatment of such returnees?

The Norwegian Police Security Service aims at bringing criminal proceedings against everyone suspected for participating in Daesh activity that returns to Norway. The Norwegian Police Security Service considers initiating criminal investigations also towards those that have not returned, with the aim of establishing an international wanted notice for arrest.

3. Have any such returnees been prosecuted for offences committed whilst engaged in Daesh activities abroad?

In the Norwegian court system, Daesh activity has been the subject of six cases, involving eight persons.⁴¹ Two cases have been finally decided (totally 4 persons convicted) and in one case, the sentencing has been appealed to the Supreme Court by one of the convicted (totally 2 persons convicted). One case only concerns offences committed within Norway and will be discussed under question 4 (2 persons convicted, but one of them has appealed the verdict).

In addition to these six cases, the prosecuting authority will bring charges in one case over the summer, and another case will be heard in the first instance during the upcoming autumn.

All the cases regarding Daesh activity have been brought under the General Civil Penal Code from 1902 section 147a and 147d (section 133 and 136a in the new General Civil Penal Code from 2005⁴²).⁴³ Section 147a punishes any person who plans or prepares for an act of terror by conspiring with another person (terror confederation), while section 147d punishes participation in, as well as recruitment and material/financial support of, a terrorist organisation. The object of proof in all the cases concerning Daesh activity has therefore been whether the accused persons have participated in Daesh, or planned/prepared/supported their activity, or entered into a confederation with Daesh to commit acts of terror; the charges have not been on crimes against humanities, genocide or other specific acts of terror.

The first Norwegian case regarding Daesh is from 2015, where a man travelled to Syria and joined armed forces affiliated with ISIL and Jabhat al-Nusra from September 2013 to February 2014.⁴⁴ The court found proven that he kept guard at roadblocks and other armed operations and thereby conspired quasi ex contractu to contribute to their armed activity (terror confederation under section 147a). The court also found that he participated in these organisations whilst in Syria and afterwards when he returned to Norway (section 147d). He was sentenced to 8 years of imprisonment.

The second case was finally decided by the Supreme Court in June 2016 and concerned three men.⁴⁵ Two of them were convicted for participating in ISIL in Syria during a period of 11 months in 2013-2014 (section 147d). The appellate court found it proven that the two were engaged in military activity in Syria, but it was neither possible nor necessary to establish with certainty what acts they had undertaken. In addition, the court found it proven that their participation in ISIL continued after they returned to Norway. One of the two was in addition convicted together with a third man for trying to send a package with military material to their brother who was fighting for ISIL in Syria. The three were imposed a sentence of 4 years and 3 months, 4 years and 6 months, and 7 months, respectively.

The third case regarded two men who travelled to Syria in August 2014 and stayed in different training camps; one of them stayed a month and the other 10 months.⁴⁶ They were both convicted for participating in ISIL whilst in Syria (section 147d). He who had stayed in Syria for 10 months was also convicted for

⁴¹ Seven persons have been finally convicted.

⁴² The General Civil Penal Code from 2005 came into force in 2015.

⁴³ [Excerpt of the General Civil Penal Code of 1902 section 147a and 147d.](#)

⁴⁴ Judgment in Norwegian: 15-047166MED-OTIR/02

⁴⁵ Judgments in Norwegian: Norges Høyesterett - HR-2016-1422-A; 15-108037AST-BORG/02; 14-175034MED-OTIR/08

⁴⁶ Judgments in Norwegian: 16-012344MED-OTIR/05; 16-150638AST-BORG/01

participating in ISIL after returning to Norway and to have entered into a terror confederation (section 147a). He was sentenced to 7 years and 6 months of imprisonment by the appellant court, but has appealed the sentencing for entering into a terror confederation to the Supreme Court. He who had stayed in Syria for one month was only convicted for participating in ISIL whilst in Syria and was finally sentenced to 4 years imprisonment by the appellant court.

4. Have any persons been prosecuted for offences committed within Norway relating to Daesh activity abroad?

The presentation of the three cases above has shown that for four of the five persons convicted for participating in ISIL, the conviction also included participation in a terrorist organisation after they returned from Syria to Norway.

In the second case presented above, two of the three men were convicted for trying to send a package to a man participating in ISIL in Syria and thus supporting a terrorist organisation from Norway (section 147d).

In addition to these cases, one case from 2017 only concerns offences within Norway (section 147d).⁴⁷ In this case, a man was arrested on his way to Syria and convicted for attempt to participate in Daesh. He was finally sentenced to 2 years and 10 months imprisonment. In the same case, another man was convicted for recruiting the attempted traveller to ISIL. This man was also convicted for participating in ISIL from Norway and for providing material and financial support to ISIL. He was sentenced to 9 years of imprisonment, but has appealed the verdict to the appellant court.

5. What is Norway's position concerning exercise of universal jurisdiction over offences under international criminal law?

The Norwegian General Civil Penal Code from 2005 section 5 regulates the "applicability of the criminal legislation to acts committed abroad", including universal jurisdiction.

According to section 5 third paragraph, the Norwegian criminal legislation applies to acts committed abroad by foreigners when the person is staying in Norway, and the maximum penalty for the act is imprisonment for more than one year, and the acts

- are also punishable under the law of the country in which they are committed;
- are regarded as a war crime, genocide or crime against humanity;
- are a breach of the international law of war;
- are directed against the Norwegian State or a Norwegian State authority;
- were committed outside the area of sovereignty of any State and are punishable by imprisonment;
- are regarded as depriving a minor of the care of parents or other authorised persons;
- are regarded as terrorist acts or terrorist activities pursuant to the Penal Code Chapter 18; or
- are regarded as incitement to carry out a criminal act pursuant to the Penal Code section 183 or as hate speech pursuant to the Penal Code section 185.

According to section 5 seventh paragraph, a prosecution under this section will only be instituted when required in the public interest.

According to the General Civil Penal Code section 6, the Norwegian criminal legislation also applies to acts that Norway has a right or an obligation to prosecute under agreement with foreign States or under international law generally.

Confer enclosed excerpts of the relevant provisions in an unauthorized translation.⁴⁸

Reference is also made to Norway's statement on universal jurisdiction in the Sixth Committee of the UN General Assembly:

<https://www.norway.no/en/missions/un/statements/general-assembly-committees/2016/c6-principle-of-universal-jurisdiction/>

⁴⁷ Judgment in Norwegian: 16-084225MED-OTIR/02

⁴⁸ [Excerpts of relevant provisions in the Norwegian General Civil Penal Code of 20 May 2005 No. 28.](#)

6. Has Norway taken position on the question of whether or not certain acts of Daesh constitute genocide?

Norway does not have an official position on whether or not certain acts of Daesh constitute genocide. This is due to genocide being a legal term defined in the 1948 Convention, and it is therefore for the judiciary to have the final say on whether all the conditions for criminal liability are fulfilled or not.

This view was expressed by the Norwegian Foreign Minister Børge Brende to the Norwegian Parliament on 15 February 2016. The speech can be found in Norwegian here:

<https://www.stortinget.no/no/Saker-og-publikasjoner/Sporsmal/Skriftlige-sporsmal-og-svar/Skriftlig-sporsmal/?qid=64655>

POLAND

Replies received on 20/06/2017

1. How many persons from your country are known or suspected to have travelled to areas that are or have been under the control of Daesh, for the purpose of engaging in Daesh activities? How many have returned?

There is no official information about how many people from our country are known or suspected to have travelled to areas that are or have been under the control of Daesh for the purpose of engaging in Daesh activities as well as how many people have returned.

2. What is your country's policy concerning the treatment of such returnees?

We do not have any prosecuting against such crimes so far. However, in Polish Criminal Code could be found articles that are connected with terrorism.

Article 258 § 4.

Anyone who sets up or leads a group or association with the intention of carrying out a terrorist attack is liable to imprisonment for at least three years.

Art. 259.

Anyone who voluntarily leaves the group or association and informs an authority responsible for prosecuting offences about all the essential circumstances of the offence committed, or prevents a planned offence, including a fiscal offence, will not be subject to the penalty for the offence specified in Article 258.

Article 259a.

Anyone who crosses the border of the Republic of Poland with a view to committing a terrorist offences or offences from article 255a (distribution of content facilitating an offence) or article 258 § 2 or 4 (organized criminal group) is liable to imprisonment for between 6 months and 5 years.

Article 259b.

The court, on the application of the prosecutor, adopts an extraordinary mitigation of the penalty or may conditionally suspend a penalty of imprisonment whether offender from article 259a:

- 1) voluntarily ceased a prohibited act specified in article 259a as well as disclosed to an authority responsible for prosecuting offences all the essential circumstances of the committed act or prevented the commission of a planned offence,*
- 2) voluntarily ceased an aiding other person to offence a prohibited act specified in article 259a as well as disclosed to an authority responsible for prosecuting offences all the essential circumstances of the committed act, in particular information about person who committed an offence from article 259a.*

3. Have any such returnees been prosecuted for offences committed whilst engaged in Daesh activities abroad? If so, please indicate how many such prosecutions have taken place and provide details of the offences, the outcome of the prosecutions and any sentences imposed.

See above.

4. Have any persons been prosecuted for offences committed within your country relating to Daesh activities abroad?

See above.

5. What is the position of your country concerning exercise of universal jurisdiction over offences under international criminal law?

There is no official position in that issue.

6. Has your country taken position on the question of whether or not certain acts of Daesh constitute genocide, as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide? If so, what position has it taken, and in what institutional context(s) has this position been expressed?

There is no official position in that issue.

PORTUGAL

Replies received on 28/08/2017

Portugal is facing threats similar to those faced by countries within the geo-strategic and political space closest to us and where most of our interests are projected.

Among these threats the following stand out: terrorism; espionage; cyber threats; proliferation of chemical, biological, radiological and nuclear weapons; extremism; and transnational organised crime, namely regarding drug trafficking, trafficking in persons, irregular migrations and maritime piracy.

In recent years, the Islamist terrorist threat has seen a sustained increase at global level. In 2016, it reached unprecedented levels in Europe, which led several countries to increase their threat level related to this phenomenon.

The possible existence of a group of individuals of Portuguese nationality in the Syrian-Iraqi conflict zone with ties to the Daesh terrorist organisation remains a cause for concern, especially due to the risks associated to their potential return to Portugal or any other European country.

However, it is important to say that so far cases of Portuguese nationals in scenarios of Islamist insurgency have not been reported, namely in Libya, Sahel-Maghreb, the Horn of Africa, the Arab Peninsula, South-east Asia or in the Afghani-Pakistani region. (RASI, 2016)

Legislation only available in Portuguese:

[Law no. 53/2008 of 29 August 2008](#) - Approves the Internal Security Law;

[Lei no. 62/2013 of 26 August 2013](#) - Law governing the Organisation of the Legal System.

