SEVENTH FRAMEWORK PROGRAMME

SECURITY, Collaborative Project
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SAFIRE *Scientific Approach to Formulate Indicators & Responses to Radicalisation*

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1.	Hogeschool Utrecht
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MANAGEMENT SUMMARY

Project objectives
Radicalisation research leads to ethical and legal questions and issues. These issues need to be addressed in way that helps the project progress in ethically and legally acceptable manner.

Description of Work
The legal analysis in SAFIRE addressed questions such as which behaviour associated with radicalisation is criminal behaviour. The ethical issues were addressed throughout the project in close cooperation between the ethicists and the researchers using a method called ethical parallel research.

Results
A legal analysis was made about criminal law and radicalisation.
During the project lively discussions were held in the research team about ethical issues. An ethical justification for interventions in radicalisation processes has been written.
With regard to research ethics: An indirect informed consent procedure for interviews with (former) radicals has been designed. Practical guidelines to prevent obtaining information that could lead to indirect identification of respondents were developed

Project information
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Table of Contents

1. Introduction

This deliverable reports the legal and ethical work that has been performed within SAFIRE.

1.1 Legal work

An analysis was made of criminal law with regard to radicalisation to determine what type of behaviour related to radicalisation constitutes a crime. This analysis was subcontracted to FennellRoosendaal. The results of this analysis can be found in Chapter 2 and Appendix 2 and 3.

1.2 Ethical Parallel research

The ethical (parallel) research being conducted and the advice given during the SAFIRE project went beyond the formal ethical requirements of just making sure that checklists with regard to data protection and informed consent were being adhered to. Parallel research was important in this research project because with this method it was possible to observe and direct the project within its progress and thus changes were made before potential problems arose. The presence of ethicists does not imply that the other researchers were considered 'unethical', but since they had a different specialisation and worked in a separate work package they had another perspective. The ethicists were able to concentrate on social and ethical factors that may not immediately relate to the research questions but were very relevant to the research project (e.g. public perception of activities).

The ethical research consisted of two parts: One part was research ethics during the research itself (for example related to interviews and interventions studies). The other part related to the subject matter. The ethics research has assisted in improving the project and its conduction in such a way that ethical and legal problems were addressed proactively. This helped guide the project following an ethically acceptable and legally compliant trajectory. Thus the ethical parallel research was not about hindering research but about guiding research in such a way that potential ethical, societal and legal problems were minimised.

The ethical parallel research roughly consisted of a cycle of five steps.

1. Gathering of data about the project to help identify ethical issues.
2. Reflecting on these issues and searching for relevant ideas in literature.
3. Preparing the discussions on the ethical issues and decisions that have to be made
4. Having a discussion with the SAFIRE team or some of the researchers and making a decision.
5. Reporting about the ethical issues and proposed solutions.

This cycle was started several times to see if new ethical issues had come up during the research. In some cases the discussions needed to be finalised with a decision, for example on what type of programme to evaluate for Work P 5. These decisions concerning the project can be found in italics in this report.

The data gathering about the project was done in the following ways:

- consortium meetings and advisory board meetings were attended;
- team members were interviewed either in person or by phone (the list of interviewees can be found in Appendix 1);
- team members contacted the ethicist with questions, for example, regarding informed consent forms and procedures;
- (draft) deliverables and press releases were read;
- A workshop was organised during the SAFIRE symposium, see Chapter 4.

Reflection on the ethical issues was done by searching for relevant ideas in literature and discussions with team members about possible solutions and the practical constraints. During consortium meetings or in smaller meetings a discussion was held where the ethical issues were presented as well as possible solution directions. In the discussions the discussants together with the ethicists decided how to deal with the ethical issue at hand.
Throughout the project, decisions were made that made some ethical issues less relevant. Therefore, some of the discussions and some of the literature that seemed very relevant at the beginning of the project gradually lost its relevance. For the purpose of creating a readable final report, the ethical issues are reported systematically not chronologically and with the bias of hindsight, meaning that a choice is justified instead of a thorough exploration of all possible choices in all the decisions that were made. Some issues that came up but lost all relevance are not included in this report.

First we will describe the conceptual issues that arose at the beginning of the work and were addressed by discussions with the consortium and by the legal work. After that we will provide an argumentation how some types of interventions to reduce radicalisation could be ethically justified, even if people are not violent. Subsequently we focus on the European context and the difficulties arising with respect to preventative interventions.. The ethical issues related to research ethics such as obtaining data from respondents with interviews and intervention studies are dealt with in Chapter 5. In Chapter 6 conclusions are drawn.

2. Conceptual issues

Right at the beginning of the project there were many discussions regarding what the project should include and focus on. Should the research focus on people who have proved that they commit violent acts based on ideological motives or should people who have very uncompromising ideals also be included? It was decided that SAFIRE would focus on violent radicalisation, so radicalisation that led to people performing a criminal or terrorist act. Within SAFIRE an analysis of relevant law was made to get a clearer picture of what deeds are criminal with regard to radicalisation. This analysis starts with the concept of criminal behaviour in Dutch law and continues with specific anti-terror laws. In Appendix 2 a list of international legislative initiatives regarding terrorism is provided. In Appendix 3 relevant case law on terrorist law and freedom of expression are included.

2.1 Legal analysis

2.1.1 Criminal behaviour as a concept

According to Broers (2010), criminal law gradually shifted during the years from the private to the public domain, including the creation of a large range of penalties including corporal punishment. The criminal offender and his behaviour slowly received more and more attention during this process. This attention resulted in regional, national and international legislation of crime dealing with specific subjects: on the one hand types of offences and on the other hand criminal procedure. Of course, actual punishment of offences was still at the discretion of the judiciary. Montesquieu and later Beccaria argued that punishment should be proportional to the committed offence. Severe penalties were not necessarily a way to prevent crimes, while imprisonment seemed the most suitable penalty for prevention. Limiting the individual right of freedom, imprisonment would scare off potential wrongdoers. During the centuries, criminal behaviour was both labelled as having an anthropological cause (Lombroso, see Gibbons, 1987, p. 206) and a social or exogenous factor (Tarde, Lacassagne). The latter of which still has ground in modern theory. Exogenous factors, such as poverty, drug abuse and unemployment tend to have a negative effect on behaviour, which can result in committing criminal offences. With the birth of the Modern Movement in the late 1800's, attention was shifted from the act to the actor, paying attention to both personality and personal conditions of the individual offender. Whereas the search for criminal behaviour during the centuries was focused on different ideas on how criminal behaviour came to being, ranging from biology, physiology to sociology, criminal behaviour is only relevant for this project insofar as it is punishable under the law. Criminal law is therefore, as much as criminology, relevant to determining how criminal (deviant) behaviour is perceived.

Reason for any typological approach is on the one hand to be able to explain criminality, and on the other hand to ensure effective treatment of offenders. Whether or not we actually profile offenders and are able to categorise them does not seem really relevant for the underlying research.

Whilst modern criminal law holds individuals accountable for criminal wrongdoing, it does acknowledge several models for punishment of groups. One can think of

accessory, conspiracy and constructions like aiding and abetting. With the events of 9/11 and the rise of modern organised crime, we also tend to look more and more at criminal behaviours of groups as well. As a result, both individual and group behaviour became punishable under several terrorism acts. It is the criminal punishability and thus criminal law that determine whether or not individual or group behaviour can be punished. So, no matter the underlying foundation and concept of individual or group behaviour, the criminal liability of such behaviour is most relevant for this part of the research.

In order to do research concerning crime and criminal behaviour, it should first be defined what crime is. 'Crime is first of all, a legal conception, human behaviour punishable under the criminal law' (Mannheim 1965, p. 22). According to Prins (1982, p. 5) and based on the ideas of Sutherland and Cressey (1960, p. 12-13), behaviour is criminal when it complies with the following elements:
a) harm; the intention itself is not taken for the deed (which incorporates the concept known in Dutch as 'daadstrafrecht' (see below)
b) prescribed punishment (illegitimate action)
c) conduct (causal relationship between the act and the result)
d) *mens rea*; criminal intent

Criminal behaviour thus results in criminal punishment, therewith complying with the internationally recognised concept of *nulla poena sine lege* (no punishment without a legal basis). The law thus protects citizens from random criminalisation and punishment. Codification and the legality principle (art 1 Dutch Penal Code) form the basis of any western criminal system[1]; the foundation of this idea can also be found in EU law.[2]

Note that there is no such thing as a list of elements incorporated in the law that defines criminal behaviour as a concept. However, these elements can all be found in criminal law, when looking at specific criminal acts.

An example: Manslaughter (article 287 Dutch Penal Code, and comparable, Par. 212 German Penal Code and many other acts incorporated in national laws).

[1] Also see: Mevis, 2009.
[2] Article 7 European Convention on Human Rights (ECHR).
(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
(2) This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time it was committed, was criminal according to the general law recognised by civilised nations.
Article 15 ICCPR (International Covenant on Civil and Political Rights)
1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.
2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by the community of nations.

Article 287 states that “he who intentionally takes the life of another, is guilty of manslaughter and liable to a term of imprisonment of not more than fifteen years or a fine of the fifth category.”

Article 212 German Penal Code:
“(1) Whosoever kills a person without being a murderer under section 211[3] shall be convicted of murder and be liable to imprisonment of not less than five years.
(2) In especially serious cases the penalty shall be imprisonment for life.”

Following the elements above we can assess why manslaughter is a crime:
a) harm: the death of a person
b) prescribed punishment (it is prescribed by law as an illegitimate action (to kill))
c) conduct: there has to be a causal relationship between the act and the death of the person at hand
d) criminal intent: the term ‘intentionally’ in the law

Crime thus differs from acts of negligence where harm is done, and a causal relationship can be determined but there is no criminal intent. It also differs from causing accidental harm, where intent is also lacking. That does not mean of course that negligence or accidental harm cannot be punished. It merely means that such actions are not considered criminal behaviour, but can be illegitimate; not all illegitimate actions are criminal behaviour. Legally criminally punishable behaviour is criminal behaviour.

Gibbons (1987, p. 107) states, that according to many sociologists, including, amongst others, Durkheim, crime is a matter of definition: departing from prevailing norms, deviance is in fact socially condemnable behaviour. Note that in the literature, the term ‘deviance’ is often used as a umbrella-term for criminal behaviour in all its forms. However; deviant behaviour is not necessarily criminal behaviour. See for example, Jones, 1998, p. 31. As a result, conduct or the causal relationship between the act and the criminally punishable result, is based upon social factors; we only tend to punish the act we socially condemn. Such ‘punishment’ however is not necessarily a legitimate act; social condemnation is also a form of punishment. The socially condemned act does not have to be a criminal act under the law. Social condemnation is the foundation of criminal law, whereas several purposes of criminal law can be recognised; protection of the person, the people, the Realm, property, social institutions (marriage, family) and, more controversially, preventing certain behaviour that might shock, corrupt or deprave society. (Gibbons, 1987, p. 6-7). The main goal is to regulate behaviour, in order to serve the purposes listed above.

Mens rea or criminal intent is a requirement to establish *criminal* responsibility. Such responsibility rests only upon ‘normal persons’ therewith excluding the mentally disordered.

The foundation of any criminal offence is a certain *act* which has to be *committed* by the alleged offender. *Being* is thus not enough for the constitution of a criminal act. (de Hullu, 2003, p. 155). The behaviour should therefore be visible in one way or

[3] Section 211 under (a): A murderer under this provision is any person who kills a person for pleasure, for sexual gratification, out of greed or otherwise base motives, by stealth or cruelly or by means that pose a danger to the public or in order to facilitate or to cover up another offence.

another, in order to constitute illegitimacy. Thoughts are therefore not punishable by law, neither are psychical reflexes. Acting upon thought however, can be. Intentionality (consciousness) and free will are leading concepts to determine whether an act is actually illegitimate. Whether or not the act is considered to be criminal behaviour and illegitimate is left to the discretion of a judge.

The Netherlands has what is known as 'daadstrafrecht' in contrast to what is recognised in literature as 'Gessinungsstrafrecht'[4] (de Hullu, 2003). As a result, the *act* is often the element constituting the criminal offence in penal law. The criminal behaviour is not always visible though, especially in cases where the criminal offence is constituted by the act of negligence. To prevent 'artificial' constructions, physical behaviour, often supported by emotional, sociological, linguistic and moral behaviour, will have to result in a punishable offence; it has to have *legal* consequence for an act to be illegitimate. The physical act thus has to be seen in relation to the relevant circumstances and the person of the offender, the so-called 'sociale handelingsleer'. An insult for example, is not only the result of moving the vocal cords, but has its effects as a result of emotional, social, linguistic and moral circumstances that are all considered relevant. In the Netherlands, the guiding principle is individual responsibility for criminal behaviour. That does not mean that group behaviour cannot be punished; it means that each individual holds individual responsibility for his or her own acts.

2.1.2. Criminally liability of individuals vs. criminal liability of groups

An offence can also be committed even when the offender is not physically acting, but is considered to be responsible 'as if he committed the act himself' (Functioneel daderschap). This idea broadens the possibility to punish criminal behaviour and imposes criminal liability on both the actual offender and the person considered functionally liable. As will be shown further in this section the idea of 'functioneel daderschap' allows society to punish group behaviour, by holding members of a group liable as perpetrators.

No country in the European Union upholds the idea of 'Gessinungsstrafrecht'; freedom of thought is considered a fundamental human right (article 9 ECHR). The concept does however seem to play an increasing role in the debate about the possibility to ban political parties[5] but also in the debate about the introduction of all kinds of national laws on the prevention of terrorism.

An exception to the 'daadstrafrecht' idea resulting in the need for acts rather than thought to make something illegitimate, seems to be the offence called 'samenspanning' (conspiracy). Criminal conspiracy is limited to several offences that are considered to be a danger to state security (the basic rules for criminal liability on the act of terrorism). Criminal conspiracy is considered to be present when two or more persons have agreed to commit a crime (art. 80 Dutch Penal Code). However, the act of conspiracy must constitute some kind of complicity, either by involvement

[4] Note that the fact that the Dutch make a distinction between 'daadstrafrecht' and 'gesinnungsstrafrecht' does not mean that Germany upholds the idea of 'gesinnungsstrafrecht'.
[5] See for example http://schreibfreiheit.eu/2010/08/01/meinungsfreiheit-und-terrorismuspraventionsgesetz-2010/ and European Commission for Democracy through Law, Constitutional Implications of Accession to the European Union, CDL-STD(2002)031.

as principal or as accessory before or during the act. Accessories to criminal acts are those who intentionally assist during the commission of the crime or those who provide opportunity or contribute with any means (art. 47 Dutch Penal Code).

"article 47
1) The following persons are liable as principals:
(1) those who commit a criminal offense, either personally or jointly with another or others, or who cause an innocent person to commit a criminal offense;
(2) those who, by means of gift, promises, abuse of authority, use of violence, threat or deception or providing the opportunity, means or information, intentionally solicit the commission of a crime.
2) with regard to the last category, only those actions intentionally solicited by them and the consequences of such actions are to be taken into consideration."

Even though not directly incorporated in Dutch law, causation is an important criterion that has been developed in Supreme Court case law. Since 1978, the criterion of reasonable imputability (foreseeability of the result) has been elaborated upon, resulting in the situation that the concept of strict liability is unknown in Dutch law; a mental element (negligence or intent) is required to trigger criminal liability (Tak, 2008: p. 71).

An attempted criminal act results only in liability when the crime is a felony (art. 45 Dutch Penal Code); an attempt to commit a misdemeanour is not:

Art. 45 (attempt)
1) An attempt to commit a serious offense is punishable where the perpetrator *manifests his intention* by *initiating* the serious offense [emphasis added]
2) in case of attempt, the maximum principal penalty prescribed for the serious offense is reduced by one third.
3) In case of a serious offense carrying a sentence of life imprisonment, a term of imprisonment of not more than fifteen years shall be imposed
4) the additional penalties for attempt are as for the completed serious offense.

According to the Dutch Supreme Court[6] the manifestation of the intention should be clearly visible and the initiation of the serious offense should be focused on finishing that specific serious offense. For example, lighting a match in order to set a house on fire but not being able to throw the match because a police car drove by, constitutes attempt; the suspect manifested his intention to set fire to a house, even though he wasn't able to finish the fire-setting. Also: lighting the match, throwing the match, but the house doesn't catch fire. The attempt to set the house on fire was made, but failed.

Articles 46 to 54 of the Dutch Penal Code describe participation in criminal offences, but even though especially article 46 seems quite similar to article 45, there is no need for a relationship between the act of preparing the offense and the actual completed offense, as is the case in article 45. Article 46 concerns the behaviour *prior* to the actual serious offense. This is in its nature different from manifesting an intention to commit a serious offense.

[6] See HR 24 october 1978 (Uitzendbureau Cito) and HR 8 September 1987 (Grenswisselkantoor).

