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PRIPRAVLJENOST EVROPSKIH DRŽAV NA VRNITEV TUJIH BORCEV ISLAMSKE DRŽAVE

READINESS OF EUROPEAN COUNTRIES FOR THE RETURN OF FOREIGN FIGHTERS OF THE ISLAMIC STATE

Povzetek   V analizi smo želeli prikazati, ali so tuji borci resnično nevarni za evropsko varnost, saj vemo, da je morebitna grožnja vedno mogoča. Do zdaj je bilo zelo težko oceniti grožnjo vrnitve tujih borcev. V raziskavo smo vključili dve državi, v katerih so napade izvedli tuji borci, ki so se vrnili v državo. Vključeni državi sta bili Belgija in Francija. V raziskavi smo primerjali politiko posameznih držav s skupno zunanjo in varnostno politiko EU. Ugotavljali smo, kako se ti državi spoprijemata z vrnitvijo tujih borcev in kateri ukrepi so bili glede tega sprejeti. Poleg tega smo poskušali oceniti, ali sta bolj osredotočeni na pregon tujih borcev, ki se vračajo, ali je poudarek na programih deradikalizacije in reintegracije.

Ključne besede   *Tuji borci, terorizem, Islamska država, EU, zakonodaja.*

Abstract   This analysis will consider whether foreign fighters pose a real danger to European security, knowing that the potential threat is always possible. Up to now, assessing the threat of returning foreign fighters has been very difficult. In this article we have attempted to analyze the attacks that have been carried out by returning foreign fighters in Belgium and France. Our research compared the politics of individual countries with the common foreign and security policy of the EU. We have investigated how these countries are dealing with the return of foreign fighters and what measures have been taken in this regard. In addition, we have tried to evaluate whether they are more focused on the prosecution of returning foreign fighters or whether their focus is connected with deradicalization and reintegration programmes.

Key words   *Foreign ighters, terrorism, Islamic state, EU, legislation.*

Introduction   In this section, the main focus will be on those foreign terrorist fighters (FTFs) who were part of the war conflicts in Syria and Iraq and who were part of the organization called the Islamic State (IS, also known as ISIS). But who are these foreign fighters? David Malet describes foreign fighters as "non-citizens of conflict states who join insurgencies during the civil conflict. I build on this formulation and describe a foreign fighter as an agent who (1) has joined, and operates within the confines of, an insurgency, (2) lacks citizenship of the conflict state or kinship links to its warring factions, (3) lacks affiliation to an official military organization, and (4) is unpaid" (Hegghammer, 2013, p 57). Returning foreign fighters have been well recognized as a potential problem: "As regards the problem of departures, the biggest concern of intelligence and security services and the police were the process of return of EU citizens to their home countries. There are legitimate fears that the return of radicalized individuals with the knowledge of how to use weapons and with traumas from crisis areas could create a serious security risk related to terrorist threats" (Čaleta, 2016, p 18).

The research of this paper will be based on several specific European countries, even though the issue of FTFs has been detected more widely, across all European countries. The many FTFs who have returned from the Islamic State have led to increasing questions about them posing a threat to Europe. The problem of returning FTFs is in the idea that they did not leave their radicalized ideas in the conflict zone, but are returning with a will or a plan to develop terrorist activities. They are returning brave, after seeing many violent situations, and with a broad military knowledge. Other than terrorist activities, a further danger of returning FTFs is that they could radicalize others and make them want to join terrorist organizations in the future. This analysis will look into whether FTFs pose a real danger to European security, knowing that the potential threat is always possible.

Whether the threat is real or not is the question asked not only by scholars but also by governments of European countries and their citizens. But the threat posed by returning foreign fighters (RFFs) is not thought to be underestimated. Terrorist attacks carried out by RFFs in different European countries are the proof of that. We have attempted to research those attacks which have been carried out by or connected with RFFs, including in Belgium and France. Both countries are important members of the European Union, so in order to make a complete analysis it is also important to analyze the politics of the EU in terms of the questions of terrorism, counterterrorism and the return of foreign fighters. In addition, we have compared the politics of these two countries with the common foreign and security policy of the EU, in order to analyze the challenges that European policymakers have in dealing with the phenomenon of RFFs. We have investigated how these countries are dealing with the return of foreign fighters and what measures have been taken in this regard. In addition, we have tried to evaluate whether they are more focused on the prosecution of RFFs or whether their focus is on de-radicalization and reintegration programmes.