ROMANIA

Replies received on 28/06/2017

In Romania, the Penal code regulates crimes against humanity in article 349, genocide crimes in article 438 and war crimes in article 440. Taking into account the typical Daesh methods of action, these are the articles relevant for prosecuting and punishing them, with the observations that the penal code only has legal power on the territory of Romania, and these articles can be applied to any types of terrorist groups who indulge in such actions.

1. Crimes against humanity

Article 349 of the Romanian Penal Code regulates a few situations that have been seen in the actions of Daesh: (1) The committing of one or more of the following acts in a general or systematic attacks against a civilian population: A) killing people; B) subjecting a population or part of it with the purpose of destroying it wholly or in part by living conditions intended to cause its physical or total physical destruction; C) slavery or trafficking in human beings, especially women or children; D) the deportation or forced transfer of persons legally resident in a given territory, by their expulsion to another state or to another territory or by the use of other coercive measures, in violation of the general rules of international law; E) torture of a person which is under the care of the perpetrator or over whom he exercises control in any other way, causing him physical or mental harm or serious physical or psychological suffering that exceeds the consequences of the sanctions allowed by international law;

The recruiting methods and detention methods:

Submitting a person to methods of treatment which are not medically recognized, and unnecessary for the health of the person and without having voluntarily, expressly and prior consent; H) subjecting a person to degrading treatment shall be punished by life imprisonment or by imprisonment from 15 to 25 years and the prohibition of the exercise of certain rights. (2) The same punishment shall be imposed on the recruitment or the incorporation of minors who have not reached the age of 15 in the armed forces or in armed groups, as well as their determination, by any means, to actively participate in hostilities. (3) In the event of an armed conflict with or without an international character, a member of the enemy armed forces or an enemy combatant, after having surrendered without conditions or who has been removed from the fight in any way is punished by imprisonment from 5 to 12 years and ban the exercise of certain rights. (4) The commission of one of the following acts in an international armed conflict: A) the unlawful detention or unjustified delay in the return of one or more of the persons referred to in paragraph (5) lit. a); B) the transfer, directly or indirectly, by an agent of the receiving power of part of the civilian population to which he belongs, in the occupied territory; J) persecution of a particular group or community by depriving them of fundamental human rights or by severely restricting the exercise of these rights on grounds of political, racial, national, ethnic, cultural, religious, sexual or other criteria Recognized as inadmissible in international law; is punishable also with imprisonment between 5 and 12 years.⁴⁹

2. Genocide related crimes

The commission, in order to destroy, in whole or in part, a national, ethnic, racial or religious group of one of the following acts: A) killing members of the group; B) harming the physical or mental integrity of some members of the group; C) subjecting the group to conditions of existence likely to result in its total or partial physical destruction; D) imposing measures to prevent births within the group; E) the forced transfer of children belonging to a group in another group shall be punished by life imprisonment or by imprisonment from 15 to 25 years and the prohibition of the exercise of certain rights. (2) If the facts provided in paragraph (1) are committed in time of war, the punishment is life imprisonment.⁵⁰

3. War crimes

Finally, in the circumstances of war, the crimes shall be prosecuted under the power of article 440 of the penal code which cites:

(1) The commission of one or more persons protected by international humanitarian law in an armed conflict, whether international or not, of one of the following: A) killing; B) Taking hostages; C) the application of cruel or inhuman treatment, causing injury to physical or mental integrity or serious physical or psychological suffering, in particular through torture or mutilation; F) enforcing or enforcing a severe punishment, in particular the death penalty or imprisonment, against a person who has not been tried in the

⁴⁹ Article 349 of the Romanian Penal Code (unavailable in English, in online format).

⁵⁰ Article 438 of the Romanian Penal Code (unavailable in English, in online format).

course of a legal and impartial procedure offering the guarantees required by international law; is punishable by imprisonment between 15 and 25 years .⁵¹

⁵¹ Article 440 of the Romanian Penal Code (unavailable in English, in online format).

SLOVAKIA

Replies received on 28/07/2017

1. How many persons from your country are known or suspected to have travelled to areas that are or have been under the control of Daesh, for the purpose of engaging in Daesh activities? How many have returned?

N/A

2. What is your country's policy concerning the treatment of such returnees?

N/A

3. Have any such returnees been prosecuted for offences committed whilst engaged in Daesh activities abroad? If so, please indicate how many such prosecutions have taken place and provide details of the offences, the outcome of the prosecutions and any sentences imposed.

N/A

4. Have any persons been prosecuted for offences committed within your country relating to Daesh activities abroad?

N/A

5. What is the position of your country concerning exercise of universal jurisdiction over offences under international criminal law?

According to the *de lege lata* Slovak legislation, the principle of the universal jurisdiction is stipulated in the section 5a of the act no. 300/2005 Coll. Criminal Code as amended.

*"This Act shall be applied to determine the criminal liability for the criminal offence of illicit manufacturing and possession of narcotics or psychotropic substances, poisons or precursors, and trafficking in them (Section 171 and 172) forgery, fraudulent alteration and illicit manufacturing of money and securities (Section 270), uttering counterfeit, fraudulently altered and illicitly manufactured money and securities (Section 271), manufacturing and possession of instruments for counterfeiting and forgery (Section 272), forgery, fraudulent alteration and illicit manufacturing of duty stamps, postage stamps, stickers and postmarks (Section 274), forgery and fraudulent alteration of control technical measures for labelling goods (Section 275), establishing, masterminding and supporting a terrorist group or its member (Section 297), illicit manufacturing and possession of nuclear materials, radioactive substances, hazardous chemicals and hazardous biological agents and toxins (Section 298 and 299), plotting against the Slovak Republic (Section 312), terror (Section 313 and 314), destructive actions (Section 315 and 316), sabotage (Section 317), espionage (Section 318), assaulting a public authority (Section 321), assaulting a public official (Section 323), countefeiting and altering a public instrument, official seal, official seal-off, official emblem and official mark (Section 352), jeopardising the safety of confidential and restricted Information (Section 353), smuggling of migrants (Section 355), endangering peace (Section 417), **genocide** (Section 418), terrorism and some forms of participation on terrorism (section 419), brutality (Section 425), using prohibited weapons and unlawful warfare (Section 426), plundering in the war area (Section 427), misuse of internationally recognised and national symbols (Section 428), war atrocities (Section 431), persecution of civilians (Section 432), lawlessness in the wartime (Section 433), **even if such act was committed outside of the territory of the Slovak Republic by an alien who has not his/her permanent residence on the territory of the Slovak Republic.**"*

6. Has your country taken position on the question of whether or not certain acts of Daesh constitute genocide, as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide? If so, what position has it taken, and in what institutional context(s) has this position been expressed?

No. The alleged commission of the crime of genocide is ad hoc considered and decided by the Slovak Courts. There is no judicial decision in relation to the Daesh so far.

"(1) Any person who, with the intention to destroy, in whole or in part, any national, ethnic, racial or religious group,

a) causes grievous bodily harm or death to a member of such group,

b) imposes a measure intended to prevent births within the group,

c) forcibly transfers children of the group to another group, or

d) deliberately inflicts on the group conditions of life calculated to bring about its physical destruction in whole or in part, shall be liable to a term of imprisonment of fifteen to twenty years.”

In case of suspected crime of genocide, it is essential to demonstrate the intention of the perpetrator to destroy a nation or a national, ethnic, racial or religious group.

The Ministry of Justice of the Slovak Republic has no competence to classify acts committed by Daesh as genocide, crimes against humanity and war crimes. For this purpose, a valid judgment of a Slovak court or International Criminal Court is needed. However, we have no information about such judgement by now.

Note: *The qualified data from the General Prosecutor’s Office of the Slovak Republic concerning questions 1 – 4 have not been supplied yet.*

Sources:

1. Act no. 300/2005 Coll. Criminal Code as amended
2. Qualified answer of the Ministry of Justice of the Slovak Republic

SLOVENIA

Replies received on 04/07/2017

1. How many persons from your country are known or suspected to have travelled to areas that are or have been under the control of Daesh, for the purpose of engaging in Daesh activities?⁵² How many have returned?

The current Penal Code provides for criminal offenses in the field of terrorism (terrorism, direction and participation in a terrorist criminal organization, the financing of terrorism, incitement to and public glorification of terrorist acts, and the recruitment and training for terrorism). With the amended Penal Code (KZ-1E), which entered into force in July 2017, the offense of traveling abroad for the purpose of terrorism was also specifically criminalized as defined in the Protocol to the Council of Europe Convention on the Prevention of Terrorism and the EU Counter-Terrorism Directive.

We have 3 confirmed cases so far. 2 persons have returned, while one person was killed during conflicts.

2. What is your country's policy concerning the treatment of such returnees?

Slovenia tries to capture the risk of foreign terrorist fighters through three fundamental aspects:

- By means of general prevention, where we pursue a comprehensive, multidisciplinary and explicitly horizontal approach. This is facilitated by the national RAN platform set up in January 2015, which currently comprises more than 20 different stakeholders competent to prevent the violent radicalization at national level, including the academic, non-governmental, and research sectors. Such a format enables (a) adequate communication, coordination and cooperation, (b) the development of proper practices, while also an effective transfer of good practices and obligations achieved at the international level, (c) transfer of the policies adopted at the systemic level to the operational level for implementation, i.e. *first line practitioners*.
- Crime prevention where we use special indicators for early detection and prevention of radicalization that leads to violent extremism. Taking into account the geostrategic position of the Republic of Slovenia and through which important transit routes are taking place between the EU and the crisis areas, we are specifically focused on the detection of foreign terrorist fighters.
- Slovenia as an equal partner in the fight against terrorism consistently implements its obligations arising from membership in various international formats: UN, Council of Europe, EU, Europol, Interpol. Being aware of its responsibilities at the international level, it is particularly responsible in carrying out the activities necessary for the transfer and strengthening of standards in the region of SE Europe which is realized through management of the EU Western Balkan Counter Terrorism Initiative of which initiator is in fact Slovenia.

3. Have any such returnees been prosecuted for offences committed whilst engaged in Daesh activities abroad? If so, please indicate how many such prosecutions have taken place and provide details of the offences, the outcome of the prosecutions and any sentences imposed.

The State Prosecutor's Office is currently conducting one pre-trial procedure for crimes related to terrorism. The procedure is still ongoing. The collection of evidence on possible activities abroad is still ongoing.