Example: HR Grenswisselkantoor (HR 08-09-1987, NJ 1988. 612).
In the Dutch Supreme Court case 'Grenswisselkantoor', two men planned to rob the foreign currency exchange office. They were fully prepared and were waiting in their car for the first bank employee to arrive so they could strike as soon as the door of the office was opened. The employee was, however, suspicious and alarmed the police when he saw the exact same car parked as the day before. The robbers fled the scene when the police arrived, but were taken into custody and were tried for extortion (art. 317 Dutch Penal Code). The preparations were elaborate: a stolen car with stolen license plates, a loaded gun, hand cuffs, rope, wigs, et cetera. The question before the court was whether an attempt was made to commit a crime (was there a manifestation of the intent by a visible initiation of the offense). The court ruled that there was no initiation since the men stayed in their car and didn't start with the robbery. The Supreme Court decided that an initiation of the act of extortion was not present. Critique has led to a new article in the penal code; article 46 for preparation.

Art. 46 (preparation)
1) preparation to commit a serious offense, which, by statutory definition, carries a term of imprisonment of not less than eight years, is punishable, where the perpetrator intentionally obtains, manufactures, imports, transits, exports or has at his disposal, objects, substances, monies or other instruments of payment, information carriers, concealed spaces or means of transport *clearly intended for the joint commission of the serious offense*. [emphasis added].
2) in case of preparation, the maximum principal penalty prescribed for the serious offense is reduced by one half.
3) in case of serious offenses carrying a sentence of life imprisonment, a term of imprisonment of not more than ten years shall be imposed.
4) the additional penalties for preparation are as for the completed serious offense.

Note that without the intent described in par. 2.1.1 no criminal act is constituted!

2.1.3 Commiting crimes together

The objects listed in article 46 in themselves are not always *intended for the joint commission of the serious offense*. The Supreme Court therefore provided a criterion explaining how to objectively determine when this intent is present. This is the case "[when] these objects at the time of their use, alone or together *could be* supporting the criminal offense that the suspects intended when using the objects." ('deze voorwerpen, afzonderlijk dan wel gezamenlijk naar hun uiterlijke verschijningsvorm ten tijde van het handelen dienstig kunnen zijn voor het misdadige doel dat de verdachte met het gebruik van de voorwerpen voor ogen had.')[7].
Articles 46a and 46b provide the rules for the attempt to induce another to commit a serious offense (a) and non-completion of the crime as a result of the perpetrator's will (b).

Art. 48 describes liability as accessories:

[7] HR 20 February 2007 (Samir A.), see appendix 3.

"The following persons are liable as accessories to a serious offence:
1) those who intentionally assist during the commission of a serious offence.
2) those who intentionally provide the opportunity, means or information necessary to commit a serious crime."

Article 49 (complicity)
"1) in the case of complicity as an accessory, the maximum of the principal penalty prescribed for the serious offense is reduced by one third.
2) in the case of a serious offense carrying a sentence of life imprisonment, a term of imprisonment of not more than fifteen years shall be imposed.
3) the additional penalties for complicity as an accessory are as for principals.
4) only those actions that were intentionally facilitated or promoted by the accessory and the consequences of such actions are to be taken into consideration in sentencing."

Complicity does result however in crime reduction (art. 49), for the person who can be considered an accessory, is not considered to be the principal actor.[8] Note that group pressure is a very real and relevant element when committing a crime in groups. Even though it might be considered a relevant element in court, group pressure as such does not remove liability. Furthermore, group pressure as such is not mentioned in the law at all.

According to article 80, conspiracy is constituted "from the moment two or more persons agree to commit a serious offense."

As a result of the regulations on terrorism, the former dormant article 96 is again discovered:

Article 96:
" 1) conspiracy to commit any of the serious offenses defined in article 92-95a is punishable by a term of imprisonment of not more than ten years or a fine of the fifth category. [serious offences against the security of the State].
2) the punishment in section 1 is also applicable to a person who, with the object of preparing or promoting any of serious offenses in articles 92-95a:

1) seeks to induce another person to commit such a serious offense, either personally, through an innocent person, or jointly with another or others, or to assist in its commission or to provide the opportunity, means or information for its commission;
2) seeks to procure for himself or for others the opportunity, means or information for the commission of the serious offense;
3) has at his disposal objects which he knows to be intended for the commission of the serious offense;
4) prepares or has control of plans for the commission of the serious offense, which are intended to be communicated to others;
5) seeks to render impossible, obstruct or thwart any measure taken by the government to prevent or suppress commission of the serious offense.
6) A person whose object proves to have been solely the preparation or promotion of political changes in general sense is not criminally liable. "

[8] Note that, according to article 52, complicity as an accessory in lesser offenses is not punishable.

Similar to the apparent 'renewed' applicability of article 96, by means of article 83 (see below), article 415b was put in place to allow for the punishment of terrorists.

Article 415b
"1) The conspiracy to the crimes described in articles 385a, 385b and 385d (serious offenses related to shipping and aviation (red.)), committed with a terrorist intent, is liable to a term of imprisonment of not more than ten years or a fine in the fifth category.
(also see articles 96 par. 2, 114b, 120b, 176b, 282c, 289a, 304b)."

Note that criminal liability in the case of terrorist conspiracy does not require the act to have started.[9] Main reason for this is to enable the possibility to prevent terrorist attacks.

Title IX of the Penal Code provides some definitions of the terms and expressions used in the code. Note that the term 'terrorism' is not defined in the Penal Code. The code only describes the term 'terrorist offense' rather than terrorism (art. 83); according to Mevis (2009: 638), terrorism is not a criminal act in itself, because it cannot be distinguished from any other criminal act, nor can it be qualified as a criminal act. Ultimately, it is a 'regular' criminal act committed with a terrorist intent that qualifies for punishment. The Dutch legislator decided to punish criminal acts committed with terrorist intent much more severely than criminal acts committed without this intent.

On the EU level, conspiracy and association have been laid down in the Convention relating to extradition between the Member States of the European Union. In its explanatory report[10], Article 3 (conspiracy and association to commit offences), is elaborated upon, while specifically referring to the act of terrorism:

> "*Since 1993, the European Union, within the framework of its measures against the most serious forms of crime, has held in particular that high priority should be given to the most serious forms of organised crime and terrorism. In this context, it has often been established that the domestic laws of the Member States lack homogeneous provisions criminalising the aggregation of two or more persons with a view to committing crimes. This is due to different legal traditions but does not amount to differences in criminal policy. These differences may make judicial cooperation more difficult. In particular, the differences between the various forms of association to commit offences covered by the criminal laws of Member States and those between the various forms of conspiracy, and even more the differences between offences of criminal association on the one hand and offences of conspiracy on the other, appeared to be particularly sensitive in the field of extradition in that, due to the lack of the necessary dual criminality, extradition may be prevented for crimes relevant to the fight against organised crime in all its forms.*

[9] One of the downsides to the broadened scope of conspiracy to future criminal acts to be committed with terrorist intent is that it tends to lean towards the previously described concept of 'Gesinnungsstrafrecht'. Critics could say that broadening the scope leads to criminal liability on the basis of thoughts, rather than acts. Also see Mevis, 2009, p. 640.
[10] *Official Journal C 191 , 23/06/1997 P. 0013 – 0026.*

Article 3 is intended to remedy this difficulty by providing an exception to the rule of dual criminality, derogating from Article 2 (1), of this Convention and from the corresponding Article 2 of the European Convention on Extradition and Article 2 of the Benelux Treaty. To that effect paragraph 1 states that where the offence for which extradition is requested is classified by the law of the requesting Member State as an association to commit offences or a conspiracy, extradition may not be refused on the sole ground that the law of the requested Member State does not provide for the same conduct to be an offence. It is self-evident that the other grounds for refusal in this Convention or in other applicable conventions remain in force.
However, this important provision is subject to two conditions, both indicated in paragraph 1. The first is that the offence must, under the law of the requesting Member State, be punishable by a maximum term of deprivation of liberty or a detention order of a maximum of at least 12 months. For greater clarity, the threshold already indicated in Article 2 is explicitly reaffirmed.

The second is that the criminal association or the conspiracy must have as its objective the commission of:
(a) 'one or more of the offences referred to in Articles 1 or 2 of the European Convention on the Suppression of Terrorism;` or
(b) 'any other offence punishable by deprivation of liberty or a detention order of a maximum of at least 12 months in the field of drug trafficking and other forms of organised crime or other acts of violence against the life, physical integrity or liberty of a person, or creating a collective danger for persons.` Paragraph 2 indicates the documentation which forms the basis on which the requested Member State shall decide whether this second condition is met. The conditions show that the exceptional derogation from the requirement of dual criminality is justified and applies only in respect of particularly serious criminal associations or conspiracies and that the assessment of such seriousness must be based on the nature of the offences which are the aim of those persons who conspire, establish or take part in a criminal association. The offences regarded in this connection as serious by this Convention belong to three categories: terrorist offences, offences related to organised crime, including drug-trafficking offences and violent offences.

By contrast, paragraph 1 does not contain a definition of criminal association or conspiracy, it being enough that the offence on which a request for extradition is based is classified as a criminal association or a conspiracy by the law of the requesting Member State.

However, since the principle of dual criminality is an established principle of extradition law for many Member States, it was considered appropriate to provide an alternative solution to paragraph 1. To that end, paragraphs 3 and 4 provide for a combination of a reservation to paragraph 1 and an obligation to make the behaviour described in paragraph 4 extraditable under the terms of Article 2 (1).

Pursuant to paragraph 3, a Member State may reserve the right not to apply paragraph 1, or to apply it under certain conditions to be specified in the

reservation. The Member State entering a reservation is free to decide on the content of such conditions. Where a reservation has been made, with or without conditions, paragraph 4 will apply. This paragraph describes behaviour which Member States will make extraditable in their national law. For this purpose, without using concepts such as criminal association or conspiracy, a series of objective elements is used:
- it must be behaviour contributing to the commission by a group of persons acting with a common purpose of one or more offences of the types mentioned in paragraph 4,
- the contribution may be of any nature and it will be a matter of objective evaluation in a given case whether the behaviour contributes to the commission of one or more offences. As it is stated in this paragraph, the behaviour need not consist of the participation of the person in the actual execution of the offence or offences concerned. The contribution can in fact, be ancillary in nature (mere material preparation; logistic support to the movement or harbouring of persons and similar conduct). The paragraph does not provide that the person contributing to the commission of the offence must be a 'member` of the group. Therefore, if a person having no part as a member of a closely organised group contributes to the criminal activity of the group, either occasionally or permanently, also this kind of contribution shall be covered by the provision in question, provided the other elements constituting the contribution, as indicated in paragraph 4, exist,
- as stated in the paragraph, 'contribution shall be intentional and made having knowledge either of the purpose and the general criminal activity of the group or of the intention of the group to commit the offence or offences concerned`. This text qualifies the contribution in two ways: firstly, the contribution must be intentional, so non intentional contributions are excluded. Secondly, the nature of criminal groups and the circumstances whereby the contribution is given vary and so there is a requirement that an element of knowledge is specified. In this regard the text provides that the element of knowledge shall be based on knowledge either of the purpose and general criminal activity of the group or of the intention of the group to commit one or more of the offences concerned,
- the offences of a group, to the commission of which a person contributes, are the same as those referred to in paragraph 1 (a) and (b). Also in this case, the particular obligation of the provision in question is justified in the light of the seriousness of the offences committed or planned by the group."

Note that conspiracy to commit crime is more serious than liability as an accessory or complicity as an accessory. Conspiracy suggest that the act is actually committed together, resulting in full liability for all conspirers. Proving conspiracy to commit specific crimes requires of course fulfilment of the elements of such a specific act, supported by proof.

2.1.4. Specific criminal behaviour – extremism and radicalism

Given the focus of SAFIRE, we will look at extremist / radical behaviour that might constitute criminal behaviour. Radicalisation or extremism are not legal terms. However, *behaviour* that can be considered terrorist behaviour *is legally defined* in

the Penal Code.[11] The term extremism is often used to describe a group or an individual that has become violent against individuals or society; it is a label applied by others to identify a group or an individual who has become *radical*. “Most simply, it can be defined as activities (beliefs, attitudes, feelings, actions, strategies) of a character far removed from the ordinary. In conflict settings it manifests as a severe form of conflict engagement.” (Colemann & Bartoli, 2009, p. 2). As such, extremism or radicalism are not necessarily criminal behaviour that is punishable under the law. It rather concerns activities that are deemed abnormal that *could* result in criminal activities. As a result, there is no law that forbids the extremist ideology, thought, beliefs, attitudes or feelings per se, but when extremism results in radical behaviour inflicting harm to people or society as a whole, the individual and / or group can be held criminally liable. Society does however seem to want to control such behaviour for the fact that *society* does consider the behaviour abnormal. Note that there is no single legal definition of radicalism or extremism, countries use whatever term they deem fit.
An example from the German Federal Office for the protection of the constitution (Bundesamt für Verfassungsschutz/BfV), that operates especially in the field of extremism (freely translated):

In common parlance, ideology is all activities oriented towards a single goal. Extremist tendencies, within the meaning of the Constitution, are thus, activities with the objective to undermine the basic values of democracy. Political convictions of dissidents, manifested by reading communist literature for example, or criticising the government, does not affect the scope of constitutional rights.

And, providing a distinction between radicalism and extremism:

Extremist ideology are those actions that go against the core of the [German] Constitution; which is oriented towards a free democratic society. The concept of extremism is however often unclear and is often wrongfully equated with radicalism. Critics of capitalism for example, although considered radical, are not extremists, for radical political views are legitimate in a democratic society. Implementation of radical visions is neither problematic, for as long as fundamental principles of the Constitution are recognised.[12] [also see appendix 3: ECtHR Arrowsmith with regard to the acceptability of radical views].

[11] Not all criminal codes define the term extremist, or terrorist or radical (if at all incorporated). Most criminal codes define only the *act* punishable when having an extremist, terrorist, or radical motive. The legal definition is thus not focused on the level of defining terminology (for the concept of what we consider terrorism can differ over the years), but focused on the actual act.

[12] Original text from http://www.verfassungsschutz.de/de/FAQ/.
Nach allgemeinem Sprachgebrauch sind Bestrebungen alle auf ein Ziel gerichtete Aktivitäten. Extremistische Bestrebungen im Sinne des Verfassungsschutzgesetzes sind demzufolge Aktivitäten mit der Zielrichtung, die Grundwerte der → freiheitlichen Demokratie zu beseitigen. Die Gesinnung politisch Andersdenkender, die sich darin äußern kann, dass z.B. jemand mit Begeisterung kommunistische Literatur liest oder die Bundesregierung kritisiert, berührt den Aufgabenbereich der Verfassungsschutzbehörden nicht.
Als extremistisch werden die Bestrebungen bezeichnet, die gegen den Kernbestand unserer Verfassung - → die freiheitliche demokratische Grundordnung - gerichtet sind. Über den Begriff des Extremismus besteht oft Unklarheit. Zu Unrecht wird er häufig mit Radikalismus gleichgesetzt. So sind z.B. Kapitalismuskritiker, die grundsätzliche Zweifel an der Struktur unserer Wirtschafts- und Gesellschaftsordnung äußern und sie von Grund auf verändern wollen, noch keine Extremisten. Radikale politische Auffassungen haben in unserer pluralistischen Gesellschaftsordnung ihren

Radicalism and/or extremism are often *not* defined by law itself, but their counterpart *terrorism* is; often with a definition of the term, or by punishing the criminal activities that constitute terrorism[13].

When discussing the issue of radicalism / extremism, we do not merely mean Jihadism which is one of the more prominent issues nowadays when discussing the topic. One can also think of activist groups like the ETA (Basque nationalist movement, Spain), animal-radicalism (Animal Liberation Front), IRA (Irish Republican Army, Ireland), RAF (Rote Armee Fraktion (no longer active), Germany), semi-organised riots and protests at G20 summits (ECO-activism) and many other (paramilitary) activist groups or individuals, provided that the activism can be considered radical, extremist or terrorist, and results in criminally liable action.

2.1.5 Terrorist activities and criminal organisations

As a result of the terrorist attacks of 9/11 and many other terrorist attacks or preparations that followed in other countries, new laws were created to oppose terrorist behaviour (among others, Kwakman 2010), which is often linked to what we call extremism.
According to Kwakman (2010, p. 3-7), terrorism can be broken down into several types:

- Social revolutionarist terrorism (e.g. anarchist attacks in 19th century Europe and Russia, the Rote Armee Fraction (RAF) in Germany). These social revolutionaries act out of solidarity with revolutionary freedom movements in third world countries,
- Nationalist / separatist terrorism; paramilitary groups that strive for independence on the basis of their ethnicity (e.g. ETA, IRA or Hamas),
- Repressive terrorism; right-wing extremist groups violent against the rights of specific groups of people (Aryan Republican Army, Ku Klux Klan, Grey Wolves (Turkey)),
- Modern terrorism post 9/11. This type of terrorism, which can be referred to as ‘suicide terrorism’ has diverse goals and is focused on long-term results. It is also transnational in nature. According to Kwakman (2010, p. 5), the relationship between the means and the perceived goal is unclear making negotiation extremely difficult. The terrorists do not seem to be tied to a single (national) organisation.