Our evaluation could serve as a good analytical example of the situation in Europe. Some of the "restrictive" approaches used by the countries we researched include "new law approaches which criminalized recruitment, travel, the provision of funds, the organization or facilitation of travel, the delivery and receipt of broadly defined training (including self-training via the internet) or various forms of facilitation, support, incitement, "justification" or "apology" for such offences. Increasingly restrictive administrative measures that have been used in the foreign fighters' context include stripping individuals of their citizenship, deporting them, imposing travel bans and blocking their entry into or transit through territories, or the removal of travel documents" (OSCE, 2014, p 19). Other possible approaches used by countries are presented below. The analysis included in this research could help to additionally regulate all the relevant aspects of this problem and make EU governments ready for possible future events, and could help propose better ways of dealing with the challenges that RFFs will bring in the future in the national and European security environments. In the context of our research, the main research question was: *"Are the governments of European states ready for the return of foreign fighters, and what are their legal and other possibilities to help secure the safety of their citizens?"*

This research question helped us to investigate this complex subject and find some additional answers. The phenomenon of RFFs is possibly the most important question concerning the security politics of the EU of the past few years. To illustrate how serious the situation of RFFs is, we can use some existing studies which show us that "there are now at least 5,600 citizens or residents from 33 countries who have returned home. Added to the unknown numbers from other countries, this represents a huge challenge for security and law enforcement entities" (Barrett, 2017, p 5). Additionally, "some 5000 men, women and children have travelled from Europe to Syria and Iraq since 2012. An estimated 1500 of these foreign fighters have returned so far" (Renard et al., 2018, p 5).

From a methodological point of view, in our research process we used the historical method, the deductive method, the case study method, and statistics. The historical method took into account not only the basic facts, but also a chronology of events, as well as their development, causes, and consequences. The deductive method was used to provide focus analyses in the part of this research which looked at legislation; we used both analysis and synthesis. We also used the case study method, which helped us to investigate each individual country of interest in this paper to see what they are doing when dealing with RFFs. With the case study analysis, we were able to see whether countries were using a more restrictive approach or an approach for the re-integration of foreign fighters into society. In this part of the analysis, we used a comparative method, so we could best present the similarities and differences between countries. Statistics were used to analyse how many foreign fighters have returned to their countries and how many of them have been prosecuted, and also how many are involved in programmes of de-radicalization and re-integration, if

they even exist in their countries of origin. Using these methods together helped us to explain and answer our research question.

1 FOREIGN FIGHTERS AS A SECURITY THREAT

While both governments and citizens of countries are scared by the return of foreign fighters, research shows that foreign fighters do not significantly deviate from their surrounding society, and that in general they are not prone to committing terrorist attacks when they return. "My data indicates that only one in nine foreign fighters return because of an attack in the West" (Hegghammer, 2013, p 7). In addition to this, "it is important to realize that not all foreign fighters represent the same level of danger" (Bos, et al, 2018, p 12). At least initially, those who have travelled to Syria are less likely to see themselves as domestic terrorists than those IS sympathizers who have stayed at home. They generally appear to have a stronger desire to join something new, rather than to destroy something old. Analyses connected with returnees have so far shown that this problem is more manageable than initially anticipated (Barret, 2017, p 14). There will probably always be a percentage of RFFs who get involved in unlawful activities, including terrorist acts, but there are unlikely to be mass numbers of foreign fighters launching major attacks. For this reason it is important to implement a system to separate these individuals from the hundreds of thousands of returnees from Syria or other conflict areas (Renard and Coolsaet, 2018, p 17). This is something that the Terrorism Situation and Trend Report (TE-SAT) confirms in its annual report of 2018, where they say that jihadi attacks are primarily committed by "local" terrorists that have been radicalized in their own states without travelling to join terrorist organizations, and that they often do not have a direct link with Islamic State or any other jihadi organization. Of course, "recent attacks in Europe have been committed by lone individuals who have not been to a conflict zone – but who may have been inspired by terrorist propaganda and/or the extremist narrative, as well as by other successful attacks worldwide" (TE-SAT, 2018, p 27).

The Radicalization Awareness Network (RAN, 2017) explains how, in general, foreign fighters are not likely to commit terrorist attacks when returning to their countries. However, they also mention that when we talk about returning fighters, we are talking about two generations of fighters. The first generation represents those who joined the conflict for humanitarian reasons, to fight the Assad regime. These people are less violent. When talking about the differences between returning foreign fighters, this is the category who do not have any intention of carrying out unlawful activities. The second generation of returners is more ideologically decisive, and it is possible for them to return with violent motives to harm EU citizens. Hegghammer reports that "tentative data indicate that militants usually do not leave intending to return for a domestic attack, but a small minority acquire that motivation along the way and become more effective operatives on their return" (Hegghammer, 2013, p 1). Referring to these analyses, we could suppose that foreign fighters do not represent a danger.

Another reason for this is that this category of individuals often do not pose a threat to the West because they have little or no desire to ever attack their home countries, no matter how much anti-Western sentiment they are exposed to in the conflict zone. They were motivated to join a conflict that took place abroad, and they do not associate that conflict with struggles in their homeland. There are also some very interesting factors connected to militant preachers, who at some level of transferring religious messages argue that fighting foreign "invaders" in places like Iraq is justified, but carrying out terrorist attacks at home is not. We should also understand an aspect related to the social status that comes with fighting abroad, which is far higher than that of those who commit terrorist attacks at home. It is one thing to be seen as a heroic soldier fighting an invading army, and quite another to be seen as a terrorist who bombs his own country. Finally, foreign fighters may not want to carry out attacks back in their home countries for the simple reason that such attacks could endanger their friends and families (Byman and Shapiro, 2014, p 21). However, even if most experts agree that foreign fighters do not represent a direct danger by themselves, and that in most cases they do not return to carry out terrorist attacks in their own countries, the national security environment should still be prepared to deal with them. There are many implacable challenges, such as a negative public viewpoint to their inclusion in the social environment, which could encourage a different conflict situation.