The Slovenian police has initiated two pre-trial procedures so far. One procedure is conducted by a Specialised State Prosecutor's Office and is still ongoing, while in one case it was concluded with the report due to lack of evidence. In another case, Slovenia participated together with Italy and BiH in the collection of notifications and evidence in the framework of Eurojust coordination for the purposes of prosecution of a Slovenian citizen. After successfully tracking down the suspect, Slovenia arrested the him and later handed him over to Italy to stand trial.

4. Have any persons been prosecuted for offences committed within your country relating to Daesh activities abroad?⁵³

⁵² The expression 'persons from your country' is intended to include citizens, nationals and permanent residents.

⁵³ Examples of such offences would include public provocation to commit a terrorist offence, recruitment for terrorism, training for terrorism, financing of terrorism, participating in an association or group for the purpose of terrorism, receiving training for terrorism, travelling abroad for the purposes of terrorism, funding travelling abroad for the purpose of terrorism and organising or otherwise facilitating travelling abroad for the purpose of terrorism. For definitions of these offences, see in particular the 2005 Council of Europe **Convention on the Prevention of Terrorism, CETS no. 196 and the 2015 Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, CETS no. 217.**

The Penal Code lays down criminal offenses related to the violations of international humanitarian law. In particular, special attention must be paid to the provision of Article 26, paragraph 5, of the Council of Europe Convention on the Prevention of Terrorism (CETS 196): The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by military forces of a Party in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

There are currently no cases.

5. What is the position of your country concerning exercise of universal jurisdiction over offences under international criminal law?

Article 13 of the Penal Code also provides that the Penal Code of Slovenia also applies for offenses committed by a foreign citizen in a foreign country, and in the third paragraph that it also applies to anyone who commits any other criminal offense in a foreign country which, according to an international treaty or general legal principles, recognized by the international community, is prosecuted in all countries, regardless of where it was committed.

So far, no cases have been dealt with on such basis.

6. Has your country taken position on the question of whether or not certain acts of Daesh constitute genocide, as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide? If so, what position has it taken, and in what institutional context(s) has this position been expressed?

SPAIN

Replies received on 30/06/2017

1. How many persons from your country are known or suspected to have travelled to areas that are or have been under the control of Daesh, for the purpose of engaging in Daesh activities? How many have returned?

According to data issued by the National High Court, between the 1st January 2014 and the 28th March 2017 there have been 204 detained for jihad in Spain, of which 25 are women. In the case of Spain, there are no second or third generations that are radicalised but it has been noticed that, as a previous step to go to a conflict zone, they return to their country of origin (generally Morocco) where they culminate the process of radicalisation. The average age is between 18 and 40 years. The majority of them, almost a hundred, are of Moroccan origin, and the rest are Spanish converts and other nationalities that have been captured by jihadist networks that spread their messages through social networks.

Concerning the number of persons that have travelled to areas under the control of Daesh, it was estimated at about 70 in January 2015, at the end of the year, it had doubled and by July 2016 it went up to 178. At least until now, the return to Spain by individuals who were in Syria and Iraq has been detected in time. The increase in the number of those who have fled makes matters more complicated, but information services remain alert in order to be able to cut off any possibility of infiltration.

2. What is your country's policy concerning the treatment of such returnees?

[Organic Act 2/2015](#) introduced several modifications to the 1995 [Criminal Code](#) regarding, among other offences, terrorism. In the reform thereby carried out two new figures were introduced: on the one hand, that of being trained to commit terrorist acts and on the other hand to travel to places where those actions can be developed and to serve the interests of such organisations. The former is foreseen in Article 575.1 and 2 of the Criminal Code, punishing receiving military or combat indoctrination, or techniques for the development of chemical or biological weapons, as well as other destructive powers, for the purpose of perpetrating terrorist offences. The former is enshrined in Article 575.3 which criminalises the conduct of anyone who, in order to collaborate with a terrorist organisation or group or to commit any of the crimes of the like, travels or gets established in a foreign territory controlled by a terrorist organisation.

Self-training actions are criminalised when carried out with terrorist purposes by means of regular access to publicly available communication services through the Internet, the contents of which are likely to incite entry into, or cooperation with, a terrorist organisation that are understood to be committed in Spain when accessing the contents from the Spanish territory.

Therefore, the mere fact of leaving the Spanish territory or attempting to do so, with the determination to carry out acts of collaboration with a terrorist organisation or to commit such crimes, shall suffice to assert that we are dealing with a terrorist circumstance, which shall also be deemed to occur when the individual is established in a place controlled by an organisation of such nature, provided that it has the aforementioned purposes.

Thus the relevant Article of the Criminal Code specifically regarding the abovementioned aspects reads as follows:

Article 575

1. Whoever, with the purpose of being trained to carry out any of the crimes typified in this Chapter [Terrorist organisations and groups and terrorist offences], receives indoctrination or military or combat training, or relating to development techniques on chemical or biological weapons, on the preparation of explosive, inflammable, incendiary or asphyxiating substances or devices or specifically intended to facilitate the commission of any such offences, shall be punished with imprisonment from two to five years.

2. The same penalty shall apply to whoever, for the same purpose of training to commit any of the offences established in this Chapter, carries out by him/herself any of the activities foreseen in the previous section.

It shall be understood that this offence is committed by those who, for that same purpose, habitually access one or more online publicly available communication services or contents accessible through the Internet or an electronic communications service whose contents are directed or suitable to encourage to join a terrorist organisation or group, or to collaborate with any of them or with their purposes. It shall be understood that the relevant acts are committed in Spain when the contents are accessed from the Spanish territory.

It shall also be understood that this offence is committed by those who, for the same purpose, acquire or have in their possession documents that are intended or, because of their content, are suitable for inciting to join a terrorist organisation or group or to collaborate with any of them or with its objectives.

3. The same penalty shall be imposed on anyone who, for the same purpose, or to collaborate with a terrorist organisation or group, or to commit any of the offences included in this Chapter, travels to or establishes in a foreign territory controlled by a group or terrorist organisation.

3. Have any such returnees been prosecuted for offences committed whilst engaged in Daesh activities abroad? If so, please indicate how many such prosecutions have taken place and provide details of the offences, the outcome of the prosecutions and any sentences imposed.

Information not available.

4. Have any persons been prosecuted for offences committed within your country relating to Daesh activities abroad?

In 2014, investigations into jihadist terrorism doubled compared to the previous year, with 106 preliminary investigations having been reached, which in percentage terms represent 16% of the preliminary investigations that fall within the purview of this Prosecutor's Office and 13.5% The total number of judicial bodies of the National High Court.

Also noteworthy are the data concerning accusations made by the Prosecutor's Office, oral hearings, sentencing and prosecution regarding offences related to jihadism: 43 of the 119 allegations (approximately 36%), 192 of the 496 oral hearings held (approximately one 38%), 39 of the 122 judgements handed down (32%) and 142 of the 448 individuals tried (32% of the total number of people tried).

As an example, in October 2015, the National High Court condemned the eleven members of a Ceuta cell that sent suicide combatants to fight against Bachar the Asad to 12 and 10 years of jail respectively, this was considered the first jail sentence for sending jihadists to Syria.

5. What is the position of your country concerning exercise of universal jurisdiction over offences under international criminal law?

The principle of universal justice underwent a thorough reform by means of [Organic Act 1/2014](#) modifying Article 23 of [Organic Act 6/1985 on the Judiciary](#), which now reads as follows:

Article 23

1. [...]

2. [...] *the Spanish jurisdiction shall hear of offences committed outside the national territory, provided that the criminals responsible are Spaniards or foreigners who have acquired Spanish nationality after the commission of the event and meet the following requirements:*

a) *That the offence is punishable at the place of execution, unless, under an international treaty or a normative act of an international organisation to which Spain is a party, such a requirement is not necessary, without prejudice to the following sections.*

b) *That the aggrieved party or the Public Prosecutor file a complaint before the Spanish courts.*

c) *That the offender has not been acquitted, pardoned or punished abroad, or, in the latter case, has not served the sentence. If he/she has only partially fulfilled it, this shall be taken into account in order to reduce proportionally the applicable penalty.*

3. *The Spanish jurisdiction shall adjudicate the acts committed by Spaniards or foreigners outside the national territory when they are subject to be criminalised, in the light of Spanish criminal law, as one of the following offences:*

a) *Of treason and against the peace or independence of the State.*

b) *Against the owner of the Crown, his Consort, his Successor or the Regent.*

c) *Rebellion and sedition.*

d) *Falsification of the real signature or stamp, the stamp of the State, the signatures of the Ministers and the public or official stamps.*

e) *Falsification of Spanish currency and its issuance.*

- f) Any other falsification that directly damages the credit or interests of the State, and introduction or issuance of the falsified items.
- g) Attack against Spanish authorities or public officials.
- h) Those perpetrated in the exercise of their functions by Spanish public officials residing abroad and crimes against the Spanish Public Administration.
- i) Those related to exchange control.

4. Likewise, the Spanish jurisdiction shall adjudicate the acts committed by Spaniards or foreigners outside the national territory susceptible of being criminalised, according to the Spanish legislation, as one of the following crimes when the conditions expressed are fulfilled:

A) Genocide, crimes against humanity or against persons and property protected in the event of armed conflict, provided that the proceedings are directed against a Spaniard or against a foreign citizen who is habitually resident in Spain, or against an alien who is in Spain and whose extradition would have been denied by the Spanish authorities.

B) Crimes of torture and against the moral integrity enshrined in Articles 174 to 177 of the Criminal Code, when:

1º the procedure is directed against a Spaniard; or,

2º the victim had Spanish nationality at the time of commission of the facts and the person to whom the commission of the crime is imputed is in Spanish territory.

C) Crimes of enforced disappearance covered by the International Convention for the Protection of All Persons from Enforced Disappearance (New York on 20 December 2006), when:

1º the procedure is directed against a Spaniard; or,

2º the victim had Spanish nationality at the time of commission of the facts and the person to whom the commission of the crime is imputed is in Spanish territory.

(D) Offences of piracy, terrorism, illegal trafficking in toxic drugs, narcotic drugs or psychotropic substances, trafficking in human beings, against the rights of foreign nationals and offences against the safety of maritime navigation carried out in marine spaces, cases provided for in the treaties ratified by Spain or in normative acts of an International Organisation to which Spain is a party.