However, extremist behaviour in the sense of political activism and terrorism are not necessarily the same. As such, and depending on the type of harm caused to either society or an individual or group of individuals, extremist behaviour will be dealt with as *normal criminal behaviour,* for example murder, assault, abuse et cetera. Extremist behaviour is thus not necessarily the same as political activism, nor is it radicalism in the strict sense of the term. Extremist behaviour can become terrorist behaviour however, when it strives for human casualties. And as said, such behaviour is punished more severely when terrorist intent can be proven.

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legitimen Platz. Auch wer seine radikalen Zielvorstellungen realisieren will, muss nicht befürchten, dass er vom Verfassungsschutz beobachtet wird; jedenfalls nicht, solange er die Grundprinzipien unserer Verfassungsordnung anerkennt.

[13] The exception being Germany see above

There is yet no legal definition of terrorism incorporated in Dutch law. Both the General Intelligence and Security Services (AIVD) and the National Coordinator for Counterterrorism and Security (NCTV) use different definitions. The AIVD defines terrorism as 'commiting an act of or threathening with violence aimed at people, aiming at societal changes or influencing political decision-making', the NCTV uses a much less broad definition which is copied by the Ministry of Justice following parliamentary questions[14]: "Terrorisme is het uit ideologische motieven dreigen met, voorbereiden of plegen van op mensen gericht ernstig geweld, dan wel daden gericht op het aanrichten van maatschappijontwrichtende zaakschade, met als doel maatschappelijke veranderingen te bewerkstelligen, de bevolking ernstige vrees aan te jagen of politieke besluitvorming te beïnvloeden." (Terrorism is threatening, preparing or committing seriously violent acts focused on the harm of other human beings, or acts aiming at societal disruptive property damage, based on ideological motives, aiming at the change of social structures, fear and intimidation of the public, or to influence political decision-making (freely translated)). Main difference is the use of the term 'ideological motives'.[15] Apparently, the ideological motives are one of the elements required to prove terrorism in such a case; whilst the EU Council Framework decision and the UN Resolution do not incorporate the phrase (see below), the Dutch Ministry of Justice does. As a result, a requirement for terrorism seems to be the ideological motive. How such a motive should be proven before the court is yet unknown.

Whilst the definition is based upon the EU Council Framework Decision on combating terrorism (2002/475/JHA) and upon Resolution 1566 of the UN Security Council (2004), these regulations do not use the term 'ideological motives'. With the framework decision, the EU tries to bring down the variety of definitions of terrorism that are used in the Member States to describe 'terrorist crime' and it obligates Member States to punish several criminal acts that are committed intentionally, damage a country or international organisation severely, are committed with the purpose to intimidate the people and to change or damage political, economical or social structures of a country. According to the framework decision, terrorist offences are: "offences under national law, which, given their nature or context, may seriously damage a country or an international organisation where committed, with the aim of: seriously intimidating a population, or unduly compelling a Government or international organisation to perform or abstain from performing any act, or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation." The Resolution provides the following definition: "criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organisation to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism."

[14] Kamerstukken II, 30 164, brief van de Minister van Justitie, 18 augustus 2010.
[15] Note that the use of the term 'ideological motives' poses problems with the assessment of terrorist behaviour. After all, today's freedom fighter is tomorrow's terrorist or *vice versa*. An example is Nelson Mandela who was long considered a terrorist as the leader of the ANC.

Other countries do define terrorism in their national laws. The UK for example defines terrorism in its 'Terrorism Act 2000'[16] as:

(1) In this Act 'terrorism' means the use or threat of action Terrorism:
Where:
(a) the action falls within subsection (2),
(b) the use or threat is designed to influence the government or to intimidate the public or a section of the public, and
(c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.
(2) Action falls within this subsection if it:
(a) involves serious violence against a person,
(b) involves serious damage to property,
(c) endangers a person's life, other than that of the person committing the action,
(d) creates a serious risk to the health or safety of the public or a section of the public, or
(e) is designed seriously to interfere with or seriously to disrupt an electronic system.

Again, the ideological motive seems to be relevant to determine whether an act can be defined as an act of terrorism (above under 1(c).)

When implementing the EU Council Framework Decision on combating terrorism (2002/475/JHA) and incorporating it into national law, no formal definition was provided for terrorism in the penal code. By combining elements from the current article 83a (see below), the framework decision and UN Resolution 1566, the definition of the NCTV came into being. Apparently, such a definition is considered needed in order to distinguish terrorism from 'normal' criminal acts.

With the establishment of new terrorism-related legislation after 9/11, violent actions of radical parties or individuals are dealt with specifically. Terrorist can either be prosecuted on the basis of the Terrorism Act or on the basis of being a member of a *criminal organisation*.

The Dutch Terrorism Act (Wet terroristische misdrijven) incorporated in art. 83a of the Penal Code uses the term 'terrorist intent' (terroristisch oogmerk) to describe the criminal liability of terrorist acts.[17] Article 83 provides a list of felonies, that are considered 'terrorist felonies' insofar as the act was committed with 'terrorist intent'. Article 83b also holds criminally liable those who prepare or facilitate terrorist acts. Note that preparation requires initiation of crime, and therewith differs from the concept of attempt. Preparation is assumed to be present when the offender 'intentionally obtains, manufactures, imports, transits, exports or has at his disposal, objects, substances, monies or other instruments of payment, information carries, concealed spaces or means of transport clearly intended for the joint commission of such a crime' (Tak, 2008, p. 76).

[16] Amended in 2001 and 2006.
[17] See http://english.nctb.nl/Images/Crimes%20of%20Terrorism%20Act_tcm92-132189.doc for the English version of the text.

According to article 83a terrorist intent is present when one has “the objective to cause serious fear in (part of) the population in a country and/or to unlawfully force a government or international organisation to do something, not to do something, or to tolerate certain actions and/or to seriously disrupt or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation.”
To prove terrorist intent, the prosecutor must come up with evidence that any of the objectives where actually intended *with* an ideological motive. It is than up to the judge to determine whether or not terrorist intent was sufficiently proven.
As a result of the Terrorism Act it became much easier to deal with extremist tendencies beforehand.

Criminal behaviour of groups is dealt with under articles 140 and 140a of the Dutch Penal Code, holding members of a criminal organisation criminally liable for their membership only. Leaders of such an organisation can be punished more severely than members. Membership includes the provision of financial or material support and acquisition of financial support or members for the organisation (article 140). Article 140a specifically deals with membership of a criminal organisation that has the intent to commit terrorist felonies.

Article 140:

1. participation in an organisation that has as its object the commission of serious offenses is punishable by a term of imprisonment of not more than five years or a fine of the fourth category.
2. participation in the continued activities of a juristic person that has been proscribed in a final judgement and consequently has been dissolved is publishable by a term of imprisonment of not more than one year or a fine of the third category.
3. with respect to the founders or directors the terms of imprisonment may be increased by one third, and a fine of the next higher category may be imposed.”
4. Participation as described in paragraph one includes rendering financial or other material support to, as well as raising funds and recruiting funds for the organisation described therein.

Article 140a

5. Participating in an organisation with the objective of committing terrorist crimes shall be punished with a prison sentence not exceeding fifteen years or a category five fine.
6. Founders, leaders or managers shall be punished with life imprisonment or a prison term not exceeding twenty years or a category five fine.
7. Article 140, paragraph four, applies by analogy.

Being part of a terrorist organisation does not necessarily mean that participation to commit a terrorist act has occurred as well. The mere participation in the terrorist organisation can result in criminal liability. A criminal organisation requires *organisation* while a terrorist criminal organisation also requires a) a shared ideology, and b) the intent to commit terrorist acts. Note however that even though a shared ideology should be present, the interpretation of that ideology by the members of the organisation may differ. (See appendix 3 case law, Hofstadgroep).

Terrorist intent or membership of a criminal organisation (with or without terrorist intent) will often be hard to prove by the public prosecutor, for it holds severe punishment and judges will not be very eager to *just* accept terrorist acts.

With regard to the prevention of terrorist attacks, the evidence threshold to detain a suspected terrorist was lowered in February 2007 by a law providing professionals with more resources for terrorist investigations and prosecutions (*Wet ter verruiming van de mogelijkheden tot opsporing en vervolging van terroristische misdrijven*) (Van Gestel et al., 2012). Under this exceptional legislation, the objective of safeguarding national security can allow for intervention before any attack has been carried out and with a lower evidence threshold (see Hirsch-Ballin (2012) for a comparative study of the possibilities for preventive policing in the Netherlands and the US).

2.1.6 Hate-speech and discrimination – the freedom of speech issue

The Penal Code also includes articles that hold individuals and groups liable for the stimulation of hatred, discrimination and violence (article 137d). Support (financial or material) is also punishable, but under art. 137f. This of course also holds a limitation of the freedom of speech, which will be discussed later.

Article 137 Dutch Penal Code prohibits discriminatory defamation, incitement to hatred and discrimination in official duties or the running of business. The Dutch Penal Code penalises: incitement to hatred, discrimination and violence on grounds of, inter alia, race (Article 137d).

Personal violence - Prohibited under art. 137d incitement to violence against persons.
Destruction of property - Prohibited under art. 137d incitement to violence against property.
Racist cyber-crime - Prohibited under art. 137c,d and e.

Article 137c:
“A person who publicly, either orally or in writing or by image, intentionally makes a defamatory statement about a group of persons on the grounds of their race, religion or personal beliefs, their sex or their hetero- or homosexual orientation, is liable to a term of imprisonment of not more than one year or a fine of the third category.”

Article 137d:
“ A person who publicly, either orally or in writing or by image, incites hatred of or discrimination against persons or violence against their person or property on the grounds of their race, religion or personal beliefs, their sex or their hetero- or homosexual orientation, is liable to a term of imprisonment of not more than one year or a fine of the third category.”

Note that art 137 includes blasphemy (art. 147 Penal Code[18], Janssens, p. 234 ev).

[18] Article 147:
“A term of imprisonment of not more than three months or a fine of the second category shall be imposed upon:

The crime of blasphemy is however a dormant one and has not been used in the Netherlands for years. Advances to remove the article from the Penal Code however have not succeeded.

Furthermore, whoever promotes or actively pursues hatred or discrimination is also criminally liable. Hate speech under Dutch law requires the stimulation of such speech, therewith including intent as one of the necessary elements to prove hate speech (also see art. 4 ICERD; HR 18 May 1999, NJ 1999, 634; ECHR Glimmerveen en Hagenbeek; ECtHR, 11 October 1979, 8348/78 and 8406/78).[19]

Discrimination (art. 90 quater) (see art. 1 ICERD).
Art. 90 quater:
"the term 'discrimination' or 'to discriminate against' is to be taken to mean any form of differentiation, any act of exclusion, restriction or preference that intends or may result in the destruction or infringement of the recognition, enjoyment or equal exercise of human rights and fundamental freedoms in the field of politics or economics, in social or cultural matters or any other area of social life."

Art. 10 European Convention on Human Rights: Freedom of expression
1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 10 is quite broad. Not only does the first part of the article include the act of expressing, it also includes the right to receive information *and* ideas. This provides protection to the public debate and includes not only speech, but also other means of expression, such as images. Part 2 however provides us with the limitations to the freedom of expression.

Article 17 of the Convention however limits the freedom of expression by providing

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1) a person who publicly, either orally or in writing or by image, offends religious sensibilities by malign blasphemies;
2) a person who ridicules a minister of religion in the lawful execution of his duties;
3) a person who makes derogatory statement about object used for religious celebration at a time and place at which celebration is lawful."

[19] In *Glimmerveen and Hagenbeek v. The Netherlands* (1979) the European Court on Human Rights considered the convictions of two members of a right-wing political party for possessing leaflets inciting racial discrimination by urging the removal of all nonwhite immigrants from the Netherlands. The Court declared the applications, based on the right to freedom of expression, inadmissible, relying primarily on Article 17 of the Convention, which prohibits the abuse of Convention rights. In the Commission's view, the applicant's discriminatory immigration policy was contrary to the text and the spirit of the Convention and likely to contribute to the destruction of the rights and freedoms of others. Also see http://www.enotes.com/genocide-encyclopedia/hate-speech.

that “no one may use the rights guaranteed by the Convention to seek the abolition or limitation of rights guaranteed in the Convention.” This article ensures that those who propagate fascist or racist speech cannot invoke the right to freedom of expression, for it undermines the rights guaranteed in the convention.

Criminal liability constituted on the basis of art. 10 of the Convention is a limitation of this right. The European Court of Human Rights accepts such limitation only when it complies with the following criteria:
1. the limitation is prescribed by law
2. serves the purposes of the goals listed in art. 2
3. is necessary in the democratic society.

According to the Court in Handyside v. United Kingdom, the limitation should be proportionate to the cause that needs to be served with the limitation. There should be a ‘pressing social need’ before a limitation can be allowed. Censorship has no place in a democratic society (see appendix 3 case law).

Incitement (see Janssens, p. 195).
Article 131 Penal Code:
“A person who in public, either orally or in writing or by image, incites another or others to commit any criminal offense or act of violence against the authorities is liable to a term of imprisonment of not more than five years or a fine of the fourth category.”

The limits of incitement to commit a criminal offense or inciting hate speech for example are difficult to point out. As will be shown with the case law, many acts that could be considered hate speech or inciting to crime, cannot be proven, or, in the case of inciting hate speech, are not hate speech after all (on, for example, religious grounds).

2.1.7. Limitations of fundamental rights

When fundamental rights, such as freedom of speech, are limited in some way, a number of conditions have to be met.

Proportionality
When rights are limited or interfered with, proportionality is of special significance. In the case Handyside v. the United Kingdom the European Court of Human Rights held that an interference must be proportional to the legitimate aim pursued (see appendix 3)

Two interpretations of the term ‘proportionality’ can be distinguished: a wide and a narrow interpretation. The wide interpretation provides that the interference does not exceed the boundaries of a democratic society and can, thus, be seen as a different characterisation of the act of balancing. In this case, there is an emphasis on the acceptability of the interference (Van der Schijff, 2005, p. 214-215). In other words, the interference has to be in accordance with fundamental principles of a democratic society. These principles and related rights of the individual create the ultimate boundaries within which the interference has to take place. The narrow interpretation

of the concept isemphasises the extent of an interference. It does not include other factors, such as the nature and importance of the interfered right or whether less restrictive means could have been pursued in satisfying the purpose (Van der Schijff, 2005, p. 217). Both the broad and narrow interpretation of proportionality are used in practice, depending on the type of act, the type of law et cetera. These factors are covered by the concept of subsidiarity, which is always closely connected to the proportionality principle. The narrow interpretation thus argues that an interference to the right of privacy should be as limited as possible.

Subsidiarity
The limitation of fundamental rights should not only comply with the rules of proportionality. When limiting ones rights, subsidiarity is also considered to determine whether the limitation can be considered just in a democratic society. Subsidiarity is closely intertwined with the principle of proportionality. For a decision to comply with the principle of subsidiary, it must comply with the rule that the action taken must be the least infringing action possible. So limitation of fundamental rights, fundamentally infringing as it is, cannot be taken lightly.

Margin of appreciation
When judging limitations of fundamental rights, the European courts do leave room for national authorities in what is called the 'margin of appreciation'. Especially when it comes to issues such as 'public health and morality' and 'state security' the court leaves room for national authorities, since national authorities are those who are the most well informed about national situations (Janssens, 2008, p. 21).

Art. 9 freedom of thought, conscience and religion
1. 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, and to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Considered as 'one of the foundations of the democratic society', this article is comparable to art. 10 of the Convention. Certain expression concerning religion can fall within the scope of this article. The European Court will however not often judge issues of freedom of speech under this article (see appendix 3 EHRM Arrowsmith). In general, according to Janssens, the court will judge expression issues concerning religion within the scope of art. 10 (Janssens, 2008 p24).

International cooperation
Since 9/11 the cooperation on a European level has been intensified. The EU-Counter-terrorism Coordinator ensures coordination between police and intelligence agencies in the various countries (see Appendix 2 for international initiatives to

prevent and prosecute terrorism) [20]. The EU's plan of action for combating terrorism focuses on four main objectives[21]:

1) Prevent, including disruption of the activities of the networks and individuals who draw people into terrorism; ensure that voices of mainstream opinion prevail over those of extremism; promote security, justice, democracy and opportunity for all. First of all, prevention of radicalism and extremism (and radical extremism for that matter), is key. "Under the Polish Presidency, the Council Conclusions on Counter-Terrorism of 12 September underlined once again the importance of continuing to tackle extremism and radicalisation in all its forms, regardless of motivation, and terrorist modus operandi, dealing with the spreading of extremist propaganda via the Internet, recruitment and incitement to commit terrorist acts."[22]

Examples of prevention programmes in the Member States can be found in a Danish research report from 2010; *The Challenge of Extremism.*[23] Most countries seem to include both a semi-individual approach and collective awareness programmes.