This could have at least two main implications: the first is that the RFFs could very quickly become violent in such a tense situation, while the second is that they start to build a close network of communication only with others of the same mind. The fact is that brutal combat hardens the fighters, making them steady under pressure and giving them a deep sense of loyalty to their comrades-in-arms. They also gain direct, practical skills (Byman and Shapiro, 2014, p 8). We must bear in mind that these people have passed hard training, have been on the battlefield, have seen and experienced many traumatic things, and have learned how to use weapons. We can also find completely different approaches and perception of RFFs, such as: "EU Member States reported that returnees to Europe may have a certain amount of combat and operational experience; have gained an enhanced capability of committing acts of terrorism; and be particularly dehumanized and prone to violence upon their return. They also serve as role models and might be involved in recruiting and radicalizing others" (TES-AT, 2018, p 27). Most returnees will be unlikely to experience anything in their lives at home that matches the intensity of their experience as a member of IS. If they begin to again feel as rootless and lacking in purpose as they did before they left, then they are unlikely to settle back easily into a 'normal' life.

We should also understand the constant IS activity with regard to increasing its external campaigns, both through action and propaganda. Returnees may be particularly vulnerable to contact from people who were part of the network that recruited them, or appeals for help from ex-comrades-in-arms. It seems probable that the influence and involvement of returnees will grow as their numbers increase (Barret, 2017, p 15). Even if they are subject to close psychological and

police assessment, circumstances may lead them to again seek violent solutions to their problems, especially if they return to the same conditions that they left. Others may suffer from a delayed psychological reaction to their life with IS. Terrorism is as much emotional as ideological, and even those who returned disillusioned or revolted by what they saw, or simply mentally or physically exhausted, may over time look back on the caliphate more positively and blame outsiders for its failures (Barrett, 2017, p 19). So, even if most of the foreign fighters do not represent any danger, we must pay close attention to them as they return.

1.1 Terrorist attacks carried out by returning foreign fighters

At the present time, most of the research into foreign fighters talks about them not being a danger to the wider society. However, opponents of allowing foreign fighters to return to European countries say that it only takes one person to bring death to a large number of people if they decide to carry out a terrorist crime after they return. Aside from this, it is also said that foreign fighters are dangerous because they could radicalize other people. Even just one person who returned to Europe with the desire of carrying out a terrorist attack is still enough to make us change our opinion on whether RFFs are dangerous. Unfortunately, even though most of the returnees have not been inclined to carry out a terrorist attack, the Islamic State has been an inspiration to many people thinking about terrorist attacks. Statistics state "that since declaring its caliphate in June 2014, the IS has conducted or inspired more than 140 terrorist attacks in 29 countries other than Iraq and Syria, where its carnage has taken a much deadlier toll. These attacks have killed at least 2,043 people and injured thousands more" (Lister et al., 2018, e-source). Most of these attacks have been carried out by people who were inspired by IS, not those who were under their direct command, and nor are there any data stating that they participated in war conflict in IS territory. However, there are still some examples where terrorist attacks were committed by people who had participated in the conflict as members of IS and as foreign fighters:

– "Three people were killed and another seriously injured in a shooting at the Jewish Museum in Brussels, Belgium. The suspect was identified as Mehdi Nemmouche, a 29-year-old Frenchman from Roubaix in the Pas-de-Calais region of northern France. Nemmouche, who had spent a year in Syria, is a radicalized Islamist, according to the chief prosecutor of Paris" (Lister et al., 2018, e-source);
– On 13 November 2015, eight attackers attacked Paris. They killed and/or wounded more than 400 people. Six of the attackers had returned from Islamic State where they had participated as foreign fighters;
– A returnee from Islamic State carried out an attack on an Amsterdam-Paris train in August 2015;
– In 2016 "two explosions at Brussels airport and another at a subway station in the Maalbeek district of the Belgian capital left at least 32 people dead and scores injured. In a statement posted online by several prominent supporters and by the ISIS-affiliated Amaq news agency, ISIS claimed that its fighters had carried out the attacks" (Lister et al., 2018, e-source).