E) Terrorism, provided that one of the following assumptions exists:

1º the procedure is directed against a Spaniard;

2º the procedure is directed against an alien who is habitually resident or in Spain or, without meeting these requirements, collaborates with a Spaniard, or with an alien residing or in Spain, for the commission of a terrorist offence ;

3º the offence was committed on behalf of a legal person domiciled in Spain;

4º the victim had Spanish nationality at the time of the commission of the facts;

5º the crime has been committed to influence or unlawfully condition the performance of any Spanish Authority;

6º the offence has been committed against an institution or body of the European Union which has its seat in Spain;

7º the offence has been committed against a ship or aircraft with a Spanish flag; or,

8º The offence has been committed against Spanish official facilities, including their embassies and consulates.

For these purposes, "official Spanish facilities" is to be understood as any permanent or temporary premises in which public authorities or public officials perform their public functions.

F) The offences contained in the Convention for the Suppression of Unlawful Seizure of Aircraft(The Hague on 16 December 1970), provided that:

1º the crime has been committed by a Spanish citizen; or,

2º the offence has been committed against an aircraft sailing under the Spanish flag.

G) The offences contained in the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971, and in its Supplementary Protocol done at Montreal on 24 February 1988, authorised by it.

H) The offences contained in the Convention on the Physical Protection of Nuclear Material done in Vienna and New York on 3 March 1980, provided that the offence was committed by a Spanish citizen.

I) Illegal trafficking in toxic drugs, narcotic drugs or psychotropic substances, provided that:

1º the procedure is directed against a Spaniard; or,

2º in the case of acts of execution of one of these crimes or of constitution of a criminal group or organisation with a view to its commission in Spanish territory.

J) Crimes of constitution, financing or integration into a group or criminal organisation or crimes committed within them, in the case of groups or organisations acting for the commission in Spain of an offence punishable by a maximum penalty of three years or more.

K) Crimes against freedom and sexual immunity for minor victims provided that:

1º the procedure is directed against a Spaniard;

2º the procedure is directed against a foreign citizen who is habitually resident in Spain;

3º the proceedings are directed against a legal entity, company, organisation, group or any other type of entities or groups of persons that have their registered office in Spain; or,

4º the offence was committed against a victim who, at the time of committing the acts, had Spanish nationality or habitual residence in Spain.

L) Crimes covered by the Council of Europe Convention of 11 May 2011 on preventing and combating violence against women and domestic violence, provided that:

1º the procedure is directed against a Spaniard;

2º the procedure is directed against an alien who is habitually resident in Spain; or,

3º the crime was committed against a victim who, at the time of the commission of the facts, had Spanish nationality or habitual residence in Spain, provided that the person charged with the commission of the crime is in Spain.

M) Trafficking in human beings provided that:

1º the procedure is directed against a Spaniard;

2º the procedure is directed against a foreign citizen who is habitually resident in Spain;

3º the proceedings are directed against a legal entity, company, organisation, group or any other class of entities or groups of persons that have their registered office or registered office in Spain; or,

4º the offence was committed against a victim who, at the time of committing the acts, had Spanish nationality or habitual residence in Spain, provided that the person charged with the commission of the crime is in Spain.

N) Offences of corruption between individuals or in international economic transactions, provided that:

1º the procedure is directed against a Spaniard;

2º the procedure is directed against a foreign citizen who is habitually resident in Spain;

3º the offence was committed by the manager, administrator, employee or collaborator of a commercial company, or a partnership, association, foundation or organisation that has its headquarters or registered office in Spain; or,

4º the crime was committed by a legal person, company, organisation, groups or any other class of entities or groups of people that have their headquarters or registered address in Spain.

O) Crimes covered by the Council of Europe Convention of 28 October 2011 on counterfeiting of medical products and offences posing a threat to public health where:

1º the procedure is directed against a Spaniard;

2º the procedure is directed against an alien who is habitually resident in Spain;

3º the proceedings are directed against a legal entity, company, organisation, group or any other class of entities or groups of persons that have their headquarters or registered office in Spain;

4º the victim had Spanish nationality at the time of the commission of the facts; or,

5º the offence was committed against a person who had habitual residence in Spain at the time of the commission of the facts.

P) Any other offence whose persecution is compulsorily imposed by a treaty in force for Spain or by other normative acts of an International Organisation of which Spain is a member, in the cases and conditions determined therein.

Likewise, the Spanish jurisdiction is also competent to hear previous crimes committed outside the national territory by foreign citizens who are in Spain and whose extradition has been denied by the Spanish authorities, as long as a treaty in force in Spain requires it.

5. The crimes referred to in the previous section shall not be prosecutable in Spain in the following cases:

A) When a procedure has been initiated for its investigation and prosecution in an International Tribunal constituted in accordance with the Treaties and Agreements to which Spain is a party.

B) When a proceeding has been initiated for its investigation and prosecution in the State where the acts were committed or in the State of nationality of the person charged with its commission, provided that:

1º the person to whom the commission of the act is imputed is not located in Spanish territory; or,

2º a proceeding for extradition to the country where the acts were committed or of whose nationality the victims were committed, or to place it at the disposal of an International Tribunal to be tried by the them, unless the extradition was not authorised.

The provisions of this section b) shall not apply when the State exercising its jurisdiction is not willing to carry out the investigation or is not in the position to actually do so, and is thus valued by the Second Chamber of the Supreme Court, to which the relevant Judge or Court shall raise a reasoned opinion.

In order to determine whether or not there is a willingness to act in a particular case, consideration shall be given, taking into account the principles of a due process recognised by international law, if one or more of the following cases apply:

A) That the trial has already been or is in progress or that the national decision has been adopted with the purpose of removing the person in question from their criminal responsibility.

B) That there has been an unjustified delay in the trial that, under the circumstances, is incompatible with the intention to bring the person in question to justice.

C) That the proceeding has not been or is not being conducted independently or impartially and has been or is being substantiated in a manner which, in the circumstances, is inconsistent with the intention to bring the person before Justice.

In order to determine the inability to investigate or prosecute a particular case, it shall be examined whether the State, due to the total or substantial collapse of its national administration of justice or because of a complete lack of one, cannot bring the accused to court, does not have the necessary evidence and testimony or is otherwise unable to carry out the trial.

6. The offences referred to in paragraphs 3 and 4 may only be prosecuted in Spain following the filing of a complaint by the aggrieved party or by the Public Prosecutor.

6. Has your country taken position on the question of whether or not certain acts of Daesh constitute genocide, as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide? If so, what position has it taken, and in what institutional context(s) has this position been expressed?

In March 2015, all Parliamentary Groups adopted a non-legislative motion condemning the persecution by Daesh of Christians in the world, especially in Iraq and Syria, which claimed the need for a statement by the Congress and a determined action of the Government of Spain. The positions taken by most of the speakers regarded the actions committed by Daesh in Iraq and Syria as genocide. Spain subscribes deeply to the resolutions issued in this regard by both the European Parliament and the UN ([Link](#) to the entire text –in Spanish- of the said motion, page 6 of the Journal of Debates)

SWEDEN

Replies received on 22/06/2017

How many persons from your country are known or suspected to have travelled to areas that are or have been under the control of Daesh, for the purpose of engaging in Daesh activities? How many have returned?

According to estimates from the Swedish Security Service, approximately 300 people (so-called foreign terrorist fighters) travelled to Syria and Iraq during the period 2012–2016 to join extremist terrorist groups (the Islamic State, IS, and Jabhat Fatah al-Sham). In spring 2017, approximately 150 individuals had returned and about 40 are confirmed or believed to have been killed in action.⁵⁴

Most of the first-time foreign terrorist fighters went during the period 2013–2014 when IS coalesced its international network to generate support for the creation of the Caliphate in June 2014. Since autumn 2015, the number of trips to IS-controlled areas has decreased. According to the Swedish Security Service, approximately 250 Swedish citizens had travelled to the area up to November 2014, and only an additional 30 had travelled there one year later. The military losses suffered by IS and the tightening of border controls into the conflict zone are considered to be the main factors behind this decrease. According to the Swedish Security Service, most of the individuals who join IS are young men between the ages of 18 and 30, born in Sweden with at least one parent born abroad and who have no or low income. However, women have also been recruited and their numbers increased in 2014/2015 at the same time as minors were taken to IS-controlled areas.⁵⁵

For further information on the Swedish foreign fighter contingent, see Gustafsson, L. and Ranstorp, M. (2017) [Swedish Foreign Fighters in Syria and Iraq. An Analysis of open-source intelligence and statistical data](#), Swedish Defence University.

What is your country's policy concerning the treatment of such returnees?

Overall policy

The Swedish policy with regard to returning terrorist fighters is to initiate a criminal investigation upon their return to Sweden (terrorist travel is a criminal offence in Sweden since April 2016 under the Act on Criminal Responsibility for Public Provocation, Recruitment and Training concerning Terrorist Offences and other Particularly Serious Crime [2010:299]), and to prosecute any criminal offences committed. Several legislative initiatives are under way with the aim of further strengthening the rules of criminal law governing terrorist offences (see below under question 4). It is also stressed, however, that initiatives to help these people leave violent extremist or terrorist groups and to reintegrate them into society are required, especially so due to the often severe difficulties in securing evidence and, thus, to prosecute in these cases.⁵⁶

Current developments

The main task of the National Coordinator to Safeguard Democracy against Violent Extremism, initially appointed in June 2014, has been the development and reinforcement of the work taking place at local level and ensuring that there is cooperation between government authorities, municipalities, and civil society organisations. Today, all of Sweden's municipalities are part of a nationwide network to combat violent extremism, and more than half of the municipalities have adopted, or are currently developing, action plans or guidelines on violent extremism – including how to deal with returning foreign terrorist fighters.⁵⁷

As a result of cross-party talks following the attack in Stockholm on 7 April 2017, the government parties and four out of six opposition parties (all except the right-wing nationalist party Swedish Democrats and the Left Party) presented an agreement on anti-terror measures in June. The measures presented included e.g. the launching of government investigations into easing the exchange of information between the police and other authorities – for instance local-council social services – and also between the Security Service and the police, regarding people deemed to pose security threats, such as returning foreign terrorist fighters.⁵⁸

⁵⁴ [Press release from the Swedish Security Service](#), 2016-06-29 (in Swedish); Normark, M., Ranstorp, M. och Ahlin, F. (2017) [Financial activities linked to persons from Sweden and Denmark who joined terrorist groups in Syria and Iraq during the period 2013–2016](#), Swedish Defence University, pp. 7 f.; [Interpellation debate 2016/17:369](#), 28 March 2017 (in Swedish).

⁵⁵ Ibid.

⁵⁶ See e.g. Government Communication 2014/15:144 [Actions to Make Society More Resilient to Violent Extremism](#); Government Communication 2014/15:146 [Prevent, preempt and protect – the Swedish counter-terrorism strategy](#); [Interpellation debate 2016/17:71](#) (in Swedish), [Interpellation debate 2016/17:369](#) (in Swedish).