2) Protect; the protection objective of the EU is more practical in nature; reduction of vulnerability by means of for example border control, cyber security, and critical infrastructure protection.

3) Pursue ; the third EU objective is pursuit of terrorists by means of criminal law. "We have to continue and increase our efforts to uncover terrorist networks, to impede communication, travel and planning activities of terrorists and their supporters; to cut off funding and access to attack materials, and to file them in court."[24] This includes the extensive use of data-sharing, passenger name records (PNR), Terrorist Finance Tracking Programmes (TFTP) and other technologies between Europol, Eurojust and joint intervention teams.

Given the difficulties with legal matters when pursuing practical goals in criminal law, a roadmap for strengthening procedural rights of suspected and accused persons in criminal proceedings has been laid down to improve the current situation:
"– translation and interpretation,
– information on rights and information about charges,
– legal advice and legal aid,
– communication with relatives, employers and consular authorities,
– special safeguards for suspected or accused persons who are vulnerable, and
– a green paper on pre-trial detention."[25]

4) Respond. The final objective, response, requires, amongst others, a more detailed perspective on the so-called solidarity clause (art. 222 TFEU), that obligates Member

[20] http://www.consilium.europa.eu/policies/fight-against-terrorism/eu-counter-terrorism-co-ordinator?lang=en
[21] Eu Plan of Action on Combating Terrorism, last update December 2011, via http://register.consilium.europa.eu/pdf/en/11/st17/st17594-re01.en11.pdf
[22] Idem. P. 4
[23] The Challenge of Extremism, Examples of deradicalisation and disengagement programmes in the EU, October 2010. http://www.nyidanmark.dk/NR/rdonlyres/20FBDF6E-43C2-43F1-A770-D908D67AC16C/0/the_challenge_of_extremisme_final.pdf
[24] EU Plan of Action p. 25.
[25] Idem, p. 25.

States to help one another in case of terrorist attacks, and also withbetter understanding of victims and victim's needs.

2.1.8 Conclusion legal analysis
Relevant for the researchers of this project is to realise that extremist behaviour can be tried in court when terrorist intent can be proven. In cases when terrorist intent (often an ideological basis) cannot be proven, the perpetrators can still be tried on the basis of 'ordinary' criminal liability when sufficient proof is present. Both individuals and groups can be punished according to the law, depending on the proof presented by the public prosecutor.

However, in many penal codes, the terms *extremist* and *radical* are not defined and in themselves do not result in criminal liability, whereas *terrorism* sometimes is defined and can result in criminal liability if a terrorist intent is present and sufficiently proven. The term however can more often be found in specific articles in such a penal code, providing the public prosecutor with a more severe means of punishment. No matter how the law perceives criminal acts conducted by either individuals or groups, it is in the end the individual who will stand trial for his actions.

Decision of the consortium based on the legal analysis: *SAFIRE is not about radical thought as such but about ideological violence and factors leading to the use of violence in achieving one's ideological goals. To make this point clear also to people outside the consortium the term used changed from radicalisation to violent radicalisation or extremism.*
Because it had been decided to focus on violent acts as opposed to the mere attitudes and beliefs, the analysis of the literature is done based on literature about convicted terrorists (see for example deliverable 2.1).

Decision*: SAFIRE will focus on violent acts with an ideological intent and literature about convicted terrorists or extremists is sought in bona fide literature. By only taking into account convicted terrorists and extremists we will make sure that no individual will be labelled as extremist or terrorist who has not been convicted as such in a court of law.*

*If names of groups or individuals are reported those are individuals or groups who have been convicted under terror legislation. These groups and individuals are already well-known as most court cases were very well covered in the media.***2.2 Groups or individuals**

It has been decided to look at factors at both levels: groups and individuals. Although psychological and socio-economic factors are addressed on the individual level as far as publicly available information addresses these, SAFIRE does not focus on so-called 'lone-wolves'. Some data for example in the work package on culture (4.1) are all on group levels or even national level.
In regard to interventions it was easier to work with individuals on the basis of free consent, than with groups. Therefore the interventions and measurements are focussed on individuals. Some parts of the interventions, however, take place within a group.

It has been decided to look at a wide spectrum of different forms of 'radicals'. Such an approach can help prevent ethnic or social framing and improve the scientific quality of the research by assessing similarities as well as differences and putting the focus on evaluating general mechanisms of radicalisation processes towards violence and potential influencing factors.

Throughout the whole of the SAFIRE project a basic assumption can be seen that was only rarely made explicit. With regard to deradicalisation programmes and programmes focused on prevention, the assumption was that the people in the programme were rational or as rational as ordinary people are expected to be. The assumption was that if people's self-esteem increased and they learned how to deal with negative emotions, etc., they would not choose to become violent radicals. This means that people who have psychopathological issues are not specifically addressed within SAFIRE.

With regard to the protection of fundamental rights of persons with possibly radical ideas a decision was made during the kick-off meeting about what information could be gathered for example with regard to the media analysis made in Work Package 2.

***Decision**: Throughout the project only observables (e.g. texts, pictures, media, speeches etc.) that are publicly accessible or aggregated statistically data were used and analysed (i.e. private or password protected information was not accessed and reviewed). This means that most analysis was on the group level. Only the analyses on individuals convicted under terrorism laws are on the individual level.*

3 Ethical justification of intervening in radicalisation processes[26]

As has been shown in the legal analysis there are no or only very limited legal grounds to intervene in processes of radicalisation if individuals are not violent or using hate speech.

The social psychologists prefer an early intervention in the prevention stage of radicalisation and although this is understandable from their point of view (preventing damage, less intrusive interventions necessary, good access to schools) one cannot justify an intervention on legal grounds in a prevention stage. It is questionable whether one could justify an intervention at that stage on ethical grounds. Partly this is due to the concept of intervention which could be understood as someone intervening for example deliberately changing something or someone else. From an ethical point of view there might be justifications to set up programmes for individuals who have or could develop radical ideas, but the justification cannot be based solely on security concerns or possible consequences of a terrorist attack. Radical ideas as such do not pose a direct threat to a democratic society, and our constitutions and human rights conventions explicitly allow citizens to develop their ideals undisturbed by government intervention. In this chapter possible justifications for programmes focussed on radicals who have not committed crimes are explored.

3.1 Deradicalisation programmes for people who ask for support

A reasonably unproblematic justification for a programme or intervention is when people ask for help. For example in Norway, Sweden and Germany there are non-governmental organisations or local governments that help individuals who want to leave the extreme right wing environment or criminal gangs.[27] These programmes aim at disengagement form a radical (violent) group and, depending on the programme, some also require a critical reflection on the ideals (deradicalisation). From an ethical point of view it is reasonably unproblematic if individuals, who want to leave a violent radical environment, get support. These individuals decide for themselves that they want or need support and ask for this support. Insofar as the organisation informs individuals correctly and sufficiently about the aims of the programme and what support the individuals can expect, these programmes do not need a specific justification. Exit Germany for example, uses contracts in which the support that A*ussteiger* will receive and what Exit expects in return from the *Aussteiger* are specified.

3.2 Deradicalisation or preventive programmes from a utilitarian position

It is, however, harder to find a justification for *preventive* programmes if individuals do not ask for help. Especially when someone only has radical thoughts but is not yet violent. Utilitarianism, as first developed by Bentham, proposes that the consequences of an act are decisive for the question whether or not an act is justified. According to Bentham the so-called principle of utility is the way one should decide whether an act is good or bad (Bentham,1901 (1789)). The principle of utility

[26] This chapter is a translation and adaptation of a Dutch article (Van Gorp and Roosendaal, 2013)
[27] See http://www.exit-deutschland.de/. The programme in Norway was from 1997 to 2000 financed by government and is now run by Voksne for Barn an NGO.

claims that acts that lead to the greatest happiness for the greatest group of people are good. Using this theory it is possible to argue that terrorist attacks should be prevented. Attacks cause deaths, injuries and fear, so this would decrease the total happiness. This argument can however not be used with regard to (prevention of) radicalisation because most people who have radical ideas will never commit an attack. Therefore, one cannot simply argue that an intervention in a group of people who are radical or who could become radical will prevent an attack. The question then is what are the consequences of radicalisation and of interventions against radicalisation: does the sum of these consequences justify an intervention?

3.3 Deradicalisation or preventive programmes from a deontological perspective

From a deontological position, that was most famously developed by Kant, there are also not a lot of instances in which one can intervene in the radicalisation process of an individual. Central to deontological theories is the principle of the autonomous individual, which makes any intervention in someone's life problematic. If an individual loses his or her autonomy, that might be considered a reason within deontological theories to intervene, but only to help restore the individual's autonomy. This means that if someone has become member of a sect or is under the spell of a charismatic leader, deontological theories would allow interventions to restore autonomy. Relational or narrative accounts of autonomy can be a starting point to explore the limits of what can be regarded as (see Meyer, 1989 and Asveld, 2008; for a more in depth analysis of identity and autonomy see Taylor,1989 and Laden, 2001). If an individual only has radical ideas but is not a member of a sect or under the spell of a charismatic leader, the possibilities to justify an intervention based on the restoration of autonomy are limited [28].

Rawls argues in his famous *Theory of Justice* that a state should be neutral with regard to ideas about the good life (Rawls, 1971)[29]. In Rawls' theory the neutrality of the state is interpreted very strictly. According to Rawls religious arguments have no place in public discussions (Rawls,1993). Ideas about the good life are private and should not play a role in public debates about justice. Rawls claims that even if reasonable people would discuss in freedom we cannot expect them to agree on what the good life for human beings is. Rawls calls this *reasonable pluralism*. This means that in a Rawlsian liberal democracy governments have no possibilities to interfere in religious ideas that people have. Even organising debates between people with different religious views is (nearly) impossible to justify in Rawls' theory. Deradicalisation programmes supported or organised by government are therefore not justifiable in a Rawlsian theory of liberal democracy. Only in cases where security or public order is at stake, is the government allowed to intervene, but radicalisation processes do not necessarily lead to security or public order problems. If people at home or in small groups develop radical ideas then this will not lead to direct danger for our liberal democracy. According to Rawls the right of the government to protect security and public order is only an enabling right. This

28 Whether one has the mental and social capacities to be or become an autonomous person (internal autonomy or positive freedom) is not addressed here. The ideas further down about the capacities that people need to live their own good live touch upon this.
29 Rawls ideas about, for example, state neutrality are discussed, since the first appearance of A theory of justice, for an overview see (Avinery and De Shalit, 1992)

enabling right is necessary for the government to enable citizens to pursuit their own interests and "commit themselves to moral or religious obligations as they understand them". (Rawls, 1971 p211-219). According to Rawls a government is allowed to intervene in religious freedom or the liberty of conscience of its citizens if not doing so would damage the public order that allows citizens to have liberty of conscience. The thread to the public order should not be "merely possible or in certain cases even probable but reasonably certain or imminent" (Rawls, 1971, p213). If an individual or a group of people develop radical ideas there is no direct threat and therefore intervention by the government is not allowed.

One could claim that there are different forms of state neutrality and that, although the strict Rawlsian interpretation does not allow for interventions, another interpretation might. Van der Burg argues that the strict interpretation of state neutrality that Rawls uses, is not the only possible interpretation (van der Burg, 2009). Van der Burg identifies three possible ways of a state being neutral: exclusive, inclusive and compensating neutrality. In an *inclusively neutral* state religious arguments can be used in public discourse and can be used to persuade other people. People are free to talk about and testify their religion everywhere in society and public discourse. Some countries, for example the Netherlands are by tradition inclusively neutral. Rawls's ideas are *exclusively neutral* and this interpretation of state neutrality can be seen for example in France with its history of *laïcité*.

A *compensatory neutral* state is like an inclusively neutral state, except efforts are made to address structural and historically grown disadvantages of minorities. Within an inclusively neutral state religious arguments can be exchanged in public discourse. This means that people will meet people who have different ideas about religion and the good life and hear different ideas in public discourse. Government supports everyone in being able to live their own religious life. Government can in an inclusively neutral state try to stimulate dialogues between people having different ideas of the good life. Whether or not people want to join these dialogues is up to them. Citizens cannot be forced to discuss their innermost ideals and convictions (Van der Burg, 2009). So, even in an inclusively neutral state, programmes against radicalisation are difficult to justify. Government can support or even help organise dialogues about the good life or religion but it cannot require citizens to participate. This means that within the liberal tradition there is no justification for government to develop special programmes for citizens that might have radical ideas but are not a danger to society.

In DETECTER, a EU project about ethics, human rights and counterterrorism, Sorell has developed the following argumentation (based on Kants and Rawls' ideas), why in a liberal democracy preventive policing is justifiable in *counterterrorism*, even if this would mean restricting temporarily privacy or other human rights of some people (Sorell, 2009). From a liberal point of view terrorism is not only unacceptable because people are killed, but the fact that in a terrorist attack the whole aim is to randomly kill as many people as possible and to create fear makes terrorism distinctly wrong. From a liberal point of view, terrorism "repudiates any ideal of non-violence, and any political order sustained by impartial oversight or the rule of law."(Sorell, 2009 p21) Although terrorist attacks can and should be prevented according to liberal theories, thoughts and even expressions and discussions about

terrorist attacks should not be restricted in liberal democracies. Talking about attacks, whether positively or negatively, should be part of the freedom of expression and not be restricted (Sorell, 2009). Thinking about and discussing attacks does not need to lead to attacks being carried out. Even if a person would conclude that they consider an attack justified, they are not necessarily also preparing an attack themself. So according to Sorell preventative measures against *terrorism* can be taken in a liberal democracy even if these measures were to lead to a (temporary) invasion of privacy or a (temporary) violation of human rights of some citizens. Nevertheless, this requires evidence (not mere suspicion) that someone is preparing an attack (Sorell, 2009). Special investigation techniques against *persons* can be used in prevention of terrorist attacks but only if the suspicion against a person is evidence-based (Sorell, 2009). Sorell concludes that it is easier to justify a focus on surveillance on vulnerable places and on materials that can be used in an attack, such as weapons or (precursors of) explosives, than a foucs on individuals, because with regard to surveillance on individuals there is always a risk of discrimination.

3.4 Deradicalisation or preventive programmes from a virtue ethics position

The argumentation that Sorell has developed does not allow for prevention of *radicalisation*, but only for prevention of *attacks.* Does this mean that there is no justification for a programme focussing on the prevention or stopping of radicalisation of a person or a group? Literature in ethics and political philosophy was searched to find ideas about if and when intervening in a process of radicalisation could be justifiable. Based on a teleological or virtue ethics point of view, one could argue that especially children and adolescents need guidance in forming their own lives. People do not form their ideas and identities in complete isolation as unencumbered selves. Forming your identity happens in interaction with others. Children and adolescents are educated in schools and at home where some of the interaction is even enforced on them. According to Savater, a philosopher who has written extensively on education and raising children, a certain force and compulsion are necessary to educate children and adolescents in order for them to become free autonomous citizens. They need to acquire the knowledge and skills for critical thinking in order to take charge of their own freedom and autonomy (Savater, 2001). This means that especially children and adolescents should be supported in the formation of their own ideas.

Another influential virtue ethicist, MacIntyre, talks about the quest for a good life. According to MacIntyre this is a quest because at the beginning the ultimate goal (the good life) is not defined clearly. Moreover, theory and practice are intertwined, not only the theory about the good life for man is relevant but also the practice of a good life for an individual (MacIntyre, 1981). Although there is no universal definition of the good life for human beings, there are constraints of what the good life for a human being can be. According to virtue ethics the good life is related to the specific capacities we as humans have: to reason, to critically reflect and to have dialogues and discussions. A good life for humans involves developing and using these capacities within society. In this regard, deradicalisation or prevention programmes could be seen as a way to help adolescents in their quest for the good life. If your own radical ideas make it impossible for you as a person to use your rationality and critically reflect on your own and other people’s ideas, then according to virtue ethics this life cannot be the good life for you as a human being. The reason is that you do

not develop and use to its full capacity that which makes you distinctly human, that is, the ability to reason (Sandel, 2010).

Especially the fact that virtue ethics refers to 'the good life' makes many of people wary of it. With our diverse and pluriform society in mind it seems impossible to reason about the good life for a human being. The recognition that we live in a diverse society does, however, not have to entail a rejection of virtue ethics. Virtue ethics as developed by MacIntyre, Savater and Sandel does not try to universally define the good life. Instead, they define constraints: for human beings it is necessary to develop their specific human capacities; therefore humans need to reason, critically reflect and discuss with other humans especially about the good life. These capacities help individuals in their quest for a good life and help societies in their search for a just society. Although every human being has these capacities in one way or another, these capacities need to be developed and this can only be done by practicing.