1.2   Programmes of de-radicalization of foreign fighters

Some countries have adopted strong measures towards RFFs, while others use softer measures, or soft measures in addition to other methods of dealing with RFFs. These soft measures are mostly deradicalization programmes, or reintegration of foreign fighters into society. Programmes of deradicalization are based on the principle of helping RFFs not to return to their criminal activities. When returning to their countries foreign fighters are faced with lots of challenges; besides the possible legal punishment and criminal prosecution, these challenges include facing up to their families, friends, fellow citizens, and the wider community. However, even though they have a wide range of challenges, there are still potential ways to make the returning process easier. One of these ways is deradicalization, which is a necessary first step for foreign fighters to make a return to society. "De-radicalization is focused on radicalized individuals. It is based on the assumption that not everyone who becomes radicalized remains committed to their cause, and that every extremist movement has disillusioned followers who have doubts, or simply want out (Neumann, 2017, p 20). However, it is also true to say that deradicalization does not have a clear and unique definition, and that there is no consensus about what constitutes successful deradicalization.

Reintegration can be defined as 'a safe transition to the community, by which the individual proceeds to live a law-abiding life following his or her release and acquires attitudes and behaviours that generally lead to a productive functioning in society" (Heide and Geenen, 2017, p 8). Successful deradicalization must be carried out by teams of experts, and it must contain one of the following measures: "Positive measures can be taken to form an effective deradicalization strategy. Well-articulated and inspiring counter-messaging, which effectively undermines extremist narratives, can prove powerful when prompting extremists to reflect on their position. Using image and audio-based material on social media sites is particularly effective when communicating positive messages. Moreover, grass-roots initiatives which open up a dialogue between experts and society allow people to feel engaged and respected, while also producing valuable insight and rich discussion. Developing personal resilience can enable society to deal with the difficulties and adversaries it encounters, leaving people less susceptible to extremism. Supporting people through times of transition, via outreach programmes in schools, universities and local communities, can contribute towards healthy behaviours and develop more supportive and cohesive communities" (Manning and La Bau, 2015, p 13).

Apart from these measures, one of the most successful means of deradicalization is that of foreign fighters talking to people who have already undergone deradicalization before them. Communication with people who know exactly what the problems are has been shown to be one of the best ways. "Each testimony highlighted the importance of these personal stories when delivering counter-narratives" (Manning and La Bau, 2015, p 27). When we study terrorism, extremism and violent extremism, we often focus heavily on tactics and strategy. We can better understand the situation

if we look at the cognitive and emotional behaviour which underlines a particular set of beliefs (Manning and La Bau, 2015, p 12). In the end, deradicalized RFFs can be the most helpful in creating programmes for other foreign fighters. "Returning foreign fighters can contribute to intelligence capacities and help in designing better deradicalization programmes" (Leduc, 2016, p 18). When considering the Islamic State, one of the most successful means of deradicalization is to demonstrate how the IS studies and their theoretical teachings are not in harmony with what they are doing. Equally, challenging their ideology can be of use. Depending on the individual success of each person can be tough for the programme in general; although a certain programme may succeed with one individual, it does not mean that it will be successful in other people's stories. The success of deradicalization programmes depends on many factors.

2   THE RETURN OF FOREIGN FIGHTERS AND EU COUNTRIES

2.1   EU policy concerning foreign fighters

The European Union came together on joint values such as human dignity, freedom, equality, and solidarity; democracy and the rule of law are two more. Any action that is not in harmony with these values is in direct dispute with EU law. Terrorist activity is one of the acts that violates the values on which the EU is based; this is why one of the most prominent threats to the EU is terrorism. In the EU it is very important to have a common position of every Member State towards certain questions, one of which is foreign and security policy. The importance of this question is related to the fact that terrorism knows no boundaries, and this is especially highlighted here in the EU, where one of the most important values is the free movement of goods and people.

Ten years ago we might have said that "every member of the EU is solving the problem of terrorism in its own way, more or less successfully" (Prodan, 2009, p 11): so, the "Italian government introduced extensive additional legal powers to help to fight terrorism in the mid-seventies" (Wilkinson, 2002, p 113), while the German authorities were doing something else, and the French had their own system against terrorism. However, Prodan (Ibid., p 15) stated that there is no complete and effective common security and defence policies. The EU considers that Member States are responsible for all the challenges around the fight against radicalism and recruitment, but the EU can help with a certain framework to coordinate national policies, share information, and be successful in fighting against terrorism. This is how the EU thinks that fighting together can be most successful, and is why it began to react with a common foreign policy so that it can protect European citizens. In 2001 the "EU adopted an Action Plan to Fight against Terrorism. Improvement in cooperation in the segment of arrests and extradition of terrorists has been accomplished by the Council Framework Decision 2002/584/JHA, by which the EU adopted the European arrest warrant" (Ibid., p 13). This Act was supposed to represent the main document of the EU on fighting terrorism.

A few years later, in 2004, the EU adopted a Declaration on Combating Terrorism, and soon afterwards an Action Plan for Fighting Terrorism. As Prodan mentions (2009, p 13), the goals of this plan were "to disable terrorists from having access to financial and other economic resources; to increase the efficiency of the working bodies of the EU and Member States when searching for terrorists, their prosecution in court, and when preventing terrorist attacks; to deepen international consensus and strengthen international participation in fighting against terrorism; to secure the safety of international traffic and the effective surveillance system of the outer borders, to increase the effectiveness of preventing terrorist attacks." In 2005 the Council adopted the EU Counter-Terrorism Strategy, which has four pillars (Prevent, Protect, Pursue, Respond).