⁵⁷ The national coordinator to safeguard democracy against violent extremism, [Information in English](#); [Interpellation debate 2016/17:369](#) (in Swedish).

⁵⁸ Swedish Government, [Överenskommelse om åtgärder mot terrorism](#), 7 June 2017 (only in Swedish).

In early June 2017, the Riksdag issued a resolution (Swe. *tillkännagivande*) calling on the Government to take a number of measures with regard to preventing violent extremism. In the underlying committee report, the Committee on the Constitution stated that significant shortcomings have become evident with regard to dealing with returning foreign terrorist fighters and demanded measures to strengthen local capacities and that the Government should consider the establishment of a state-run exit programme for returning terrorist fighters and other supporters of militant islamism.⁵⁹

On 14 June 2017, the Government announced that the work of the temporary National Coordinator will be made permanent in the form of a National Center on Violent Extremism at the Swedish National Council for Crime Prevention, an agency under the Ministry of Justice. According to the announcement, a central task of the centre will be to establish a national intervention team that will strengthen the operational work of the municipalities with regard to the development and follow-up of action plans and individual measures.⁶⁰

On 19 June 2017, the Government tasked The National Board of Health and Welfare with preparing national guidelines for the work of the Social Services at the municipal level with regard to returning foreign terrorist fighters. The guidelines shall be presented to the Government by 19 February 2018.⁶¹

Have any such returnees been prosecuted for offences committed whilst engaged in Daesh activities abroad? If so, please indicate how many such prosecutions have taken place and provide details of the offences, the outcome of the prosecutions and any sentences imposed.

Returnees from the war in Syria were prosecuted in Sweden for the first time in November 2015 for acts committed while fighting in Syria, although not for IS/Daesh but for the then Al-Nusra Front. Two men, Swedish citizens, aged 30 and 32 respectively, were sentenced to life in prison for terrorist crimes (under the [Act on Criminal Responsibility for Terrorist Offences \[2003:148\]](#)) by Gothenburg district court in December 2015. The strongest evidence against them was a film where the throats of two prisoners were slit. The court found that the prosecution could prove that the two men were actively taking part in the murders, even though they were not the ones holding the knife. According to the verdict, the murders and the filming of the murders were intended to install fear in those people in Syria and other countries who do not follow what the murderers claim to be the true Muslim faith. The court thus shared the prosecution's view that this was a terrorist crime. The court also deemed that it was proven that the two men fought in Syria during the spring of 2013. The sentence was appealed but was then affirmed by the Court of appeal in March 2016. One of the sentenced persons filed a petition for a new trial with the Supreme court in May 2017.⁶²

In May 2016, a 25-year-old man was prosecuted for having tried to travel to Syria with the intent to join a terrorist group. It was the first case since new legislation on terrorist trips came into force in April 2016 (under the [Act on Criminal Responsibility for Public Provocation, Recruitment and Training concerning Terrorist Offences and other Particularly Serious Crime \[2010:299\]](#)). The man was arrested at Stockholm Arlanda Airport in April 2016 with a holster and a flak jacket in his luggage. According to the prosecutor, he intended to join the terrorist group al-Nusrafront in Syria. The defence argued that the intention was not to commit a terrorist crime, but to take part in humanitarian work in Syria. In its judgement, the District court noted that there were large parts of the investigation that showed that the 25-year-old intended to do what the prosecution claimed, but that other parts of the investigation indicated another purpose. The court also found that, even if the purpose was as the prosecutor claimed there were many steps, involving a lot of time and effort, that remained before the risk of a terrorist crime would have materialized. Thus, according to the District court judge, the evidence did not go all the way to prove that the accused intended to go to Syria to commit a terrorist crime. The man was acquitted by the District court in June 2016 and later, after an appeal by the prosecution, by the Court of appeal in December 2016.⁶³

Have any persons been prosecuted for offences committed within your country relating to Daesh activities abroad?

In October 2015, a 47-year-old man from Chechnya, living in Sweden, was prosecuted under the [Act on Criminal Responsibility for Public Provocation, Recruitment and Training concerning Terrorist Offences and other Particularly Serious Crime \[2010:299\]](#) for having instructed his son, living in Syria and fighting for jihadist groups (not specifically IS/Daesh), on how to make explosives and use them to blow up a prison wall in Aleppo. The indictment was "training for terrorist offences and other particularly serious crimes." In its ruling, the district court established that the prosecution proved that the accused had sent diagrams of explosives and other instructions to help his son, and also referred to evidence of transcripts of telephone and chat conversations between the man and his son. However, the court ruled that the aim was to take the

⁵⁹ Committee report 2016/17:KU23 [Förebyggande av våldsbejakande extremism](#) (only in Swedish).

⁶⁰ Government Offices, ["Center mot våldsbejakande extremism inrättas vid Brå"](#) (only in Swedish), 14 June 2017.

⁶¹ Government Offices, [Uppdrag till Socialstyrelsen att ta fram en nationell vägledning för socialtjänstens arbete med återvändare m.fl.](#), 19 June 2017 (only in Swedish).

⁶² District court case no. B 9086-15, Court of appeal case no. B 5306-15.

⁶³ District court case no. B 3019-16, Court of appeal case no. B 6344-16.

prison, release the prisoners and take control of a road outside the prison, and not to intimidate the population of a country (in this case Syria), which is a prerequisite for an act to be considered as terrorism under Swedish law. The man was acquitted of the charges.⁶⁴

In April 2016, a 20-year-old man was indicted for conspiracy to commit terrorist offences (under the [Act on Criminal Responsibility for Terrorist Offences \[2003:148\]](#)). During a search of the man's apartment, the police found several components they believed were intended for the construction of a suicide bomb (e.g. acetone, pressure cooker, steel balls and electric wire). According to the indictment, he had also searched online for information about how to make a bomb and about terrorist acts carried out by the Islamic State. The man was arrested in February 2016 after his mother discovered the suspected bomb ingredients and alerted the Swedish Security Service. He had initially come to the attention of the Security Service for travelling to Turkey twice in 2015 and his family filed a missing persons report saying he was trying to join the Islamic State. In June 2016, the district court sentenced him to five years in prison for preparing to commit a terrorist offence. The decision of the court has become final.⁶⁵

In October 2016, a 34-year-old man was prosecuted under the [Act on Criminal Responsibility for Public Provocation, Recruitment and Training concerning Terrorist Offences and other Particularly Serious Crime \[2010:299\]](#) for solicitation to fund a terrorist organization. The prosecutor did not charge the defendant with directly collecting funds for a terrorist organization, as criminalized under the Swedish [Act on Criminal Responsibility for the Financing of Particularly Serious Crime in some cases \(2002:444\)](#), but it was the first case of its kind brought under the provision that criminalizes solicitation to commit terrorist crimes. Although the defendant denied wrongdoing, the court established that the man had solicited terrorist funding by posting a message on his Facebook page calling for people to "help supply our brothers at the front [Jabhat al-Nusra, the Islamic State and Ahrar ash Shaam in Syria, according to the investigation] with weapons to avenge our siblings." The Court also found that he had provided contact information for two known funders of terrorism. The Court found that he was the owner of the account, despite the alias used; that his objection that he had been given the Facebook account in order to access other accounts was improbable; and that in light of the full circumstances, including updates being made on his employer's network, he had indeed exercised control over the account and intentionally provided information on the account to solicit funding of terrorism. The court found that the severity of the terrorism crimes committed warranted a presumption of sentencing to prison and that there were no extenuating circumstances to rebut that presumption. The accused was sentenced to six months in prison.⁶⁶ The sentence has been appealed and will be determined by the Court of appeal in November 2017.⁶⁷

In March 2017, a 30-year-old Syrian man was charged with terror offences (under the [Act on Criminal Responsibility for Terrorist Offences \[2003:148\]](#)), alternatively arson, over a fire started at a Shia Muslim community centre in the city of Malmö, Sweden. The district court had judged in a remand hearing in December 2016 that there was not enough evidence to consider the fire a terror incident, instead remanding him in custody on suspicion of arson. However, the prosecutor insisted that the man was affiliated with Isis and that the fire was started in order to spread fear in the name of Isis. In April 2017, the District court cleared the accused of all charges and dismissed the terror charges. In its ruling, it stated that one of the prerequisites to consider the fire in question as a terror offence is that the act could have seriously damaged the state of Sweden, which require acts of a completely different and much more serious nature. The court also found that the prosecutor had failed to prove beyond reasonable doubt that the man was guilty of arson, noting that neither a forensic examination of the crime scene nor any eye witnesses had produced enough evidence to prove he started the fire. The prosecutor had argued that police searching his computer had found a description of how to make a detonator and propaganda films showing Isis soldiers fighting and killing "infidels" and a picture of an Isis flag. The court stated in its ruling that it appeared to be obvious that the accused sympathizes with Isis, which could indicate he had a motive to start the fire, but does not prove that he did.⁶⁸

Current developments

With regard to prosecution and punishment of terrorist crimes in Sweden, it should be noted that new legislative proposals are expected in the coming year(s):

A commission of inquiry was set up by the Government in 2014 with the overall task of analysing whether the criminal law regulatory framework needed to be strengthened so as to more effectively prevent and hinder individuals from travelling from Sweden to take part in armed conflict for a terrorist organization. The commission presented its final report in June 2016, proposing inter alia a new penal provision on participation in combat-related activities in armed conflict abroad in support of a terrorist organization, and an extension of criminal liability concerning travel for terrorist purposes, financing of such travel and recruitment for particularly serious crime. The proposals are currently being prepared in the Government

⁶⁴ District court case no. B 4352-15.

⁶⁵ District court case no. B 546-16.

⁶⁶ District court case no. B 10658-15.

⁶⁷ Chief prosecutor Agnetha Hilding Qvarnström, Swedish Prosecution Authority, e-mail 19 June 2017.

⁶⁸ District court case no. B 10337-16.

Offices, and according to the Government's list of forthcoming bills, a bill is scheduled for September 2017.⁶⁹

In February 2017, the Government announced the creation of another commission, tasked with overhauling and consolidating Swedish terrorism legislation. The commission has been asked to complete and present its report and recommendations by January, 2019.⁷⁰

In early May 2017, the Government also launched a "fast-track" investigation into introducing a new law making participation in a terrorist organization a criminal offence. The investigator is due to report back to the Government by mid-December 2017.⁷¹

What is the position of your country concerning exercise of universal jurisdiction over offences under international criminal law?