In education these capacities are also trained and practiced, sometimes in separate courses on citizenship. For example England, France, and Finland have separate courses on citizenship in their curricula (see (Scheerens, 2009) for a comparison between these types of school programmes in seven European countries). Groups of adolescents who no longer go to school could still use guidance and support in their quest for a good life and a just society. This justification for programmes that prevent radicalisation or are aimed to stop a radicalisation process poses constraints on the types of programmes that should be developed and the way participants are selected.

Programmes should focus on supporting people to develop the capacities they need to define and live a good life. Because the quest for a good life is a struggle for all human beings, it might be stigmatising to point to a specific group that needs guidance or support. It needs to be carefully considered whether specific groups are targeted and, in principle, programmes should be open for every adolescent. Because virtue ethics regards the moral development of every person as a lifelong development, but with the first crucial steps during youth, the development of programmes that teach kids and adolescents to critically reflect on their own and others opinions with regard to the good life and a just society, are essential.

***Decision**: Based on the above introduction of virtue ethics ideas it can be concluded that these ideas allow the development of programmes to prevent or stop radicalisation. Teaching people to discuss about and reflect upon the good life does not mean that they need to change their ideas drastically but it does require being open to other ideas. These programmes should be focused on helping people to reflect critically on their ideas of a good life and on other people's ideas of a good life. These programmes should be open to anyone, because the quest for a good life is difficult for everyone.*

4 Prevention in a European context

Although there is a moral justification to develop certain programmes to counter or prevent radicalisation as argued above, the cultural and legal constraints in EU countries are very different especially with regard to prevention of radicalisation. The UK and the Netherlands have counter-radicalisation strategies that also focus on youth at risk. These strategies are known as broad-based approaches against terrorism. They have developed programmes that support youth at risk and promote commitment to society. These preventive interventions are aimed at youngsters who might have committed violent acts but not necessarily so. Some of these programmes meet the constraints mentioned above, others do not.

Not all EC countries adopt the broad-based approach. For example, in France there are socialisation programmes for youth that have been imprisoned. These can be quite similar to the Dutch programmes with regard to the prevention of radicalisation, focussing on basic skills and self-esteem. The French programmes, however, are not labelled as deradicalication or prevention of radicalisation programmes. In France only people convicted under anti-terrorism laws can be targeted in a deradicalisation programme. Prevention of radicalisation is considered unlawful in France, where a strict interpretation of the neutrality of the state is adhered to (Van der Burg, 2009). In the UK, the Netherlands and for example Denmark the use of the word deradicalisation is seen as less problematic. It is important to bear this in mind when analysing different intervention programmes from different countries.

***Decision**: SAFIRE will also address preventive interventions but the differences with regard to different EU countries should be taken into account. These differences in cultural and legal constraints might explain that preventive deradicalisation programmes can be found in some countries but not in others.*

In order to explore this point further, a workshop held at the SAFIRE conference on the 6th of June 2012 in Amsterdam was dedicated to this point. A mixture of policymakers and people active in fieldwork formed the main participant group. They commented on two scenarios and on whether or not programmes in their country may target a specific group and, if this were allowed, how they would justify implementing a targeted programme. Both scenarios can be found in Appendix 4.

After the presentation of the scenarios the workshop participants were asked to imagine that they had to decide whether or not to implement one of the two deradicalisation programmes. Participants were asked to answer the following questions for the country they work in:

1) What is your ethical justification if you were to choose to intervene?
2) What group do you want to target the intervention at?
    a) Are you legally allowed to directly target this group?
    b) Are you allowed to use variables that are correlated, leading to indirect targeting, of the intended group?
    c) Are you allowed to use self-selection bias, where you create a programme that is attractive to a certain group and although it is open for everyone most participants will be from the targeted group?

3) Who is going to perform the intervention?
4) What procedures are going to be used with regard to informed consent and privacy of subjects?[30]

Participants working in the same country work together. Answers were summarised by the researcher and this summary was sent to all participants with a request to check if the summary were accurate and if they allowed the researcher to use the information provided by them.

At the workshop people working in France, Portugal, the Netherlands, Romania, Denmark and Belgium were present. This is of course not a representation of all 27 EU member states and participants were not always able to answer all questions but there were some interesting differences in answers that people gave.

There are differences whether groups can be targeted in government programmes if there were no clear signs of criminal acts. For all countries criminal acts committed by a group could be a justification for starting a programme for this specific group. Some countries such as France or Portugal only allow deradicalisation programmes for individuals who have been convicted of terrorist crimes.

Whether or not programmes could target specific groups differs slightly. In some countries government agencies cannot target a specific ethnic or religious group, but using correlated variables was allowed and Non-Governmental Organisations (NGO) could directly target ethnic groups. In the Netherlands some programmes from NGO's specifically target Moroccans. However, a government proposal to create a list containing youth having a specific ethnicity (so called "Verwijs Index Antillianen (lists which government offices have information concerning problems with a certain young individual with Antilles ethnicity) was deemed by court to be illegal. So in the Netherlands, NGOs are allowed to target specific ethnic groups but for government agencies this is only sometimes acceptable. In France it is forbidden to collect information about racial or ethnic origin and for the French participants in the workshop it was inconceivable that a government programme could target a specific ethnic group. Social- economic criteria can be used for (government) programmes in France but not ethnicity or religion. Because it is not allowed to collect data about religion or ethnicity it is also practically difficult to target a specific religious or ethnic group in France.

The other countries held positions somewhere between the two positions of the Netherlands and France. Participants from Portugal explained that in Portugal radicalisation has only recently become an issue and is not deemed very important. In Portugal, government agencies can and will create programmes to alleviate social problems but a programme directed at a radical group was deemed highly unlikely. In Denmark there is much emphasis on prevention of youth crime, there are ways in which schools, the police and local governmental organisations exchange information concerning youth who have already committed a crime or who are in a vulnerable position.

[30] Informed consent and privacy are considered in chapter 5 of this report.

The workshop could not and did not provide us with a complete overview of what is (legally) acceptable within the different EU member states with regard to programmes developed to stop or reverse radicalisation. The workshop pointed however to the very different cultural and legal frameworks within the EU concerning radicalisation and programmes to stop or reverse it. An intervention aimed at the prevention of radical violence is conceivable in for example Denmark or the Netherlands but less in countries such as France or Portugal.

Decision *Successful programmes from one EU country cannot be implemented in another without strategies to deal with the differences in constraints to target specific groups. Researchers or policymakers from different EU countries cooperating in the field of (de)radicalisation should address these differences at the beginning of a project, because they can lead to misunderstandings and divergent expectations.*

5 Research Ethics in (de)radicalisation research

5.1 General considerations about research ethics

Developing and evaluating new programmes with regard to the prevention of radicalisation can be justified if these programmes rely on the justifications given in Chapter 3. However, this does not mean that all types of new programmes can be designed and tested whenever researchers want. The norms of research ethics, governing the way in which (information about) respondents are protected, are particularly relevant in this type of research, due to the sensitivity of the subject matter. If respondents are linked to a research project concerning radicalisation they could be labelled as 'radical'. This label could haunt them throughout their life and even make a normal life impossible (for example because they are on a blacklist and cannot travel or are regularly questioned by the police).

To illustrate what can happen to a person when he or she is labelled unjustly, consider a Dutch case about a business man whose name and date of birth were given repeatedly to the police by a drugs criminal who had attended the same primary school. His name was entered in various databases making travel impossible, which lead to the bankruptcy of his business. For several years it was known that although his name was flagged, the man was not a criminal, though this did not help his situation. After years of problems the Ombudsman concluded that the government should clear his name. At first the government replied that it would be impossible to clear his name and remove his name from all databases. Their solution was that the businessman needed to take another identity. The Ombudsman did not consider this a just solution and required the government to clear his name (Nationale Ombudsman, 2009).

For researchers this means that data about respondents should be completely anonymous and indirect identification should be made impossible. This means, for example, that mentioning specific places where groups or individuals can be seen should be avoided. The SAFIRE researchers doing interviews were advised to inform their interviewees about this, see Appendix 5.

Researchers should take extra care in this type of research that they do not use respondents' personal data in e-mails and digital calendars (for example because a researcher includes the respondent's name in his digital calendar when making an appointment to interview a respondent). It is advisable that in radicalisation research no photos are used that contain identifiable people.

For respondents taking part in a research experiment, survey or interview, this should not be too demanding. Within psychological and physiological research most ethics committees use the rule-of-thumb that participants should not be required to do things or undergo conditions that they do not encounter in their private or professional lives. This means that in research into the effects of G-forces a fighter pilot can be subjected to larger G-forces than someone who is not a fighter pilot, because pilots are regularly subjected to large G-forces in their professional life.

In the Netherlands, this also demarcates the line between research that should be evaluated by a formal medical ethics committee and research that can be evaluated by an ethics committee that has no legal status, for example, at a faculty of psychology (CCMO, 2001). This differs amongst countries, but usually when demands or risks to participants exceed what they are used to in their daily or professional lives, the demands on respondent protection increase and some research will not be allowed by ethics committees. In programmes to prevent or stop radicalisation the psychological burden or stress to respondents when having to complete a survey or an interview should be taken into account but will usually not be too much.
According to a critical article of Lub (2012), assumptions and ideas behind programmes to prevent or stop radicalisation are often not really tested in a literature review before programmes are developed and used. In evaluating these programmes the first step is to test the assumption and ideas behind the programmes in a literature review. If these ideas and assumptions are at odds with the current state-of-the art in radicalisation research then it might not even be necessary to burden respondents with surveys or interviews.

5.2 Obtaining data from experts and (former) radicals in workshops and interviews

5.2.1 Direct contact with radical persons

In the Description of Work it was written that there would be no direct contact with radicals within the SAFIRE project. This was amended and interviews were held with persons who consider or considered themselves to be radical now or in the past. There was one scientific and two ethical reasons for this change.

First, the scientific argument for asking radicals themselves about their opinions and beliefs is that they will provide more direct and hence more reliable results.

Second, from an ethical point of view, the autonomy of a person is better respected by asking them about their own life and opinions. Of course the interview should be done under informed consent. Furthermore, as explained above protecting the anonymity of the interviewees is paramount. All precautions were taken to protect the identity of the participants, so that they may be neither directly nor indirectly identified.

Third, from an ethical point of view asking frontline workers about radical people they work with could breach the trust relationship between the radical person and frontline worker. Frontline workers are hesitant to give very specific information about someone’s pathway to radical opinions because often they have been given this information based on mutual trust with the individual. Moreover, this relationship could even be considered to have the spirit of the confidentiality of a frontline worker-client relationship. This would mean that all the information we gathered within SAFIRE could only address general trends without very specific information about individuals’ narratives. As we have seen in the literature review there is no general pathway to radicalism, there are *only* personal narratives. From an ethical point of view the only way to obtain information about the personal narratives is to ask

people themselves under explicit informed consent and suitable assurance of anonymity.

From a practical point of view the interviewer needed to be able to establish a working rapport with the radical person, but considering the experience available within the research consortium (e.g. Forum, ISCA, FRS, UvA) this was not a problem.

***Decision**: During the project it was decided to gather data directly from (former) radicals. This was amended in the Annex I of SAFIRE.*

5.2.2 Informed Consent

It is necessary to ask for formal informed consent when interviewing or working with research subjects and experts (e.g. expert interviews). Their signed consent forms need to bestored in a secure way. Some respondents[31] did not want to become known as having given information to researchers from SAFIRE and only allowed the consortium partner organising the workshop or interview to have their names. This meant that informed consent forms could not all be stored together in one single location because that would give the consortium partner responsible for storing access to these data..In SAFIRE, the consortium partner having organised a workshop or interview securely stores the corresponding signed informed consent forms for five years. In Appendix 6 the number of signed informed consent forms per consortium partner can be found.

***Decision**: We decided that the partner collecting the data would store the informed consent forms securely*.

Some respondents did not want to sign an informed consent form even under these conditions. This meant that other procedures needed to be designed. Note that within the EU FP7 SSH programme a guidance note for researchers and Evaluators of Social Sciences and Humanities research has been created that gives constraints for working without strict informed consent if working under strict informed consent is not feasible. It also recognises that sometimes informed consent forms might create a risk for participants in social science research[32]. The procedure of indirect consent developed in SAFIRE meets the constraints given in this guidance note.

5.2.3 Indirect informed consent

In SAFIRE, researchers from the University of Amsterdam held interviews with participants in a deradicalisation programme run by Exit -Germany, an NGO that helps individuals who want to leave the violent extreme right wing scene (so-called Exiters or Aussteiger).

[31] Especially (former) radicals or persons working for intelligence agencies did not want to be linked.
[32] Guidance Note for Researchers and Evaluators of Social Sciences and Humanities Research (2010) available at http://cordis.europa.eu/fp7/ethics_en.html. “In these cases, standard procedures for obtaining written informed consent may be harmful to the subjects instead of offering protection and therefore need to be replaced by other measures of protection.”p10

The UvA and Exit Germany agreed that interviews could be held with Exit Germany Exiters but only under the conditions set by Exit-Germany with regard to confidentiality. Exit-Germany and the SAFIRE researchers and ethicists decided that having the names of the Exiters was neither necessary nor even desirable. There is always a risk that this information could be leaked, leading to the Exiters potentially being labelled radical and treated as such. This could negatively affect their possibilities in life. Moreover, the right-wing scene might not like the idea that a former member has talked to researchers so it could even endanger them. Labelling or identification of respondents should therefore be prevented at all costs. Moreover, the Exiters did not want to give their names to the SAFIRE researchers as they are aware that being linked to such a project could have severe negative consequences for them. In sum, requiring the use of regular informed consent forms in these interviews was both ethically undesirable and would lead to very little or no respondents and therefore was also practically unfeasible.

Therefore a procedure was designed in which the Exiters would get all the information they needed to decide to participate in the interviews or not, without the SAFIRE consortium knowing their names or other information that could lead to their identification. Exit-Germany mediated between Exiters and the SAFIRE consortium. This procedure does not yield informed consent in a strict interpretation because no contract is signed between the participant and the researcher. All requirements for informed consent are, however, met.

For informed consent researchers need to make participants aware of the following basic points:

- participation is voluntary
- participants can quit at any time during the interview
- for what participants' data are used
- who gets access to the data
- to whom participants can turn if they have questions or want (some part of) their data removed from the study.

In order to ensure that these points were met, Exit-Germany and the principal SAFIRE researcher responsible for the data collection signed a contract that specified obligations for both, see Appendix 7. The SAFIRE team was obliged to:

1. keep all information that could lead to the (indirect) identification of the Exiters confidential. 2. only use the information obtained in the interviews for the purpose of SAFIRE.
3. include in all publications that interviews were conducted with and under supervision of Exit Germany. 4. obtain written permission from Exit Germany before using any information obtained in the interviews for other research purposes.

Exit-Germany was obliged to:

1. provide a secure environment for the interview.
2. inform the Exiters
    a. about the goal of the interview
    b. that participation is completely voluntary and that participation can be stopped at any moment
    c. that if Exiters would like to have further information about SAFIRE Exit-Germany can and will obtain this information for them.
    d. that if the participant would like to have (part of) the interview removed from the research data, Exit-Germany can and will arrange this.

The interviews themselves were done by three students from the University of Bremen. These students were trained by SAFIRE researchers and the interview structure and questions were designed by the SAFIRE researchers and students. The researchers consciously tried to avoid questions that could lead Exiters to give details about themselves that might lead to their indirect identification (see Appendix 5).

A person from Exit Germany, who was trusted by the Exiter was present during the interview, but refrained from intervening. At the beginning of the interview the Exiters were again told that participation was voluntary and that all information would be anonymous. They were asked to state that they had been given and understood the information and that they realised that their participation was voluntary. The whole interview was taped and the tapes were provided to the SAFIRE researchers.

Decision *The informed consent procedure we used in the Exiters' interviews is not informed consent in a strict interpretation because no contract is signed between the participant and the researcher. With an alternative indirect procedure, however, we were able to meet all requirements for informed consent in terms of making the participants aware of the information necessary to give informed consent. The benefit is that no identifying information exists for any of the Exiters that either the SAFIRE consortium or any third party can access: the data stored by SAFIRE do not contain any information about participants' identity. The identities of the Exiters are, of course, known to Exit-Germany because the Exiters participate in their programmes. This ensures that should an Exiter request that we remove their data, we can find it.*

5.3 Intervention studies and research ethics

As stated in section 5.1,the intervention research should be done under informed consent of the participants. The informed part means that participants should get all the relevant information and should realise the consequences of participating. Deception or keeping relevant information from the participants is not an option in the SAFIRE project. The informed consent should be given freely and participants should be allowed to withdraw their cooperation at any time without consequences. This means that if an intervention programme is evaluated that participants of the intervention programme who do not want to participate in the evaluation study should not be put under pressure to be involved in the evaluation study.