As mentioned above, terrorism does not know borders, and this is certainly true in the case of the EU, because of the desire of the Union to have open borders. Apart from the aforementioned surveillance of external borders, an important aid in their maintenance has been the Schengen Information System (SIS). Since 2016 this system has carried "terrorism-related activity" information. Besides this, the SIS has begun to use "Stronger and Smarter Information Systems for Borders and Security" technology, which utilizes photos of people's faces. Following the last large migration wave, many people began to talk about open borders being "death" to European security, and because of this, some of the Schengen countries have instigated border controls. To preserve border safety, the EU has developed Frontex, the European Border and Coast Guard Agency. Frontex is necessary for securing the borders of the EU, and was of great assistance during the migration crisis. The numbers of people crossing the borders and coming to Europe are changing every year. "Every attempt to quantify the number of migrants can give only a momentary and shaky figure that can be outdated after several days. According to the European Frontex agency, there are six main migrant routes: the Western African, Western Mediterranean, Central Mediterranean, Eastern Mediterranean, Western Balkan, and Eastern land routes" (Kešetović and Ninković, 2016, p 101). Frontex's main function is to oversee the borders, and with Regulation No. 2016/1624, it will be able to use all the measures for the prevention and detection of terrorism that are required.

The EU believes that it is vital that all information received is shared, not only with Europol, but with every relevant authority figure in all the Member States. The EU has approved this type of action by Article 47 in the aforementioned European Border Coast Guard (EBCG) regulation. As they must be involved in European protection from terrorism, Europol has founded the European Counter Terrorism Centre (ECTC). The European Council has control over the Centre, and its purpose is to become the main hub for the fight against terrorism. Apart from support in investigations and aid if a terrorist attack does occur, the ECTC has access to Europol bases that can be checked, if necessary, for the purpose of investigations. Exchange of information can also occur through the information base of Europol, the Europol Information System (EIS), and the European Criminal Records Information System (ECRIS), which is used so that states can share information related to any event in

any criminal activity, both on suspects and convicted criminals; in other words, any information that can keep the EU a safer place. This type of data comes to Europol through the Member States, and is later published in the EIS. Considering that this information is very confidential, the program SIENA (Secure Information Exchange Network Application) is used so as not to compromise it in any way.

In discussing the exchange of information, FADO must also be mentioned; the False and Authentic Documents Online is a website managed by the Geospatial Service Centre (GSC), which has in its database more than 3000 examples of false identities, travel documents, visas, stamps and so on. Another useful component of the EU's anti-terrorist work is the Terrorism Finance Tracking Program (TFTP), which helps Europol to detect the financing of terrorism. In 2015 the Council and the European Parliament adopted new rules to prevent money laundering and terrorist financing, and in 2016 the European Commission released a proposal to amend those rules to strengthen the fight against the financing of terrorism.

Finally, it does not matter that the EU offers some frameworks to deal with returning foreign fighters; the Member States are still the ones who must take full responsibility, and must prosecute or find successful ways to deal with foreign fighters.

Next, we will present some individual state approaches to the issue of RFFs.

2.2   Case study of Belgium

Belgium has found itself in a situation that has resulted in some of the most brutal terrorist attacks within just a couple of years. This has made the Belgian government look to dealing with terrorism through different laws and other possibilities. In 2015 it expanded its definition of terrorism; at the same time Belgian law has reduced the time necessary for a verdict, concordant with the 2014 UNSC Resolution and the 2015 EU Directive on terrorism. Besides this, travelling to join a terrorist organization, receiving and giving service to terrorist training, or financing a terrorist organization are from now on considered to be terrorist offences.

Since 2016, Belgian law has allowed house searches and arrests after 9pm in the event of a terrorist offence or a planned attack. The Belgian Criminal Code has been expanded so it can now punish the recruitment of people to carry out terrorist acts (Article 140), and to travel to and from Belgium to carry out terrorist attacks.[1] The modifications to this Article deleted the requirement that an action must pose a real risk to society to be considered an incitement to terrorism. With the removal of this

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[1]   *"The Constitutional Court of Belgium issued Judgement 31/2018 on the action for the annulment of the Law of 3 August 2016 containing various provisions in the fight against terrorism (III), introduced by the NGO Ligue des Droits de l'Homme (Human Rights League) with the Council of Ministers as the defendant. Since the applicant raised objections exclusively against Articles 2 and 6 of the Law of 3 August 2016, the Court considered the appeal admissible only against these Articles, and not to the entire Law. Concerning Article 2 of the Law of 3 August 2016, the applicant's complaint was based on the modification of the previous text of Article 140 of the Criminal Code."*

requirement, the Article left a wide margin of interpretation, making it impossible to assess the true impact of the action, as it did not need to pose a real risk. This modification also added the possibility of an action of incitement "directly or indirectly" to commit a terrorist act, an expression considered too general by the applicant, who felt that this generated great uncertainty about what might or might not be considered an incitement to terrorism. The modification could also lead to the criminalization of less serious offences, without the minimum sentence being reduced.