Sweden exercises universal jurisdiction over crimes against international law. Pursuant to the Swedish Penal Code Chapter 2 Section 3 (6), a number of offences – including i.a. terrorist offences (as defined in the Terrorist Offences Act Section 2) and attempts to commit such offences, terrorist-linked offences (according to the Terrorist Offences Act Section 5), and offences under the [Act on criminal responsibility for genocide, crimes against humanity and war crimes \(2014:406\)](#) – shall be adjudged according to Swedish law and by a Swedish court regardless of where or by whom it was committed.

Hitherto, two Syrian nationals, both belonging to Syrian rebel groups, have been found guilty of war crimes in Syria by Swedish courts (in 2015 and 2017) and sentenced to imprisonment.

Has your country taken position on the question of whether or not certain acts of Daesh constitute genocide, as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide? If so, what position has it taken, and in what institutional context(s) has this position been expressed?

Several private members' motions have been submitted in the Swedish Parliament calling on the Government to recognise Daesh killings as genocide. The issue was most recently addressed in depth by the Committee on Foreign Affairs in spring 2016. In its report, the committee stated that it welcomes the participation of Sweden in the international coalition against Daesh, and that it condemns the systematic and extensive violations of human rights and international humanitarian law committed by Daesh. With regard to the recognition of genocide, however, the committee underlined that in principle it is not for the parliament as a representative body to take positions on matters of international law.⁷² The Riksdag supported the position of the committee.

The issue was raised again in connection with the committee's consideration of the Annual report from the Swedish delegation to the Council of Europe. In its subsequent report, the Committee on Foreign Affairs noted the adoption by PACE of Resolution 2091 on foreign fighters in Syria and Iraq and referred to its earlier statement.⁷³

⁶⁹ Government report 2016:40 [Straffrättsliga åtgärder mot deltagande i en väpnad konflikt till stöd för en terroristorganisation](#) (contains an English summary), Government Offices, [List of bills](#), 10 January 2017 (only in Swedish).

⁷⁰ Terms of Reference 2017:14 [En översyn av den straffrättsliga terrorismlagstiftningen](#) (only in Swedish).

⁷¹ Government Offices, [Uppdrag att överväga ett särskilt straffansvar för deltagande i en terroristorganisation](#) (only in Swedish), 2 May 2017.

⁷² Committee report 2015/16:UU12.

⁷³ Committee report 2015/16:UU13.

SWITZERLAND

Replies received in French on 22/06/2017

1. Combien y a-t-il de personnes de votre pays dont on sait qu'elles se sont rendues (ou que l'on soupçonne se s'être rendues) dans une zone qui est (ou a été) sous le contrôle de Daech, afin de participer aux activités de Daech ? Combien de ces personnes sont revenues ?

Depuis 2001 et jusqu'en février 2017 (date des dernières données), 81 départs ont été recensés par le Service de renseignement de la Confédération [SRC]⁷⁴ (60 confirmés, 21 non-confirmés), dont 67 vers la Syrie et l'Irak (53 confirmés, 14 non-confirmés) et 14 vers la Somalie, l'Afghanistan et le Pakistan (7 confirmés, 7 non-confirmés). Ces chiffres étant cumulatifs, il est important de préciser que parmi ces voyageurs certains sont encore sur place, 22 personnes sont décédées (dont 15 décès confirmés), certains circulent dans les régions en conflit et d'autres sont de retour en Suisse. Par rapport au mois de janvier 2017 où 78 cas étaient répertoriés, le SRC a enregistré trois nouveaux cas. Le nombre des retours se monte à 14 (dont 11 cas confirmés). Les critères d'évaluation du SRC concernant les trois cas non-confirmés sont les suivants : la motivation djihadiste de ces personnes n'a pas été établie et/ou leur localisation exacte ne peut être définie avec certitude. Le SRC continue d'enquêter sur ces cas non-confirmés. Parmi ces 81 cas figurent 30 personnes détentrices de la nationalité suisse (dont 18 binationaux). Le SRC ne fournit pas publiquement d'autres indications sur l'identité, l'âge, le sexe, la nationalité ou le domicile de ces personnes.⁷⁵

2. Quelle est la politique de votre pays concernant le traitement de ces personnes qui sont revenues ?

Lorsqu'une personne est soupçonnée de soutien à l'Etat Islamique (ou Daech), elle peut être mise en détention provisoire selon la gravité des soupçons formulés par les autorités de poursuite pénale. Elle doit être remise en liberté quand il n'existe plus de motifs justifiant une prolongation de la détention préventive. Les dispositions sur la procédure pénale suisse (art. 237 du Code de procédure pénale CPP) permettent d'ordonner, en lieu et place de la détention provisoire ou lors de la libération de détention provisoire d'un prévenu, des mesures de substitution, pour autant que lesdites mesures permettent d'atteindre le même but que la détention. Le risque de fuite, de collusion ou de récidive ayant initialement entraîné la mise en détention provisoire (cf. art. 221 CPP) doit être circonscrit par les mesures de substitution ordonnées.

Pour illustrer les propos ci-dessus, voici un exemple concret : un jeune résidant en Suisse romande revient de Turquie en juin 2016 ; il est arrêté à l'aéroport de Zurich. Sur mandat du Ministère public de la Confédération (MPC), il est placé en détention provisoire. Après un certain temps, le tribunal des mesures de contrainte lève la détention préventive sur demande du MPC, et des mesures de substitution sont mises en place. La mise en œuvre de ces mesures nécessite une coopération intensive entre les autorités cantonales concernées, L'Office fédéral de la Police (fedpol) et le MPC. C'est ainsi tout un arsenal d'instruments policiers et sociaux qui est déployé pour accompagner le jeune jusqu'à son procès.

Les mesures de substitution qui peuvent être ordonnées sont par exemple: la fourniture de sûretés; la saisie des documents d'identité et d'autres documents officiels; l'assignation à résidence ou l'interdiction de se rendre dans certains lieux; l'obligation de se présenter régulièrement à un service administratif, comme par exemple au poste de police; l'obligation d'avoir un travail régulier; l'obligation de se soumettre à un traitement médical ou à des contrôles, ou encore l'interdiction d'entretenir des relations avec certaines personnes. En complément, le port d'un bracelet électronique peut être ordonné afin de surveiller la bonne exécution par le prévenu des mesures de substitution auxquelles il a été soumis. Ces mesures peuvent perdurer jusqu'à la clôture de l'instruction, soit lorsque la direction de la procédure estime l'instruction complète. Le non-respect de l'une ou plusieurs d'entre elles peut avoir pour conséquence la réincarcération immédiate du prévenu sous le régime de la détention provisoire.

L'Office fédéral de la Justice (OFJ) est en train de travailler sur un projet de mise en œuvre de la Convention du Conseil de l'Europe pour la prévention du terrorisme et de son protocole additionnel. Au centre de ces deux instruments se trouve l'obligation pour les États membres d'incriminer la provocation publique à commettre un acte terroriste, le recrutement et l'entraînement au terrorisme, ainsi que les voyages à des fins terroristes. Dans le contexte de ce projet, l'OFJ se penchera également sur l'art. 260ter du Code pénal CP (organisation criminelle), puisque de nombreuses voix se sont fait entendre pour demander un renforcement de cette disposition. En effet, outre des interventions parlementaires, la

⁷⁴ Plus de détails sur le SRC : <http://www.vbs.admin.ch/fr/ddps/organisation/unites-administratives/service-enseignement.html>.

⁷⁵ Source : Mesures prises par la Suisse dans la lutte contre le terrorisme à motivation djihadiste. Troisième rapport TETRA, avril 2017, p. 30.

Lien : <https://www.fedpol.admin.ch/dam/data/fedpol/aktuell/news/2017/2017-03-14/tetra-ber-f.pdf>.

Conférence des directrices et directeurs des départements cantonaux de justice et police (CCDJP) a chargé un groupe de travail d'élaborer, dans la perspective des praticiens, une proposition de révision de l'art. 260ter CP à l'intention de l'OFJ. Les organisations criminelles et terroristes représentent aujourd'hui une des menaces les plus importantes. La peine maximale applicable doit être adaptée en fonction de cet état de fait. Aujourd'hui, la peine maximale est de 5 ans – ce qui n'est pas crédible en comparaison internationale.

Le projet de l'OFJ veut également garantir que les comportements incriminés par la « Loi fédérale du 12 décembre 2014 interdisant les groupes "Al-Qaïda" et "État islamique" »⁷⁶ et les organisations apparentées, dont la validité est limitée jusqu'à fin 2018, continuent d'être couverts par une législation adéquate, non limitée dans le temps.⁷⁷

3. Certaines de ces personnes qui sont revenues ont-elles été poursuivies pour des infractions commises pendant qu'elles participaient aux activités de Daech à l'étranger ? Dans l'affirmative, veuillez indiquer dans combien de cas des poursuites ont été engagées et donner des précisions sur les infractions, sur l'issue des poursuites et sur les peines qui ont éventuellement été imposées.

Selon l'article 2, al. 2 de la « Loi fédérale du 12 décembre 2014 interdisant les groupes «Al-Qaïda» et «Etat islamique» et les organisations apparentées », « *Quiconque commet l'infraction à l'étranger est aussi punissable s'il est arrêté en Suisse et n'est pas extradé. L'art. 7, al. 4 et 5, du code pénal est applicable.* » Pour plus de détails, voir la réponse à la question 2.

4. Des personnes ont-elles été poursuivies pour des infractions commises dans votre pays qui étaient liées à des activités de Daech à l'étranger ?

Selon l'article 2, al. 1 de la « Loi fédérale du 12 décembre 2014 interdisant les groupes «Al-Qaïda» et «Etat islamique» et les organisations apparentées », « *Quiconque s'associe sur le territoire suisse à un groupe ou à une organisation visé à l'art. 1, met à sa disposition des ressources humaines ou matérielles, organise des actions de propagande en sa faveur ou en faveur de ses objectifs, recrute des adeptes ou encourage ses activités de toute autre manière est puni d'une peine privative de liberté de cinq ans au plus ou d'une peine pécuniaire.* »

Selon le Ministère public de la Confédération, deux actes d'accusation ont été déposés respectivement en 2015 et 2016 auprès du Tribunal pénal fédéral (TPF) pour violation de l'article 2, al. 1 de la Loi susmentionnée. Ces deux affaires ont été soutenues en 2016 devant le TPF et ont abouti à des condamnations. D'autres condamnations, notamment par voie d'ordonnance pénale, ont suivi en 2016⁷⁸. Nous ne disposons d'aucune statistique précise sur le nombre de personnes poursuivies pour violation de cet article de loi, mais certains échos nous parviennent régulièrement par l'intermédiaire de la presse⁷⁹.