Moreover, only adults can give informed consent. In case of youth under 18 years of age, parental consent is also necessary.[33] Within Safire we only included adolescents if parental consent was indeed given.

Besides the information that individuals should get before consenting, it is important that individuals can also refuse to participate without 'costs' (this might be real costs but also social costs for example youth can only visit the youth centre during certain hours if they participate). From a research ethics point of view usually another requirement is included: participation in a study should not be too burdensome.

Decision made before searching for opportunities to do an intervention study:
Requirements for the intervention studies:

- *Openness and informed consent (i.e. no deception, all relevant information)*
- *Respect for basic rights and freedom, civil liberties (e.g. privacy, freedom of expression, freedom of religion, thought etc.)*[34]
- *Participation is voluntary: no (social) costs if people do not want to participate in the research*
- *Participation is not too burdensome*
- *Participants are 16 and over*
- *Parental consent if adolescents are between 16 and 18 years*

***Decision**: Based on these requirements we needed to exclude schools because most of the students are underage and participation within schools is usually not voluntary. Even if students are allowed not to participate in a study it is the question if they feel free to refuse to participate.*

Regarding an intervention in a youth centre, from a scientific point of view it is best if there is also a control youth centre in which only the measurements are done and no interventions. This raises the standard issue with regard to control groups: Is it fair that one centre is only 'bothered' by measurements but youth workers do not receive any training or whatever is part of the intervention? This problem might be solved by doing (parts of) the intervention in the control youth centre after the measurement period, depending on whether the intervention is positively evaluated.

After searching for youth centres and other organisations, a possible partner was found that already had a programme to help youth who had dropped out of school, had no work, had unstable homes and were at risk of becoming criminal or homeless. This partner (SIPI) was interested in an evaluation of their programme and was therefore willing to let SAFIRE researchers do an evaluation study. SIPI's programme was not primarily focussed on prevention of radicalisation but it was focussed on youth who were in between different cultures and did not feel a strong connection to Dutch Society. Because the psychological factors that SIPI's

[33] In medical ethics beside the informed consent, the risks that children are allowed to run in research are small and the burden is minimal (see for example CPMP/ICH/135/95 1997). The risks of participating in an study about an intervention are difficult to assess, but if the inclusion of a minor in the intervention study becomes somehow known the minor might be labelled radical. This is a serious risk.

[34] Fennel and Roosendaal have provided a document related to privacy protection and legal requirements for observations, surveys and (personal) data processing.

programme was trying to address were comparable to the psychological factors that UvA had identified as relevant to radicalisation and wanted to test in an intervention, there was a good fit.

Decision: *It was decided that evaluating an existing programme was probably the most practical way of doing an empirical study. Participation in the evaluation study was voluntary, so participants who were in the SIPI programme could refuse to do interviews or surveys with SAFIRE researchers without this having any consequences for their participation in the SIPI programme.*

This means that SAFIRE has not created and implemented a new intervention but has evaluated an existing one. In Appendix 8-10 the information leaflet and the informed consent forms for participants and for their parents (some participants were under 18) can be found. Because of administrative reasons SIPI had to become a consortium partner within SAFIRE to do a second study. In November 2012 the process to become a consortium partner was started. This was well after the evaluation of the first programme and after 29 months from the start of the project. This meant that the second study was performed as well as evaluated by the SAFIRE consortium. It was, however as mentioned before, an existing programme justifiable on moral grounds explained in chapter 3 and deriving legitimacy from cooperation with local governments .

5.4 End-users

It is important to take into account how different people and professions may use the data from SAFIRE and will be able and willing to reflect upon it. Humans are notoriously bad at understanding the difference between correlations and causal relationships. In SAFIRE reports relationships between for example observable indicators and possible violent radicalisation are described. The SAFIRE team needed to be aware that with regard to relationships most people will interpret non-causal relationships in a causal manner.

Observable indicators of radicalisation are identified within SAFIRE, see Deliverable 4.1. The problem with these indicators is that most are very common phenomena within people's lives. So only the emergence of new observable indicators, occurring together over time, could be an indication of radicalisation. But even a combination of observable indicators does not determine the likelihood of engaging in violence and terrorism. Therefore it is very important for end-users to realise that although observable indicators were identified it is impossible to predict whether someone will become violent.

Decision*: Throughout the project and in communication due care will be given to possible misinterpretations of models and relations.*

6 Conclusions

Aside from the advice that was given concerning research ethics and the discussions that were started with the SAFIRE team, the ethical and legal work within SAFIRE has led to some interesting results of its own.

First, although there is no legal justification to design a programme to prevent or stop radicalisation before crimes are committed, there is an ethical justification. A programme should in such a case not be seen in the light of counter terrorism but in the light of educating children and adolescents. Interventions or programmes for groups at risk are regular social work or education. If this is called prevention of radicalisation it might stigmatise groups, could lead to adverse reactions and to misunderstanding in a European context where some countries have a tradition of an exclusively neutral state and others of an inclusively neutral or compensatory state.

Second, we have developed an indirect informed consent procedure. We would argue that when interviewing people who can experience very negative consequences if their names are associated with a research project, this indirect way of obtaining informed consent is ethically more desirable than using a regular informed consent procedure. The most important feature of the indirect informed consent approach is that researchers do not get names and information that can lead to (in)direct identification of a participant.

Third, we conclude that ethical parallel research or another type of method that includes interaction between ethicists and other researchers through the whole duration of the project is preferable for addressing ethical issues in such a research project. At the beginning of the research we addressed issues that lost relevance later in the project and explored new issues that came up during the research. It was not possible to identify and completely address all the relevant ethical issues at the start of the project. If an ethics work package aims at supporting researchers with regard to research ethics and discussions the ethics work package should be part of the research team and not be seen as something separate.

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Appendix 1

List of interviewees (all interviewees have received their interview transcript and consented to its use in this research):

Anaïs Reding, Rand EU
Joanna Pliner, ISCA
Allard Feddes and Liesbeth Mann, UvA
Tony van Vliet, TNO
Joachim Valentim, Coimbra
Jean Luc Marret, FRS
Corine van Middelkoop, Forum

Appendix 2

National Penal Codes apply in general to terrorist activities. Special laws might also be applicable (see below for an example).

In the Netherlands for example:

- Crimes of Terrorism Act
- Expanding the scope for investigating and prosecuting terrorist crimes
- Extended powers for Minister of Justice
- Aviation Act
- Aliens Act
- Protected witnesses Act
- Act on banning organisations on the UN or European Union list of terrorist organisations in the Netherlands (NGO-agreement)
- Participation and cooperation in training for terrorism Act

United Nations

The UN Security Council's Counter Terrorism Committee (CTC) was established and unanimously adopted by resolution 1373 in 2001. The committee comprises all 15 SC Members. The CTC has asked the UN countries to take several measures to counter terrorism, including:

- "Criminalise the financing of terrorism
- Freeze without delay any funds related to persons involved in acts of terrorism
- Deny all forms of financial support for terrorist groups
- Suppress the provision of safe haven, sustenance or support for terrorists
- Share information with other governments on any groups practicing or planning terrorist acts
- Cooperate with other governments in the investigation, detection, arrest, extradition and prosecution of those involved in such acts; and
- Criminalise active and passive assistance for terrorism in domestic law and bring violators to justice.

In September 2005, the Security Council adopted resolution 1624 (2005) on incitement to commit acts of terrorism, calling on UN Member States to prohibit it by law, prevent such conduct and deny safe haven to anyone "with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct." The resolution also called on States to continue international efforts to enhance dialogue and broaden understanding among civilisations. The Security Council directed the CTC to include resolution 1624 (2001) in its ongoing dialogue with countries on their efforts to counter terrorism.. ."[35]

The Counter-Terrorism Committee Executive Directorate (CTED)[36] assists the CTC and coordinates monitoring and implementation of resolution 1373.

United Nations legislative Initiatives (not limited to the list below)

[35] http://www.un.org/en/sc/ctc/aboutus.html
[36] Established under resolution 1535 in 2004, with a mandate until the end of 2013.

United Nations Initiatives

Universal declaration of human rights (protection of fundamental rights). The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, 1965), is specifically designed to 'combat' discrimination.

The Convention for the Suppression of Unlawful Seizure of Aircraft ("Hague Convention", 1970 - aircraft hijackings) has been signed and ratified. Hijacking of aircraft has been made a criminal offence with enacting §316c which threatens a minimum of 5 years and a maximum of 15 years imprisonment.

The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation ("Montreal Convention", 1971, which applies to acts of aviation sabotage such as bombings aboard aircraft in flight) has also been signed and ratified. Obligations as to creation of criminal offence statutes coming with this convention have been implemented with enacting §316c.
The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons (1973) which outlaws attacks on senior government officials and diplomats has been signed 15 August 1974 and ratified 25 January 1977. The convention has been implemented with creating §102 (see above).

Taking hostages according to the International Convention Against the Taking of Hostages ("Hostages Convention", 1979) has been signed 18 December 1979 and ratified 15 December 1980. Implementation took place with inserting §§239a, b into the Penal Code.
The Convention on the Physical Protection of Nuclear Material ("Nuclear Materials Convention", 1980--combats unlawful taking and use of nuclear material) has been ratified. Unlawful possession of nuclear substances, trafficking and the like have been penalised.
The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, (1988 – which applies to terrorist activities on ships) has been ratified. Penal provisions have been introduced that criminalise interference with maritime transportation (see above).
The Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (1988--applies to terrorist activities on fixed offshore platforms) has been ratified. A legal regime has been established that provides for criminal sanctions against interference comparable to that of maritime transportation and installations.
The Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991--provides for chemical marking to facilitate detection of plastic explosives, e.g., to combat aircraft sabotage) has been ratified and implemented with the Law on the Convention of 1991 Referring to the Chemical Marking of Plastic Explosives (as of 9 September 1998 (Gesetz zu dem Übereinkommen vom 1. März 1991 über die Markierung von Plastiksprengstoffen, BGBl II 1998, 2301).

The International Convention for the Suppression of Terrorist Bombing (1997): (UN General Assembly Resolution) was signed 26 January 1998 and ratified 23 April 2003. Universal jurisdiction applies to acts of bombing (§§307, 308, 310) according to §6 Penal Code.

The International Convention for the Suppression of the Financing of Terrorism (1999) was signed 20 July 2000 and ratified 17 June 2004. Legislation implementing the Convention partially had already been in place or was enacted subsequent to the ratification of the convention.

Finally, the International Convention for the Suppression of Acts of Nuclear Terrorism 13 April 2005 was signed 15 September 2005.

European Union initiatives

European Convention on human rights and the European Charter on human rights, and, specifically for the protection of human rights in the ‘ fights against terrorism, the Guidelines on human rights and the fight against of terrorism (EU 2002). More specific with regard to the freedom of expression: Declaration on freedom of expression and information in the media in the context of the fight against terrorism (Council of Ministers, 2 march 2005).

Of general applicability is the European Convention on the Transfer of Proceedings in Criminal Matters (1972), that allows European Member States to request transfer of criminals, provided that (article 8 under 1):

a. if the suspected person is ordinarily resident in the requested State;
b. if the suspected person is a national of the requested State or if that State is his State of origin;
c. if the suspected person is undergoing or is to undergo a sentence involving deprivation of liberty in the requested State;
d. if proceedings for the same or other offences are being taken against the suspected person in the requested State;
e. if it considers that transfer of the proceedings is warranted in the interests of arriving at the truth and in particular that the most important items of evidence are located in the requested State;
f. if it considers that the enforcement in the requested State of a sentence if one were passed is likely to improve the prospects for the social rehabilitation of the person sentenced;
g. if it considers that the presence of the suspected person cannot be ensured at the hearing of proceedings in the requesting State and that his presence in person at the hearing of proceedings in the requested State can be ensured;
h. if it considers that it could not itself enforce a sentence if one were passed, even by having recourse to extradition, and that the requested State could do so;

The European Union framework decision on the European Arrest Warrant (13 June 2002) had been implemented by a law that subsequently had been declared unconstitutional by decision of the Federal Constitutional Court (18 July 2005). The Federal Constitutional Court argued that the law did not respect the particular protection of German citizens as regards their legitimate and constitutionally protected trust in being prosecuted and tried in Germany and not delivered to foreign jurisdictions when having committed a crime which has significant links to Germany.

Moreover, German Constitution demands for the possibility of appeal before a court of law. In the meanwhile the Federal Government has drafted a new version of a law implementing the European Arrest Warrant which – according to a statement of the Minister of Justice will respect constitutionally protected rights of defendants. Extradition of a German citizen (and foreign nationals with a status comparable to that of a German citizen) may only be granted if – after a trial has been completed and a criminal sanction imposed – it is ascertained that the convicted person will be re-delivered to Germany in order to execute the penalty in Germany, and if the offence does not have a significant relation to Germany and if the offence has a significant relation to another European Union member state or if mutual punishability is established and trust of being not delivered to a foreign state worth of being protected is not present.

Anti-terrorism framework decision (see below).
Money laundering directives. All money laundering directives have been implemented.
See amongst others: Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990) and Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism (2005).

Reports to the Security Council (Counter Terrorism Committee)
Multiple reports have been submitted to the Security Council's Counter Terrorism Committee, amongst others: S/2002/11, S/2002/1193, S/2003/671.[37]

Among the mechanism used to exchange operational information we find Interpol. In addition and in terms of police practice, the "Police Working Group on Terrorism" provides a well-established forum for the exchange of information between 17 Member States (Austria, Belgium, Denmark, Finland, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom, Germany).

The intelligence services of the European Union have always worked closely together at different levels. In international terms, there are a large number of well-established contacts at bilateral and multilateral level that ensure there is efficient cooperation and that relevant information is actually exchanged. Due to decisions taken by the Special Council of Justice and Home Affairs Ministers of the European Union on 20 September 2001, two meetings have already been held by the heads of services. The decision was taken at these meetings to intensify cooperation between the services as well as cooperation with Europol and the authorities of the United States. Furthermore, meetings are held on a regular basis between the heads of the relevant departments of the services responsible for the prevention of international terrorism.

Agreements on Cooperation against Terrorism, Organised Crime

[37] See for the complete list of country reports: http://www.un.org/en/sc/ctc/resources/1373.html

European Convention on the Suppression of Terrorism, Strasbourg, 27 January 1977 (including the 2003 protocol).
United Nations Convention against Transnational Organized Crime, New York, 15 November 2000
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, New York, 15 November 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, New York, 15 November 2000
Council of Europe Convention on Cyber Crime, Budapest, 23 November 2001
Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems
Council of Europe Convention on the Prevention of Terrorism (2005).

Agreements on Mutual Assistance and Extradition
European Convention on Extradition of 13 December 1957
First Additional Protocol of 15 October 1975 to the European Convention on Extradition
Second Additional Protocol of 17 March 1978 to the European Convention on Extradition
European Convention of 20 April 1959 on Mutual Assistance in Criminal Matters
Additional Protocol of 17 March 1978 to the European Convention on Mutual Assistance in Criminal Matters
Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, 8 November 2001.
Convention of 8 November 1990 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.
Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union
Convention of 27 September 1996 relating to extradition between the Member States of the European Union
The Council of Europe in May 2005 has opened the Convention on the Prevention of Terrorism (ETS 196) as well as the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS 198) for signature. These conventions have not yet been ratified.

Agreements against Proliferation, Chemical and Biological Weapons etc.
Protocol for the Prohibition of the Use in War of asphyxiating, poisonous or other Gases and of bacteriological Methods of Warfare, Geneva, 17 June 1925
Treaty on the Non-Proliferation of Nuclear Weapons, 1 July 1968
Convention on the Prohibition of the Development, Production and Stockpiling of bacteriological and toxin Weapons and on their Destruction, 10 April 1972
Convention on the Prohibition of the Development, Production, Stockpiling and Use of chemical Weapons and on their Destruction, Geneva, 3 September 1992
Comprehensive Nuclear Test Ban Treaty, New York, 10 September 1996
OSCE Document on Small Arms and Light Weapons, Vienna, 24 November 2000
UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, New York, 20 July 2001

Please be aware that the legal framework is not at all limited to the list above. Many other regulations, decisions, laws, bilateral agreements and other agreements might be applicable to the regulatory framework.

Appendix 3 Case law

HR Hofstadgroep (The Hofstadgroup Trial)

In the Netherlands, the most famous trial against an assumed terrorist network of radical extremists is the trial against the so-called Hofstadgroup. There is currently no final judgment yet, since the court decision was appealed at the *Hoge Raad* (the Dutch Supreme Court) which decided that the case had to be judged again by the Court of Appeal. There is, however, already quite some material on the arguments and considerations made by the courts in order to decide whether the Hofstadgroup has to be considered a terroristic organisation or not.