For these reasons, the Ligue des Droits de l'Homme claimed that these modifications were a violation of the principle of legality and the principle of proportionality, in that people could be accused of committing a crime without anything to prove it, based on a potential risk determined without objective grounds. These modifications would deeply affect freedom of expression, freedom of association and freedom of movement, leaving citizens uncertain about what could be said or done, since an action would not need to pose a real risk to public safety nor directly incite people to commit a terrorist offence in order to be considered as such.

As for Article 6 of the Law of 3 August 2016, the "modification authorizes preventive detention in cases of absolute necessity for public security in the case of terrorist offences for which the maximum applicable penalty exceeds five years' imprisonment, whereas for other offences for which the maximum penalty does not exceed 15 years' imprisonment, preventive detention is only possible if there are serious reasons to fear that the accused person, if left at liberty, would commit new crimes or offences, evade justice, attempt to disappear evidence or collude with third parties. The applicant alleges that the classification as a terrorist offence is not an objective criterion to justify the difference made in relation to other offences" (Roson, 2018, e-source).

When Belgium had its first wave of foreign fighters leaving to join Syria and Iraq, in early 2012, the local authorities were, at first, relatively satisfied with that trend. "As early as 2012, Belgium was the first country in Europe to notice an alarming trend of outward travel to Iraq and Syria and to alert their European counterparts. At first, local authorities were relatively pleased to see young troublemakers and petty criminals leaving, since their departure led to a significant decrease in local crime rates. Some services also took this opportunity to improve their information gathering on extremist hubs and networks, instead of seeking to stem the flow" (Renard and Coolsaet, 2018, p 25).

Belgian statistics on foreign fighters are quite devastating. "Belgium reportedly has the highest ratio of foreign fighters per capita in Europe. The federal counterterrorism fusion centre, the Coordination Unit for Threat Analysis (CUTA), currently lists 498 people as foreign fighters, in addition to 113 "potential candidates" for jihad. Of these, 413 actually reached Syria and Iraq, while the remaining individuals were arrested on route, either in Belgium or Turkey, or never left. The vast majority of

these foreign fighters, 80%, are young men with a typical age range between 20 and 30. Three-quarters of them joined the Islamic State (ISIS)" (Renard, Coolsaet, 2018, p 21).

Belgium has one of the largest percentages of RFFs, according to the number of citizens in Europe, with one returnee to 100,000 citizens. As mentioned further by Renard and Coolsaet (2018, p 19), 125 Belgian foreign fighters had returned by November 2017, while 146 individuals are still thought to be active in combat zones in Syria and Iraq. The official figure is 288, but at least half of those are presumed to have been killed, according to intelligence sources. Among the returnees, nine are known to have died during the terrorist attacks in Paris (2015) and Brussels (2016), and one died in a car accident. There are thus 115 returnees alive in Belgium. When talking specifically about RFFs, the process of returns should look like this: "Once a returnee is identified in Belgium, whichever way he or she came back, they are now systematically arrested and presented to an investigating judge. With the support of the police and the intelligence services, this judge will make a risk assessment about that individual and decide whether pre-trial detention is necessary." In January 2018, there were 100 foreign fighters in jail, including approximately 10 abroad. Although some returnees are still awaiting trial, we could still assume that two thirds of the returnees are not in jail (Renard, Coolsaet, 2018, p 29-30).

Work is being carried out not only on making prosecution easier, but in developing an informational program in which all the relevant information will be shared between departments on a regular basis. For some specific examples, in 2015 the Belgian courts convicted five foreign fighters and one person who had assisted them when travelling from Belgium. These men travelled to Somalia and Syria where they had a plan to join jihadi groups, including Al-Shabab and Jabhat al Nusra. The one who assisted in the group travel was Hamza B; he was sentenced as a leader in the activities of this group, and for supporting them financially and materially. The case of Harris C-K. is interesting in that, because of a lack of evidence, it could not be proven that he actually did join the terrorist group Al-Shabab. He was convicted to four years in prison and a 6,000 EUR fine. On the other hand, it was demonstrated that Abdelfattah A. had left for Syria by his bought plane tickets for Turkey and a text message that he had sent from Syria. His punishment was 4 years in prison and a 6,000 EUR fine. The third person, Younnes H., was convicted in the same way, through a bought ticket and travel to Turkey showing that he had travelled to Syria, and with the additional proof of photos of him in military uniform. He was sentenced to five years in prison and a fine of 12,000 EUR. In the case of Kamal A., other than proof of travel to Turkey, the main evidence was given by his ex-wife, who testified how he was radicalized in 2010 and showed the desire for his family to go with him. He was sentenced in absentia to five years in prison and an 18,000 EUR fine. The last case in this group is Sami L., who was sentenced in his absence to ten years in prison and a fine of 60,000 EUR. It is believed that he died in a suicide attack in Iraq. The proof that this man was actually in Syria was, among other things, the use of a Syrian mobile number to talk to his mother on Skype, and a USB stick with Salafi

Jihadi videos on it (Tribunal de Premiere Instance Francophone de Bruxelles, case FD.35.98.212/11, 2015).