5. Quelle est la position de votre pays concernant l'exercice de la compétence universelle à l'égard des infractions relevant du droit pénal international ?

Dans certaines circonstances, le droit pénal suisse donne la possibilité de poursuivre au niveau national les auteurs de crimes de guerre, de crimes contre l'humanité ou de génocide, même lorsque le crime a été commis à l'étranger et qu'aucun citoyen suisse n'est impliqué en tant qu'auteur ou victime (principe de la compétence universelle). La responsabilité incombe au Ministère public de la Confédération, qui a créé à cet effet le Centre de compétences Droit pénal international (CC V). Dans certains cas exceptionnels, la justice militaire est responsable.

La Suisse veut assurer une poursuite pénale efficace, transparente et sans failles du génocide, des crimes contre l'humanité et des crimes de guerre. En 2001, elle a ratifié le Statut de Rome de la Cour pénale internationale (CPI) et adapté entièrement les normes helvétiques au Statut de Rome. Le Conseil fédéral a mis en vigueur les modifications de lois nécessaires le 1er janvier 2011⁸⁰.

⁷⁶ Détails de cette loi sous : <https://www.admin.ch/opc/fr/classified-compilation/20142993/>.

⁷⁷ Source : Mesures prises par la Suisse dans la lutte contre le terrorisme à motivation djihadiste. Troisième rapport TETRA, avril 2017, pp. 19-20.

Lien : <https://www.fedpol.admin.ch/dam/data/fedpol/aktuell/news/2017/2017-03-14/tetra-ber-f.pdf>.

⁷⁸ Source : Mesures prises par la Suisse dans la lutte contre le terrorisme à motivation djihadiste. Troisième rapport TETRA, avril 2017, p. 21-22.

Lien : <https://www.fedpol.admin.ch/dam/data/fedpol/aktuell/news/2017/2017-03-14/tetra-ber-f.pdf>.

⁷⁹ Le journal suisse Le Temps a relaté très récemment l'arrestation d'un homme soupçonné d'infraction à la Loi interdisant les groupes « al-Qaïda » et « Etat islamique » : <https://www.letemps.ch/suisse/2017/06/19/terrorisme-un-resident-genevois-arrete-police-federale>.

⁸⁰ Voir les détails sous : <https://www.admin.ch/opc/fr/classified-compilation/20002377/index.html>.

6. Votre pays a-t-il pris position sur la question de savoir si certains actes de Daech constituent un génocide, tel qu'il est défini dans la Convention de 1948 pour la prévention et la répression du crime de génocide ? Dans l'affirmative, quelle position a-t-il prise et dans quel(s) contexte(s) institutionnel(s) cette position a-t-elle été exprimée ?

La Suisse ne s'est pas prononcée officiellement sur cette question.

Cependant, lors d'une intervention du 21 juin 2016 devant le Conseil des Droits de l'Homme des Nations Unies⁸¹, le représentant de la Mission permanente de la Suisse auprès de l'Office des Nations Unies et des autres organisations internationales à Genève souligne que la Commission d'enquête sur la situation des droits de l'homme en Syrie laisse penser qu'une partie des crimes commis par l'Etat islamique est constitutive d'un génocide contre les Yézidis.

Il précise ensuite que « *la Suisse appelle à nouveau le Conseil de sécurité à déférer rapidement toute la situation à la Cour pénale internationale, cour qui est compétente pour poursuivre les auteurs de génocide, crimes contre l'humanité et crimes de guerre. Compte tenu de l'obligation énoncée dans la Convention de 1949 de « prévenir et réprimer » le génocide, les obligations des membres du Conseil de sécurité ne pourraient être plus claires.* » Il conclut son intervention en posant la question suivante : « *De l'avis de la Commission, quelles obligations ont les membres du Conseil de sécurité au regard de la Convention de 1948 pour la prévention et la répression du génocide et de votre analyse selon laquelle le crime de génocide est considéré comme jus cogens ?* »

⁸¹ Voir l'entier de l'intervention sous :

<https://www.eda.admin.ch/content/dam/mission-onu-omc-aele-geneve/en/speeches-to-the-un/Dialogue%20interactif%20commission%20d%20enquete%20droits%20de%20l%20homme%20Syrie.pdf>.

UNITED KINGDOM

Replies received on 23/06/2017

How many persons from your country are known or suspected to have travelled to areas that are or have been under the control of Daesh, for the purpose of engaging in Daesh activities?⁸² How many have returned?

What is your country's policy concerning the treatment of such returnees?

Have any such returnees been prosecuted for offences committed whilst engaged in Daesh activities abroad? If so, please indicate how many such prosecutions have taken place and provide details of the offences, the outcome of the prosecutions and any sentences imposed.

Have any persons been prosecuted for offences committed within your country relating to Daesh activities abroad?⁸³

What is the position of your country concerning exercise of universal jurisdiction over offences under international criminal law?

In summary:

Approximately 850 UK-linked individuals have travelled to engage in the conflict in Syria, with around half returning to the UK.

The UK treats returning foreign fighters as a national security risk. Various policies or measures may be implemented:

- The power to temporarily seize passports;
- Temporary exclusion orders;
- The longer-term power to permanently cancel a passport;
- Exit checks on international transport services;
- Working with international partners to increase the return and prosecution of foreign fighters;
- Deportation or prosecution.

The current total number of persons convicted for offences relating to Syria or Iraq is currently 101.

Certain international crimes can be prosecuted in the UK under universal jurisdiction laws, namely grave breaches of the Geneva Conventions, torture, crimes against humanity and genocide.

In April 2016, the Commons voted to recognise the crimes of Daesh as genocide, contrary to Government policy.

Foreign Fighters engaged with Daesh

In quantitative terms, around 22,000 foreign terrorist fighters have been involved in Syria and Iraq, mostly from the Middle East and Africa (especially Tunisia).⁸⁴ Up to 5,000 Europeans have been recruited.⁸⁵

In the UK, the official estimate as at 30 June 2016 is that:

'Approximately **850 UK-linked individuals** of national security concern have travelled to engage with the Syrian conflict. Of total travellers from the UK, **just under half have returned to the UK**, approximately 15% are deceased and just under half of the remainder have returned to the UK. The majority of individuals in theatre are affiliated with Daesh. The average age at time of travel of UK-linked individuals of national security concern engaging in the Syrian conflict has reduced significantly. Nearly half of those travelling aged 18 and under have departed since July 2014. We have also observed an increase in the number of women, families and minors engaging in the conflict, although they remain a small proportion of overall travellers. We judge that individuals who have travelled to the Syria theatre and engaged with extremist groups pose an increased risk on their return, due to the high probability of their having an increased capability and mindset to commit violent acts.'⁸⁶

⁸² The expression 'persons from your country' is intended to include citizens, nationals and permanent residents.

⁸³ Examples of such offences would include public provocation to commit a terrorist offence, recruitment for terrorism, training for terrorism, financing of terrorism, participating in an association or group for the purpose of terrorism, receiving training for terrorism, travelling abroad for the purposes of terrorism, funding travelling abroad for the purpose of terrorism and organising or otherwise facilitating travelling abroad for the purpose of terrorism. For definitions of these offences, see in particular the 2005 Council of Europe **Convention on the Prevention of Terrorism, CETS no. 196 and the 2015 Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, CETS no. 217.**

⁸⁴ United Nations Counter-Terrorism Committee Executive Directorate, *Background Note: Special Meeting of the Counter-Terrorism Committee with Member States and Relevant International and Regional Organisations on "Stemming the Flow of Foreign Terrorist Fighters"* (Madrid, 27-28 July 2015) p.1.

⁸⁵ Schmid, A., *Foreign (Terrorist) Fighter Estimates* (ICCT, The Hague, 2015) p.11.

⁸⁶ See C. Walker, *Foreign Terrorist Fighters and UK Counter-Terrorism Laws*, [Annex to The Terrorism Acts in 2015](#), December 2016. This statement was provided by the Home Office, but aspects are confirmed in HM Government, *CONTEST: Annual Report for 2015* (Cm.9310, London, 2016) paras.1.4, 2.35.

Treatment of returning foreign fighters

Overview

The approach taken by the Government has been to treat returning foreign fighters as a potential threat to national security. [A fact sheet on counter terrorism published following the attack on Westminster](#) (accessed 22 June 2017) states:

As Daesh loses ground militarily in Syria and Iraq, thanks to the global coalition of nations including the UK, we face the challenge of potential returning foreign fighters and so-called 'lone wolf' attacks in the West.

Cooperation with international partners

In addition, the Government's policy is that the threat of foreign fighters is a challenge that needs to be solved by working with international partners. [In a speech at the recent G7 summit in Sicily, the Prime Minister said](#) that it was "vital we do more to cooperate with our partners in the region to step up returns and prosecutions of foreign fighters" by improving the sharing of intelligence, gathering of evidence and countries' police and legal processes.

Co-operation with the EU is an important facet of this policy: [the Government has highlighted the role of the Second Generation Schengen Information System \(SIS II\)](#) (see paras 1.25-1.27) in tackling the terrorist threat from foreign fighters returning from Syria and Iraq, tracking them as they travel around Europe.

Travel Restrictions

The [Counter-Terrorism and Security Act 2015](#) introduced "a range of measures to disrupt the travel of foreign fighters to and from the conflict areas; and to improve our ability to manage them on their return". This includes the power to temporarily seize passports of those intending to leave the UK for terrorism-related activity. The Government has also indicated it will use other existing powers (under the royal prerogative) to permanently cancel a British passport if needed (see [HC Deb 5 January 2016 c57](#)). The Government has also put in place exit checks on all "international commercial scheduled air, sea and rail services using the UK" to help the security services make appropriate interventions.

In particular, the [Counter-Terrorism and Security Act 2015](#) introduced two new powers to place temporary restrictions on travel:

Section 1 makes provision for the **seizure and temporary retention of travel documents** where there are **reasonable grounds to suspect** that a person at a port has the intention of leaving Great Britain or the United Kingdom for **the purpose of involvement in terrorism-related activity** outside the United Kingdom.

Section 2 provides for the creation of a "**temporary exclusion order**" (TEO), which requires the individual on whom it is imposed **not to return to the United Kingdom** unless their return is in accordance with a **permit** to return issued by the Secretary of State before the individual began the return, or the return is the result of the individual's deportation to the United Kingdom. Subsection (2) provides that the Secretary of State may impose a TEO only where five conditions have been met:

The Secretary of State must reasonably suspect that the individual is, or has been, involved in terrorism-related activity outside the United Kingdom;

She must reasonably consider that it is necessary to impose a TEO for purposes connected with protecting the public in the UK from a risk of terrorism;

She must reasonably consider that the individual is outside the UK when the order is imposed;

The individual must have the right of abode in the UK (British citizens and certain Commonwealth citizens have the right of abode in the UK.)