The Court of Appeal (*Gerechtshof*) decided in January 2008 that the Hofstadgroup had insufficient organisational substance to be considered an organisation in the meaning of Articles 140 and 140 Dutch Penal Code. The public prosecutor argued that a common, radical political ideology, based on the extremist, takfiric explanation of Tawheed, was the binding factor of the Hofstadgroup. This ideology was, at least by the core members of the group, considered as unavoidably leading to violent acts, since the ideology is aimed at a systematic destruction of the democratic society in order to establish an Islamic State, led by the Shari'a. Committing violent acts would have been the objective of the Hofstadgroup. The criminal facts for which the members of the group were prosecuted would have been committed from a radical extremist religious viewpoint.

According to the public prosecutor, whereas the establishment of the Islamic State is the ultimate goal of the Hofstadgroup, the related goal (objective) was to commit the misdemeanours as laid down in Articles 131, 132, 137d, and 285 Penal Code; instigation (incitement), spreading inciting materials, or having them in possession, inciting hatred, discrimination and violence, threatening and threatening to commit a terrorist crime. The Court of Appeal did not agree, because the objective of these acts was not lawfully and convincingly proven.

The Court of Appeal considered that participation, as meant in Articles 140 and 140a Penal Code, can only occur when two conditions are fulfilled: (1) the subject has to be part of the organisation and (2) needs to take part in actions which aim at or directly relate to the achievement of the objective of the organisation, or support such actions. Belonging to, being a member, or being part of an organisation as such is therewith on the one hand insufficient, but on the other hand a necessary requirement to accept "participation". It was considered that the two mentioned conditions imply that someone who incidentally contributes to the achievement of the objective of the organisation, for instance by committing one of the by the organisation desired crimes, but has no further connection whatsoever to the organisation, cannot be found guilty of "participation" as meant in Articles 140 and 140a Penal Code. The conditions also imply that someone can belong to an organisation as meant in Articles 140 and 140a Penal Code, without participating to that organisation in the criminal law sense, without even only incidentally contributing in any sense to the in the Articles meant objective.

Subsequently, the Court of Appeal compared the ideas (conscience) of the individual members of the Hofstadgroup. One of the members had written a number of items

(letters, internet messages) which represented his – without any doubt to be considered as radical fundamentalist – ideas. This member had undergone a religious and ideological, more and more radicalising development, which eventually culminated in the conviction (conscience) that according to the Islam in certain situations the use of violence is allowed or even mandatory.
Some of the other defendants were at the time also of the opinion that God is the one and only sovereignty, as well in religious as in worldly cases. However, there was a huge difference between the politised Tawheed of the one, in which not a spark of violence could be found, and the politised Tawheed of another which – as becomes clear from a few chat talks – was extremely radical. The Court of Appeal then concludes that there cannot be spoken of a common radical political ideology, based on an extremist, takfiric explanation of Tawheed, nor of a common Jihadist ideology.

As a result, the Court of Appeal concluded that there was no terroristic criminal organisation and that the accused could, thus, not be prosecuted for taking part in such an organisation.

Supreme Court
The public prosecutor did not agree with the ruling of the Court of Appeal and appealed at the Hoge Raad. Two aspects were brought to the fore. 1. The interpretation of the term 'organisation' was too restrictive and not in accordance with its meaning in Articles 140 and 140a Penal Code, and 2. The interpretation of Article 137d Penal Code as meaning to protect only minority groups because of their vulnerability – amongst others because of their religion or beliefs – is incorrect.

The Hoge Raad decided that the Court of Appeal applied a wrong interpretation of the term 'organisation' by taking the additional requirements of common rules and a common goal within the group, to which the individual members were bound and which commonality could be used as a means of pressure to held the members to the goal. These additional requirements are not needed to conclude that a group as meant in Article 140 and 140a Penal Code existed and that the individuals were members of that group. They, thus, could have been participating in a criminal organisation with a terroristic objective.

Also the second claim, that Article 137d Penal Code aims to protect all groups and not only minority groups, was accepted.

The Court of Appeal decided at the end of 2010 that several of the suspects where guilty as charged and imposed penalties up to 13 years imprisonment. Again the suspects appealed and the Supreme Court lowered the sentence of the prime suspect to 12 years 9 months, due to the lengthy duration of the court cases. Cases of two suspects where yet again referred back to the Court of Appeal, to review their cases in 2012.[38]

Madrid Train Bomb Attacks (2004), London Subway Attacks (2005), Rote Armee Fraktion (RAF).

[38] LJN: BW5132, Hoge Raad, 11/00041 and LJN: BW5136, Hoge Raad, 11/00043, 03-07-2012.

Beside the Hofstadgroup case we have looked at a number of other European cases concerning terrorist activities. Unfortunately, not much relevant information could be obtained. For instance, in the case of the Madrid Train Bomb Attacks in 2004 28 people have been prosecuted[39] and 21 of them were convicted as guilty.[40] In the convictions, the basis was murder (192 counts of murder and 1800 counts of attempted murder). Whether there were specific considerations related to the terroristic background of the attacks is unclear to us. The court ruling is available, but consists of over 1400 pages in Spanish[41], a language we do not master.

The London subway attacks in 2005 were clearly terrorist attacks, killing 52. The bombings, however, were suicide bombings, so there are no court cases against the terrorists. Only four people, amongst which a widow of one of the terrorists[42] have been arrested. One man was arrested for possession of an Al Qaida training manual, which contains information likely to be useful to a person committing or preparing an act of terrorism.[43]

Furthermore, there was, as one of the first examples of terrorism in Europe, the so-called Rote Armee Fraktion (RAF) in Germany. Since the RAF was the first terrorist organisation, active in the 1960s and 1970s, specific legislation was not available yet. However, along the existence of this group several measures have been taken by the German government in order to set up a legislative framework to prevent and prosecute terrorist activities.

Many other cases can be found looking at the history of the IRA, ETA and other separatist groups in Europe throughout the centuries. These do not cover the scope of this work however, although they might provide interesting examples for further research on the preventing of ideological radicalism.

HR Wilders[44]

Even though the Wilders Case has gained much attention in the (international media), there has been no final verdict. The Dutch politician Geert Wilders is on trial for inciting hatred. It is said that he

- intentionally offended a group of people, i.e. Muslims, based on their religion, in public, orally, in writing or through images,
- on multiple occasions, at least once, (each time) in public, orally, in writing or through images, incited to hatred of people, i.e. Muslims, based on their religion.
- in public, orally, in writing or through images, incited to discrimination, within the meaning of article 90 quarter of the Dutch Criminal Code, against people, i.e. Muslims, based on their religion, - in public, orally, in writing or through images, incited to hatred of people, i.e. non-Western immigrants and/or Moroccans, based on their race.

[39] See: <http://www.mywire.com/a/AFP/2808563?extID=10051>.
[40] See: <http://www.reuters.com/article/idUSL308491320071031>.
[41] Available at: <http://www.elmundo.es/documentos/2006/04/11/auto_11m.html>.
[42] See: <http://news.bbc.co.uk/2/hi/uk_news/6637917.stm>.
[43] See: <http://news.bbc.co.uk/2/hi/uk_news/6675165.stm>.
[44] For a full overview see http://religionresearch.org/martijn/.

- public, orally, in writing or through images, incited to discrimination, within the meaning of article 90 quarter of the Dutch Criminal Code, against people, i.e. non-Western immigrants and/or Moroccans, based on their race.

The charges against Wilders focus on the incitement of hatred and discrimination. Even though the public prosecution office decided not to prosecute Wilders, Wilders opponents decided to go to court and in 2009, the Amsterdam Appellate Court ordered the public prosecutors to put Wilders in trial, since “in a democratic system, hate speech is considered so serious that it is in the general interest to draw a clear line”. Since then much has happened. The public prosecution office did not believe that they could prove any of the above, and as a result of the court order to prosecute Wilders they argued for his acquittal. In other parts of the trial, Wilders defence asked for substitution of the justices, for their impartial behaviour. This request was recognised by the court. Unique about this case is that also the defence moved to have the public prosecutors substituted. In November 2010, this request has been refused.

When the case commenced with new judges, Wilders defence requested substitution again, on the grounds of perjury. This request was denied by the court.

On May 25 2011, the public prosecution office again requested an acquittal verdict. According to the prosecution office, Wilders did not incite hatred or discrimination. Wilders was said to have debated the religion itself, not the religious, and would therefore not be punishable by law.

In their judgement of 23 June 2011, the judges decided Wilders was not guilty.

HR 20 February 2007: Samir A., case number 00447/06

This case deals with having available items which are intended to be used for the commitment of a terrorist act. The Court of Appeal had decided that the items available as such had to be appropriate to contribute to the act, merely because of their own concrete threatening character. The Hoge Raad decided that this interpretation was too narrow for deciding on the punishability of preparations. The measurement should have been whether the items, separately or in combination, according to their shown characteristics could be contributing to the criminal goal A. had in mind with the use of the items.

ECtHR *Arrowsmith v. United Kingdom*

In the case of Arrowsmith v. United Kingdom[45], the applicant (Mrs. Arrowsmith) was handing out leaflets to soldiers urging them not to go to Ireland. She did this from a pacifist belief. Even though this belief was protected under Article 9 of the ECHR, handing out the leaflets was judged as not expressing pacifist views and, thus, as not being a manifestation of her beliefs. The right to freedom of religion or belief protects actions which form a manifestation of the beliefs which is necessary to

[45] Arrowsmith v. The United Kingdom, 7050/75, Council of Europe, European Commission on Human Rights, 5 December 1978.

manifest the belief in practice. Since the leaflets did not express pacifist views, but rather expressed a political opposition, there was no exemption applicable which would lead to protection of the manifesting act.

The Arrowsmith case expresses the need for possibilities to practice a belief. When certain forms of expression concern a manifestation of a belief, this can be protected under Article 9 ECHR as freedom of expression. To have this protection, however, the expression has to be a manifestation of the belief. As indicated in the decision of the case, political opinions do not fall under the protection. For terrorist activities, this would mean that there is no protection either.

ECtHR Handyside v. United Kingdom

Ideas that offend shock and disturb the State or any section of the population, such are the demands of pluralism, tolerance and broadmindedness without which there is no democratic society. => art. 10 even protects these ideas.

Handyside v. United Kingdom[46] was a case for the European Court of Human Rights in 1976. Mr. Handyside was the publisher of “The Little Red Schoolbook”. This book was directed at young people and promoted a liberal attitude in sexual matters. A prosecution followed for obscene publications. The case was brought before the ECtHR, because Handyside was of the opinion that his right to freedom of expression as laid down in Article 10 ECHR was violated.

In paragraph 49 of the judgment, the most important consideration of the Court was made. It was stated that the freedom of expression constitutes one of the essential foundations of a democratic society. It is one of the basic conditions for its progress and for the development of every man. According to paragraph 2 of Article 10, a limitation of the right has to be necessary in a democratic society. The Article is “applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.” As a result, every formality, condition, restriction, or penalty imposed in this sphere must be proportionate to the legitimate aim pursued. The prohibition of the publication of the book was deemed not to be proportionate and, thus, there was a violation of Article 10.

So, Article 10 protects ideas or information which can contradict with common norms or values in a democratic society. This means that radical extremist ideas can be protected as well. However, a violent manifestation of these ideas is not.

ECtHR Müslüm Gündüz v Turkey

In ECtHR Müslüm Gündüz v. Tureky, applicant Gündüz a Turkish national, is leader of Tarikat Aczmendi (a community that describes itself as an Islamic sect). Proceedings were instituted against him following a television appearance in 1995. In 1996, a state security court found him guilty of inciting the people to hatred and

[46] Handyside v. The United Kingdom, 5493/72 (1976), ECHR 5 (7 December 1976).

hostility on the basis of a distinction founded on religion. It found in particular that he had described contemporary secular institutions as "impious" (dinsiz), fiercely criticised secular and democratic principles and openly called for the introduction of the shariah. According to Gündüz his criminal conviction violated Article 10 (freedom of expression) ECHR. The ECtHR agreed. The interference was prescribed by the Turkish Criminal Code and had legitimate aims: the prevention of disorder or crime, and the protection of morals and of the rights of others.

"The Court observed, firstly, that the programme had been about a sect whose followers had come into the public eye. Mr Gündüz, whose ideas the public was already familiar with, was invited onto the programme to present the sect and its nonconformist views, including the notion that democratic values were incompatible with its conception of Islam. The topic was the subject of widespread debate in the Turkish media and concerned a problem of general interest.
In the Court's view, some of the comments for which the domestic courts had convicted the applicant did demonstrate an intransigent attitude towards and profound dissatisfaction with contemporary institutions in Turkey. However, they could not be regarded as a call to violence or as "hate speech" based on religious intolerance. Furthermore, in view of the context in which they had been made, the Court considered that, when weighing up the competing interests of freedom of expression and the protection of the rights of others to determine whether the interference was necessary for the purposes of Article 10 § 2 of the Convention, the domestic courts should have given greater weight to the fact that the applicant was actively engaged in a lively public debate. Lastly, *there could be no doubt that expressions that sought to propagate, incite or justify hatred based on intolerance, including religious intolerance, did not enjoy the protection of Article 10 the Convention.* However, in the Court's view, merely defending the shariah, without calling for the use of violence to establish it, could not be regarded as "hate speech". In view of the context, the Court found that it had not been convincingly established that the restriction was necessary. Accordingly, notwithstanding the margin of appreciation accorded to the national authorities, the Court found that, for the purposes of Article 10, there were insufficient reasons to justify the interference with the applicant's right to freedom of expression." [47]

ECtHR Refah Partisi (EHRM 13 february 2003, Refah Partisi v. Turkey).

"The Refah Partisi (the Welfare Party - "Refah") was a political party founded in 1983. In 1997 Principal State Counsel at the Court of Cassation brought proceedings in the Turkish Constitutional Court to dissolve Refah, which he accused of having become "a centre of activities against the principle of secularism". In support of his application, he relied on various acts and declarations by leaders and members of Refah which he said indicated that some of the party's objectives, such as the introduction of sharia and a theocratic regime, were incompatible with the requirements of a democratic society. Before the Constitutional Court the applicants' representatives argued that the prosecution had relied on mere extracts from the speeches concerned, distorting their meaning and taking them out of context. They also maintained that Refah, which at the time had been in power for a year as part of

[47] Http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/1d4d0dd240bfee7ec12568490035df05/3afe929161873107 41256e1c0046b835?OpenDocument.

a coalition government, had consistently observed the principle of secularism and respected all religious beliefs and consequently was not to be confused with political parties that sought the establishment of a totalitarian regime. They added that Refah's leaders had only become aware of certain of the offending remarks in the case after Principal State Counsel's application for the dissolution of the party was served on them and that they had nonetheless expelled those responsible from the party. In 1998 the Constitutional Court dissolved Refah on the ground that it had become a "centre of activities against the principle of secularism". It also declared that Refah's assets were to be transferred to the Treasury. The Constitutional Court further held that the public declarations of Refah's leaders, had directly engaged Refah's responsibility as regards the constitutionality of its activities. Consequently, it banned them from sitting in Parliament or holding certain political posts for five years.
The applicants complained, under Articles 9, 10, 11, 14, 17 and 18 of the Convention and Articles 1 and 3 of Protocol No. 1.

The parties had accepted that Refah's dissolution and the measures which accompanied it amounted to an interference with the applicants' exercise of their right to freedom of association under Article 11 of the Convention. The Court further considered that, in accordance with the requirements of paragraph 2 of Article 11, the interference had been prescribed by law and had pursued a legitimate aim. Under the terms of that paragraph, it remained to determine whether the interference had been "necessary in a democratic society".

Citing its case-law, the Court reaffirmed the close relationship between democracy and the Convention and also the primordial role played in a democratic regime by political parties enjoying the freedoms and rights enshrined in Article 11 and also in Article 10 (freedom of expression) of the Convention. However, the freedoms guaranteed by Article 11, and by Articles 9 (freedom of religion) and 10 of the Convention, could not deprive the authorities of a State in which an association, through its activities, jeopardised that State's institutions, of the right to protect those institutions. The Court had previously held that some compromise between the requirements of defending democratic society and individual rights was inherent in the Convention system.

The Court considered that a political party might campaign for a change in the law or the legal and constitutional structures of the State on two conditions: firstly, the means used to that end must be legal and democratic in every respect; secondly, the change proposed must itself be compatible with fundamental democratic principles. It necessarily followed that a political party whose leaders incited violence or put forward a political programme which failed to respect one or more of the rules of democracy or which was aimed at the destruction of democracy and the flouting of the rights and freedoms recognised in a democracy could not lay claim to the Convention's protection against penalties imposed on those grounds.

The Court reiterated, nevertheless, that the exceptions set out in Article 11 were, where political parties were concerned, to be construed strictly; *only convincing and compelling reasons could justify restrictions on such parties' freedom of association. In determining whether a necessity within the meaning of Article 11 § 2 existed, the Contracting States had only a limited margin of appreciation.* Provided that it

satisfied the two conditions set out above, a political party animated by the moral values imposed by a religion could not be regarded as intrinsically inimical to the fundamental principles of democracy, as set forth in the Convention.