While discussing programmes other than prison, "it should be noted that reintegration is traditionally a weak spot in the Belgian penitentiary system, as the relatively high rate of recidivism seems to indicate" (Renard and Coolsaet, 2018, p 35). This does not stop the government of Belgium trying to use these programmes. "Every returnee will leave jail one day – most will in fact be released by 2020, since returnees are typically sentenced to 5 years in jail" (Renard and Coolsaet, 2018, p 33). It is therefore very important to begin the use of different programmes and different ways of helping these people. The local authorities should be well aware that foreign fighters are coming into their territory. They should proceed with some activities to help them find an apartment, job or any other situation that will deter the returnee from re-offending. However, of course, knowing that foreign fighters are in your area can make you more aware of them and their activities.

We should consider deradicalization as the only effective way forward with regard to solving the problems with RFFs. One of the positive examples is the Royal Atheneum in Antwerp, which is a secular state school with a large number of Muslim students. For years, it experienced rising tensions over issues such as wearing headscarves. At the beginning of the decade, extremist groups were beginning to recruit in the school's neighbourhood. In addition to a security response, the school launched a four-year programme which focused on creating a "common base of shared human values and rights", and involved "making practical agreements [between the students as well as between students and teachers] and setting clear limits in relation to what was acceptable. The programme included rigorous inter-cultural dialogue, projects on identity and citizenship, and systematic training for teachers in all subjects, as well as arts projects in which students were able to express delicate issues without having to articulate them verbally" (Neumann, 2017, p 58). One more example of preventing radicalization from spreading is a project called COPRA, which has been financed by the EU. This project's goal is to raise the role of police officials on the front line in the early discovery of violent radicalization. The project was launched in Belgium in 2010. In the first phase, a pocket guide was made for police officers on the front line. This included guidelines on engagement in the community, information about violent groups and their symbols, possible indications, and combinations with other factors to conclude that this situation could cause concern.[2]

2.3   Case study of France

France is another country that has recently been heavily affected by terrorist acts. The international and the domestic public still remember the attacks in Paris and Nice where many people died. Because of this, France is very sensitive to the potential threat of RFFs, although talking about terrorism in general, "French policies have

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[2]   *Source: OSCE Countering terrorism and violent extremism and radicalization which lead to terrorsim, https://www.osce.org/files/f/documents/1/d/111438.pdf.*

suffered considerable switching between hard and soft lines. When Mitterrand`s government came to power in 1981, it followed softer and more reconcilable policies towards terrorists than all of its predecessors. It gave many terrorists an amnesty, but after this many returned to active terrorism. In 1982 Government had to return to using harder measures. In May 1986, Chirac`s government added further hard measures after one of a series of terrorist attacks. The maximum penalty included years in prison, and the law was changed to allow a reduction in sentencing for those terrorists who would reveal the names of others" (Wilkinson, 2002, p 115).

Going even further back into the past, France has been leaning on a state warning system called Plan Vigipirate since 1978.[3] The system was designed as an answer to a wave of attacks by left-wing terrorist groups, and has had several updates since its creation. The plan connects all the national actors (the state, local government, public and private operators, and citizens). Since the last revision, made in 2006, it has been thought that France is under constant threat. Vigipirate has two main goals: to protect the citizens, infrastructure and institutions, and to increase awareness in the event of an attack. The plan covers the protection and security of borders; the security of all citizens, not only in France but anywhere where France has a presence, in the sense of citizens of France living in other countries, tourists and travellers from France, and state employees (diplomats and staff); French airports and aircraft in the territory of other states; and ships sailing under the French flag. Vigipirate includes a system of readiness that is within the competence of the Prime Minister, who, after consultation with the President, decides whether it is necessary to increase or decrease the level of preparedness.

Changes to the level of preparedness are broadcast to the wider public through media outlets and other systems of communication between state organs and the private sector. The system has three main pillars:

1. Vigilance is linked to knowledge of the terrorist threat and to its recognition, in order to adjust the behaviour of each individual and the protection measures;
2. Prevention is based on raising awareness of the terrorist threat in state agents, operators, and citizens, on their knowledge of the organization of the national plan, and on good preparation of means of protection and response;
3. Protection is based on a wide range of measures that must be constantly adaptable to the situation in order to reduce vulnerabilities without inducing disproportionate constraints on the economic and social life of the nation.[4]

How serious a process this is considered in France is shown by the fact that "in France, 2,680 additional jobs related to counter-terrorism will be created over the next three years and €425 million earmarked for this purpose" (Europarl, 2015, p 6). Part of this system is an operation called Sentinele, begun after the attacks in 2015,