The Secretary of State may impose a TEO only if the court has given prior permission or if he or she reasonably considers that the urgency of the case requires an order to be imposed without obtaining such permission.⁸⁷

Further, while the TEO is in place, the Secretary of State must keep under review whether the TEO remains necessary.

Deprivation of citizenship

In recent years there has been an increasing use of powers to deprive people of their British citizenship and withdraw British passport facilities, particularly in respect of those who may be involved in fighting, extremist activity or terrorist training overseas. For a full briefing on this, please see the Library's briefing paper: [Deprivation of British citizenship](#).

In December 2013 the Bureau of Investigative Journalism reported a significant increase in the use of deprivation powers in 2013, in part due to British citizens travelling to fight in Syria. The article contended that in the vast majority of cases, the deprivation orders had been issued whilst the individual was overseas, resulting in them being left 'stranded abroad' whilst legal appeals against deprivation could take years to resolve.

⁸⁷ Counter-Terrorism and Security Act 2015, [Explanatory Memorandum](#).

James Brokenshire, then Minister of State for Immigration, denied that the Coalition Government was deliberately waiting until people were outside the UK before making deprivation orders:

It is true that people have been deprived while outside the UK, but I do not accept that it is a particular tactic. It is simply an operational reality that in some cases the information comes to light when the person is outside the UK or that it is the final piece of the picture, confirming what has been suspected. In other cases, we may determine that the most appropriate response to the actions of an individual is to deprive that person while they are outside the UK. Equally, there are cases where it can be determined that it is appropriate to take action to deprive individuals while they are inside the UK.

(...)

I restate that the Home Secretary takes deprivation action only when she considers it is appropriate and that may mean doing so when an individual is abroad, which prevents their return and reduces the risk to the UK. That individual would still have a full right of appeal and the ability to resolve their nationality issues accordingly. It is often the travel abroad to terrorist training camps or to countries with internal fighting that is the tipping point—the crucial piece of the jigsaw—that instigates the need to act.⁸⁸

Deportation

According to the Government's counter-terrorism strategy (CONTEST), deportation of foreign fighters will be employed where possible:

We believe that as a matter of principle foreign nationals who have been engaged in terrorist-related activity here should be deported, where they cannot be convicted or after they have served a sentence. But, given our human rights obligations, we will deport only where we are satisfied that those concerned will not be mistreated on their return. We will continue to seek assurances in this regard from other governments to facilitate the deportation of more terrorist suspects in the future.⁸⁹

Prosecutions of returning foreign fighters

The statistics for these prosecutions are not disaggregated by proscribed organisation. However, the following prosecutions have been brought for terrorism-related offences in Syria or Iraq.

The current total number of persons convicted for offences relating to Syria or Iraq is currently 101. This figure includes:

- individuals who travelled to the region;
- individuals who tried to travel but were stopped;
- individuals who assisted the first two categories.

This figure can be broken down by offence and age. Please see the [BBC's database](#) for the breakdown of this figure.⁹⁰

Prosecutions for UK-based offences relating to Daesh

As above, please see the [BBC's database](#) for the breakdown of these offences.

Universal Jurisdiction

Certain offences can be prosecuted in the UK regardless of where they were committed and whether there is any link to the UK.

Universal jurisdiction over such offences is set out within three Acts:

- [Geneva Conventions Act 1957](#)
- [Criminal Justice Act 1988](#)
- [International Criminal Court Act 2001](#).

In brief, the Geneva Convention Act 1957 and the Criminal Justice Act 1988 allow for prosecutions of persons who commit those grave breaches of the Geneva Convention or torture, respectively. These offences can be prosecuted in the UK regardless of where in the world they were committed. Further, the accused need not be resident in the UK at the time of prosecution.

Under the [UK's International Criminal Court Act 2001](#), the UK can exercise jurisdiction over persons who commit genocide, crimes against humanity and (other) war crimes anywhere in the world **but** only where the crimes are committed by persons who are UK nationals or residents at the time of prosecution. This is, therefore, a limited form of universal jurisdiction.⁹¹

⁸⁸ HC Library briefing paper, [Deprivation of British citizenship](#), p11.

⁸⁹ HM Government, [CONTEST](#).

⁹⁰ BBC, '[Who are Britain's Jihadis?](#)', 22 February 2017.

⁹¹ See discussion by D. Akande, '[UK to restrict universal jurisdiction laws](#)', EJIL Talk, July 2010.

Geneva Conventions Act 1957 (“GCA”)

Section 1(1) of the GCA states:

“Any person, whatever his nationality, who, whether in or outside the United Kingdom, commits, or aids, abets or procures the commission by any other person of a grave breach of any of the scheduled conventions or the first protocol shall be guilty of an offence”

The Conventions deal with:

- the amelioration of the condition of the wounded and sick in armed forces in the field;
- wounded sick & shipwrecked members of armed forces at sea;
- the treatment of the prisoners of war;
- the protection of civilian persons in time of war; and
- the “first protocol” relates to the protection of victims of international armed conflicts.

“Grave breaches” are acts such as:

Wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages, and extensive destruction and appropriation of property where those acts are “not justified by military necessity and carried out unlawfully and wantonly”.

Offences under the Geneva Convention can be tried anywhere, regardless of the nationality of the alleged offender, or where the alleged crimes were committed.

In the UK, they are triable in the Crown Court. However the consent of the Attorney General is required before a prosecution can be brought under the GCA. (GCA s1A(3)(a)).⁹²

A person convicted of an offence involving murder shall be sentenced as if he had committed the offence of murder in England & Wales. For all other offences the maximum sentence is 30 years imprisonment. (GCA s1A (5) & (6)).⁹³

Criminal Justice Act 1988 (“CJA”)

Section 134 of the CJA provides for universal jurisdiction over the offence of torture:

(1) A public official or person acting in an official capacity, whatever his nationality, commits the offence of torture if in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties

Subsection (2) provides for an offence where a person “intentionally inflicts severe pain or suffering on another at the instigation or with the consent or acquiescence” of a public official.

The offence is triable only on indictment, and the maximum sentence is life imprisonment (CJA s134(6)).

The Attorney General’s consent is required to prosecute (CJA s135).⁹⁴

International Criminal Court Act 2001 (“ICCA”)

This Act incorporates the Rome Treaty (ICC) into domestic law. The UK can investigate and prosecute any crimes in the Rome Statute committed in the UK or committed overseas by a UK national, a UK resident or a person subject to UK service jurisdiction.

Under s51(1) to the ICCA

“It is an offence against the law of England and Wales for a person to commit genocide, a crime against humanity or a war crime.”

The offences are defined at s50(1) and Schedule 8 Articles 6, 7 & 8.2 respectively.

Each offence covers a vast range of behaviours, but broadly can be summarised as follows:

“Genocide” is defined as a range of acts “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group”.

A “crime against humanity” is a range of acts “intentionally causing great suffering, or serious injury to body or to mental or physical health, when committed as part of a widespread or systematic attack directed against a civilian population, with knowledge of the attack.”

“War crimes” means “grave breaches of the Geneva Conventions”, “other serious violations of the laws and customs applicable in international armed conflict” and various other violations of the laws of armed conflict, whether of an international nature or otherwise (but excluding certain internal disturbances such as riots or isolated and sporadic acts of violence).

The offences are triable in the Crown Court only and the Attorney General’s consent is required to prosecute (ICCA s53(3)). Sentencing is the same as for GCA offences (see ICCA s53(3) and (6)).

Both state and private prosecutions can be brought in respect of any of the above offences.⁹⁵

⁹² See blog post by Kingsley Napley, [Legal Update: Universal Jurisdiction – which foreign crimes can be prosecuted in the UK?](#), September 2014.

⁹³ Kingsley Napley, [Legal Update: Universal Jurisdiction – which foreign crimes can be prosecuted in the UK?](#), September 2014.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

Has the UK condemned the actions of Daesh as genocide and if so, in what context?

In the UK there is no clear process for officially recognising events as genocide, but the UK can prosecute people for genocide even if it took place outside the UK (after 1991).

There was pressure inside and outside of Parliament for the UK Government to recognise ISIS massacres as genocide. In February 2016, an amendment was tabled in the House of Lords to the Immigration Bill seeking to set up a system whereby a judge would determine whether a situation constituted genocide, and people from the genocidal situation would be able to claim asylum at a British embassy overseas and would be presumed to be eligible for asylum. This was with particular reference to ISIS massacres. The government opposed the amendment because it would not be practical, it said. A similar amendment was considered at Lords Report stage, but was disagreed to on division by 148 votes to 111.⁹⁶

The Government's position is that it is not a political decision but largely one for the international courts, as shown in a response to a question in the House of Commons in April 2016:

Kevin Foster: I thank the Minister for his answer. As reports emerged of the genocide being committed by the Nazis, the allied Governments made a co-ordinated joint statement on 17 December 1942 to condemn those crimes and pledge to bring those responsible to justice at the end of hostilities. Does my right hon. Friend the Minister agree that co-ordinating a similar statement today would be appropriate, given the evidence of similar crimes being committed by Daesh against Christians and other religious minorities?

Mr Ellwood: My hon. Friend makes a powerful argument. The regular images on our screens confirm the scale and the barbarity of Daesh's inhumane treatment of minorities. We are now witnessing systematic and horrific attacks against Christians, Yazidis and others, based on their religious beliefs or their ethnicity. I too believe that acts of genocide have taken place but, as the Prime Minister has said, genocide is a matter of legal rather than political interpretation. We as the Government are not the prosecutor, the judge or the jury. Such matters are determined first in the international courts and in the United Nations Security Council, but we are helping to gather evidence that could be used to hold Daesh to account appropriately.⁹⁷

However, in April 2016, a government attempt to prevent MPs from declaring that Daesh's treatment of Yazidis and Christians amounted to genocide was defeated, when the Commons voted unanimously to condemn their treatment and refer the issue to the UN Security Council.

The Foreign Office had directed ministers and parliamentary aides to abstain, saying it was wrong for the government to prejudge the issue or act as a jury on a case that may yet be referred to the international criminal court.⁹⁸

⁹⁶ HC Library Briefing Paper, [Declaring Daesh Massacres Genocide](#), April 2016, p14.

⁹⁷ [HC Deb 12 April 2016, c165](#).

⁹⁸ Guardian, [MPs unanimously declare Yazidis and Christians victims of Isis genocide](#), 20 April 2016.