The Court further considered that the constitution and programme of a political party could not be taken into account as the sole criterion for determining its objectives and intentions. The political experience of the Contracting States had shown that in the past political parties with aims contrary to the fundamental principles of democracy had not revealed such aims in their official publications until after taking power. That was why the Court had always pointed out that a party's political programme might conceal objectives and intentions different from the ones it proclaims. To verify that it did not, the content of the programme had to be compared with the actions of the party's leaders and the positions they defended.

In making an overall assessment of the necessity of the interference and in particular whether it corresponded to a pressing social need, the Court found that the acts and speeches of Refah's members and leaders cited by the Constitutional Court were imputable to the whole of the party, that those acts and speeches revealed Refah's long-term policy of setting up a regime based on sharia within the framework of a plurality of legal systems and that Refah did not exclude recourse to force in order to implement its policy and keep the system it envisaged in place. Considering that these plans were incompatible with the concept of a "democratic society" and that the real opportunities Refah had to put them into practice made the danger to democracy more tangible and more immediate, the penalty imposed on the applicants by the Constitutional Court, even in the context of the restricted margin of appreciation left to it, might reasonably be considered to have met a "pressing social need". The Court further concluded that the interference could not be regarded as disproportionate in relation to the aims pursued.

There were thus convincing and compelling reasons justifying Refah's dissolution and the temporary forfeiture of certain political rights imposed on the other applicants. It followed that Refah's dissolution might be regarded as "necessary in a democratic society" within the meaning of Article 11 § 2 and there had accordingly been no violation of Article 11."[48]

HR 20 February 2007: Samir A., case number 00447/06

This case deals with having available items which are intended to be used for the commitment of a terrorist act. The Court of Appeal had decided that the items available as such had to be appropriate to contribute to the act, merely because of their own concrete threatening character. The Hoge Raad decided that this interpretation was too narrow for deciding on the punishability of preparations. The measurement should have been whether the items, separately or in combination, according to their shown characteristics could be contributing to the criminal goal A. had in mind with the use of the items.

[48] http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/d0cd2c2c444d8d94c12567c2002de990/950aeda61843540041256ccd004ac34d?OpenDocument.

A complete list of ECtHR on terrorism can be found online.[49]

European Court of Justice, C-57/09 and C-101/09, 09 November 2010.

A person can be excluded from refugee status if he/she is individually responsible for acts committed by an organisation involved in terrorist acts. Membership alone of such an organisation would not have exclusion from this status as an automatic consequence.[50]

[49] https://www.unodc.org/tldb/en/case-law-of-the-european-court-of-human-rights-related-to-terrorism.html
[50] http://www.europolitics.info/exclusion-from-refugee-status-requires-case-by-case-assessment-art286652-16.html.

Appendix 4

Scenarios used in the workshop at the SAFIRE symposium June 2012 Amsterdam

Scenario 1

A city with 500.000 inhabitants has two neighbourhoods with very big social economic problems: unemployment, poor quality housing, poor quality education , crime and stigmatisation (based on opinions held by the population from other neighbourhoods and even other cities: nothing good will come from these neighbourhoods). So people from these neighbourhoods have fewer (job) opportunities.

Suppose there is a group of teenagers, who loiter in a small park in one of those neighbourhoods drinking beer and just hanging around. They have caused some nuisance by littering and making noise but they are, at least according to the police, not involved in severe crime. Some of the group members have police records for minor offences but none of the teenagers has ever been arrested for more severe offences. The youth worker has no real contact with the group; he greets them and sometimes invites them for activities in the youth centre but they never come. Because other groups have caused more trouble the youth worker has decided not to spend a lot of time on this specific group. However, the youth worker has observed that the group is still in the park but they have changed: no alcoholic beverages have been drunk for at least the past four weeks. Some of the group members have started to wear different clothes. Moreover, the youth worker has heard that the group was talking to other teens about religion, whereas previously conversations were about cars, football, the weather or other everyday topics. One of the group members, the one usually seen as having a lead role, has recently married and gotten a job. The group is Muslim and mostly of Moroccan descent (there is one from Turkish and one from Pakistani descent).

The youth worker has not been successful in establishing real contact with the group, therefore he only has a gut feeling that the group might be radicalising. He is, however, worried and wants the city council to implement a deradicalisation programme that has been developed by an organisation in cooperation with the city council. The youth worker is convinced that people from that organisation will be able to get in contact with the group because it is an organisation set up by a former Muslim radical of Moroccan descent.

Scenario 2

Same city but a different neighbourhood. The problems are the same but in this neighbourhood there are not a lot of minorities. The social economic problems are severe. The crime rates are high. The police suspect that a lot of crime is not reported because people "solve" it themselves. Other crimes such as insurance fraud are also reported. There are families where none of the parents or grandparents has ever had a job for longer than six months. People living in the neighbourhood like their neighbourhood: they feel at home and identify strongly with the neighbourhood and their neighbours. Lately the local government (or social housing agency) has offered some immigrant families houses for rent in the neighbourhood. This has led to heated debates and some vandalism of the houses and gardens. People living in the neighbourhood want their children to be able to live in affordable houses in the neighbourhood but there is a seven-year waiting list. Young people want to stay in the neighbourhood and claim they have more rights to

the affordable houses than immigrants because they have lived in the neighbourhood all their lives. A radical right wing group sees an opportunity to gain support and members in the neighbourhood and has started to contact young people. The youth worker fears that a substantial number of youngsters, especially those with limited prospects in life, might sympathise with extreme right ideas, and wants to start a deradicalisation programme. Her target group is young people from the neighbourhood who dropped out of school or attended schools for children with learning or behavioural problems. All these youngsters miss the basic qualifications and skills to get a regular job and most of them are unemployed.

Appendix 5
Short guideline for interviewees

Due to privacy protection requirements, ethical considerations and the nature of this study, the consortium and the persons conducting interviews and observations (hereafter referred to as 'interviewer') are not interested in obtaining data/information that could lead to the identification of individual persons that are radicalised, suspected of radicalisation, in the process of radicalisation or in deradicalisation programmes or similar projects (hereafter referred to as 'subjects').

Since it is likely that the experts as well as first-line workers to be interviewed (hereafter referred to as 'interviewee') have data/information that includes personal and/or sensitive personal data (e.g. information about religion, ethnicity, political opinion) of individual subjects as well as information that may lead to the identification of individual subjects the interviewee is asked to adhere to the following guidelines when answering questions/providing information during the interview or in related activities afterwards:

- Not provide information about real names of subjects or other direct identifiers
- Not provide detailed descriptions about physical appearance (incl. handing photographs showing identifiable subjects)
- Not provide information that may lead to indirect identification (e.g. also in combination with other data/information), i.e. **refrain** from giving any information about:

    - the exact age of subjects;
    - addresses (incl. names of facilities where subjects may stay);
    - detailed description about geographical locations;
    - any data/information that could in combination with other data/information lead to a possible identification of individuals (e.g. referring to a woman if only one woman would knowingly fit a certain criteria or is the only woman/one of very few women in the group etc.)

Therefore as a guideline we would like to ask you to speak in general terms (e.g. 'one of the <adjective> youth we worked with', 'most <adjective> people tend to be in their mid 20s', '(fe)males/younger/older/migrant people tend to be more <adjective>', 'many come from areas with high <adjective, noun> background/rate etc.' instead of pointing towards specific areas or naming them).

Thank you for your cooperation.

Appendix 6

CEIS:
workshops 1: 19th of May 2011 in Brussels
24 participants and also 24 signed informed consent forms

Workshop 2: 25th of November 2011 in Brussels
16 participants and also 16 signed informed consent forms

ISCA:
5 signed informed consent forms from interviews

Rand:
Workshop 15th of April 2011
10 participants and 10 signed informed consent forms

Forum:
Interviews 7 signed informed consent forms

Workshop: 6th of June 2011
7 signed informed consent forms

UvA:
10 signed informed consent forms at EXIT Germany (indirect consent see above)
3 signed informed consent interviews
46 signed informed consent forms of participants of DIAMANT.
25 signed parental informed consent forms of parents of underage participants of DIAMANT

Appendix 7

ZDK Gesellschaft Demokratische Kultur gGmbH
Thaerstr. 17, 10249 Berlin

CONTRACT

Between:

ZDK Gesellschaft Demokratische Kultur gGmbH
Thaerstr. 17
10249 Berlin

represented by the chief executive officer Mr. Bernd Wagner

and

Dr. E.J. (Bertjan) Doosje

University of Amsterdam
Faculty of Social and Behavioural Sciences
Social Psychology Department
Weesperplein 4
1018 XA Amsterdam
The Netherlands

The above mentioned parties agree to the terms of the following contract:

Dr. Doosje and/or the colleagues involved in the EU research project SAFI
allowed to analyse interviews with 10 former members of the right wing ext
movement (following: *Drop-Outs*), who left the movement with the help of E
Germany, in line with his research on radicalisation processes.
According to this contract Dr. Doosje and/or the colleagues involved in the
research project SAFIRE will be able to conduct personal interviews with th

Geschäftsführer
Bernd Wagner

Kontakt:
Tel.: (+49) (0) 30 – 420 18 690
Fax: (+49) (0) 30 – 420 18 508

info@zentrum-demokratische-kultur.dew

Konto:
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BLZ 100 800 00
SWIFT-BIC.: COBADEFFXXX
IBAN :
DE47 1008 0000 0906 4527 00

Registratur :
HR B 91426
Amtsgericht
Berlin – Charlottenburg

Steuernummer:
27/602/53200
FA für Körperschaften I Berlin

USt-IdNr.:
DE233964989

Betriebsnummer:
08272158

Spenden:
ZDK Gesellschaft
Demokratische Kultur gGmbH
Stichwort: ZDK oder EXIT
Commerzbank
KTO 0906452700
BLZ 100 800 00

Outs. In doing so all security measurements and directions from EXIT-Germany regarding such precautions and case by case necessities will be followed by Dr. Doosje and/or the colleagues involved in the EU research project SAFIRE. Thereby EXIT-Germany ensures that the Drop-Outs will not be subjects of any harmful or intimidating action.

Date: T.B.A.
Place: Thaerstr. 17, 10249 Berlin

Usage of the interview material

Dr. Doosje and/or the colleagues involved in the EU research project SAFIRE obligate themselves to observe and maintain secrecy towards everybody regarding any information connected to privacy, personal rights and personal data (confidentiality). Additionally they obligate themselves to take any necessary precaution to prevent any third party from accessing and using this data.

Labeling Obligation

Dr. Doosje and/or the colleagues involved in the EU research project SAFIRE obligate themselves to use the obtained material only in line of the SAFIRE research project (i.e. EU documents and scientific publications related to SAFIRE) and to label clearly that the material was obtained through interviews with and under supervision of EXIT-Germany.

Any further use of the obtained material has to be agreed with EXIT-Germany and authorised in written form. This also applies to publications not connected to the above mentioned research intention.

Mutual safety

EXIT Germany guarantees to provide a safe environment for conducting the interviews and assures to treat any personal information and/or information regarding the personal safety of Dr. Doosje and/or the colleagues involved in the EU research project SAFIRE with confidentiality.

Handling damage cases

In case of negligent or intentionally caused damage Dr. Doosje commits

himself to adequate reimbursement. Damage cases are: events as results of immediate infringement of privacy or confidentiality damaging the identity, life or residence of the Drop-Outs. This is avoidable through proper handling of privacy and confidentiality and correct and careful description of the interviews when published. This can achieved through consultancy with EXIT and/or the Drop-Out when necessary.

Applied law

During the project German law will be applied. Berlin will be the juridical district.

Ethical Consent

Participants are assured by EXIT that

* There are only correct answers in the interview and that no judgments are made by the interviewers;
* The interviewer is only interested in the participant's thoughts and opinions. It is *not* a study about the group they belonged to in the past. The interviewer is only interested in how extreme ideals develop among people.

Participants have been told by EXIT that

* The goal of the research is to investigate how people develop their ideals. For this five topics will be talked about: (1) becoming a member of a rightwing extremist group; (2) how it was to be a member of the group; (3) the process of leaving the group; (4) the role of identity and self-esteem; and (5) possibilities to intervene among young people who have extreme ideals. In addition, some questions will be asked about dates of group membership, education, and marital state;
* The interview will take one hour in total and will be recorded;
* Participation in this study is completely voluntary. At any time participants can stop the interview if they do not feel like continuing without giving a reason. This will have no consequences for participants. Also, if participants decides afterwards that they do not want the researcher to use the information that is recorded, then participants

can do that by informing EXIT. EXIT will then contact Heather Griffioen-Young, heather.griffioen-young@tno.nl, tel. +31 (0) 34 6356378 or Allard Feddes, a.r.feddes@uva.nl, tel +31 (0)20 5258863. After the interview is completed the data will be stored for an additional 5 years;

* In case the participant likes to have further information about this research he/she can contact EXIT. EXIT in turn then contacts the researcher Allard Feddes (a.r.feddes@uva.nl, tel +31 (0)20 5258863, Weesperplein 4, 1018 XA Amsterdam, The Netherlands). For any complaints about this research the participant can contact EXIT. EXIT in turn can then contact the member of the Ethics Committee of the Department of Psychology, University of Amsterdam, Prof. Dr. V. Lamme (V.Lamme@uva.nl, tel +31 (0)20 5256675; Weesperplein 4, 1018 XA Amsterdam, The Netherlands);

* The interview is completely anonymous. At no point participants are asked to state or write down their name;

* The information that participants provide in the interview will be used for reports for the European Committee, scientific articles and articles in professional journals, and this will be done in complete anonymity. Personal information cannot be accessed by third parties without permission of participants.

Berlin, 09. 01. 2011

Bernd Wagner
Chief Executive Officer

Dr. Doosje

Appendix 8
Information Brochure for DIAMANT Participants

We would like to ask you to participate in a study examining the DIAMANT training. This study is conducted by researchers from the University of Amsterdam. Before the study begins it is important that you carefully read the following information:

Goal

The purpose of the study is to observe whether the DIAMANT training is effective. This research is part of a larger European project called SAFIRE. This project investigates, among other things, the relationship between developing identity, self-confidence and skills and how this ties in with the development of radical ideas in certain young people.

How will the study be done?

We would like to know how the participants of the DIAMANT training think about themselves, about others and Dutch society. There will also be questions asked about what they think of the DIAMANT training. The study consists of a questionnaire and an interview. Filling out the questionnaire will take about 20 minutes. The interview will last about 15 minutes. First the questionnaire will be filled out, followed by the interview.

When will the study be done?

The questionnaire will be taken four times. Just before the start of the DIAMANT training, in the middle, at the end, and three months after the training. The researchers will have a short interview with you two times, this being before and after the training.

Confidentiality

The study is completely confidential (anonymous). The information from the study will be used in reports. These reports will not contain any names or personal information. That means no one will know what you said or filled in.

Voluntary

Participation in this study is completely voluntary. You may stop participating at any time without providing a reason. This will have no consequences for you. You can also decide after participation that you want the answers you have given to be destroyed. In order to do this you should contact Dr. Allard R. Feddes (telephone: 020 525 8863, e-mail: a.r.feddes@uva.nl; Weesperplein 4, 1018 XA Amsterdam).

Appendix 9
Informed Consent Form for DIAMANT Participants

I declare I have received sufficient information about the goal and the method of this research. All my questions have been answered. My participation is voluntary. I know I have the right to stop the interview at any moment without giving a reason.

Participation is anonymous. My personal information will not be linked to the information I provide.

For further questions about this study I can contact Dr. Allard R. Feddes (telephone: 020 525 8863, e-mail: a.r.feddes@uva.nl; Weesperplein 4, 1018 XA Amsterdam).

If I have complaints about this research I can contact the president of the ethical committee of the Department of Psychology at the University of Amsterdam, the Netherlands, Dr. Mark Rotteveel (m.rotteveel@uva.nl; 020 525 6713).

Signed in twofold

Signature participant:

……

Signature researcher

……

Date:

……

Appendix 10
Informed Consent Form for the Parents of Underage DIAMANT Participants

I declare I have received sufficient information about the goal and the method of this research. All my questions have been answered. I approve of my child's participation in this study. I know my child has the right to stop the interview at any moment without giving a reason.

Participation is anonymous. My child's personal information will not be linked to the information that they provide.

For further questions about this study I can contact Dr. Allard R. Feddes (telephone: 020 525 8863, e-mail: a.r.feddes@uva.nl; Weesperplein 4, 1018 XA Amsterdam).

If I have complaints about this research I can contact the president of the ethical committee of the Department of Psychology at the University of Amsterdam, the Netherlands, Dr. Mark Rotteveel (m.rotteveel@uva.nl; 020 525 6713).

Signed in twofold

Signature parent of the participant:

……

Signature researcher

……

Date:

……