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[3] *https://www.gouvernement.fr/sites/default/files/locale/piece-jointe/2017/08/vigipirate-anglais-v2017.pdf*

[4] *https://www.gouvernement.fr/sites/default/files/locale/piece-jointe/2017/08/vigipirate-anglais-v2017.pdf*

whose goal is protecting French territory from possible terrorist attacks. France brought in a new antiterrorism law in 2017, which guarantees expanded possibilities for searches, even allowing the restriction of free movement and monitoring of the movements of extremists; can close religious institutions due to the spread of extremist ideas; expands security measures at public events; and expands searches of identities at the French borders. France is also part of the Financial Action Task Force initiative, which deals with preventing money laundering for the purpose of financing terrorism.

In terms of statistics, we can say that the problem of foreign fighters is worsening. "Some 350 'Islamic terrorists' currently sit in French prisons; another 5,800 are under police surveillance, and an additional 17,000 have been classified as a potential threat. Manuel Valls, France's former prime minister, has declared the country's fight against radicalization the 'biggest challenge of our generation'" (Crowell, 2017, p 65, e-source). Further, the figures show that around 1700 individuals left France to go and fight in Syria. French law enforcement officials estimate that about 690 French foreign fighters are still in Syria and that about 43% – 295 – of these are women, said the Paris prosecutor, François Molins, in an interview in November on FranceInfo (Rubin, 2018, e-source). France is not a country that will welcome RFFs and others who have left for Syria and Iraq back with open arms. "President Emmanuel Macron said that decisions on allowing women and children to return from Iraq and Syria would be made on a case-by-case basis. The government spokesman, Benjamin Griveaux, made a similarly inconclusive statement in an interview with BFM TV. France favours having its citizens criminally processed where they are caught, he said, but only "if there are judiciary institutions today that are able to grant a fair trial" (Rubin, 2018, e-source).

Further French laws have been added with which they have tried to deal with the situation in Syria, including Legislation No. 2016-731 from 2016, which criminalized the sale of cultural goods that come from areas under the control of terrorist groups, and Law No. 2012-1432, which is about punishing people that have been in training camps. The French government is very firm on the subject of RFFs and their punishment. This is shown by a report from 28 September 2017: "The mother of a French foreign terrorist fighter (FTF) was found guilty of terrorism financing and sentenced to a two-year jail term by a criminal court in Paris. She is accused of having sent money to her son Abbes Bounaga and having paid for plane tickets as he travelled to Algeria and to Malaysia from November 2015 to May 2016. Bounaga eventually reached Syria and joined the so-called Islamic State (IS) in June 2016 and is believed to have died there in August 2016. In addition to the mother, the brother and a friend of the French jihadist were prosecuted for terrorism financing, for a total amount of about 6,000 Euros (2,800 Euros from the mother, 500 Euros from the brother, and 2,900 Euros from the friend)" (Boutin, 2017, p 1). As Boutin (2017, p 2) states, this situation is even harder for parents; if you were a parent who knew that your child had travelled to Syria, and they contacted you in need of financial help to buy food and cover medical expenses, what would you do?

France is one of the countries that takes a hard approach to RFFs. Processes of deradicalization and re-integration are not supported, and more restrictive approaches are used. The French Prime Minister, Edouard Philippe, said that nobody has a magic formula for deradicalization, and this has been shown by the different ways in which the French government has tried to deal with foreign fighters. At the moment, as Phillippe said, France is trying to stop the extremism that is flourishing in prisons (Boring, N., 2018, e-source).

They do provide some special measures, which include activities connected with taking care of the psychological health of the children of fighters, strict controls on private Islamic schools, education of teachers to help them detect signs of radicalism, and more investment in teachers so they can help students see the difference between reality and made up stories on the internet.

In 2014 France added 24 further measures to the national plan against violent radicalism. This plan includes making trips to Syria more difficult, prevention and social reintegration strategies for extremism, and prevention of jihadi promotion. The law allows the confiscation of the passports of potential foreign fighters, and also forbids foreigners to enter France if they have been connected with terrorist activities.

The national plan against Islamic radicalization was passed in 2018, and consists of many measures whose purpose is to recognize radicalism and prevent it. The main measures include:

– Improving the detection and segregation of radicalized people in French prisons;
– Providing improved psychological counselling for and monitoring of young French minors returning from Syria and Iraq;
– Removing government agents (especially members of law enforcement and the military) who have been radicalized;
– Improving the monitoring of religiously affiliated schools;
– Working with mental health professionals to find better ways to detect and deal with radicalized individuals;
– Working with social network providers to ensure the removal of illicit content within an hour of posting;
– Developing educational tools to fight against conspiracy theories on the internet;
– Creating a scientific committee to better understand the phenomenon of radicalization and find ways to more efficiently counter it (Boring, N., 2018, e-source).

Before this step, France had developed a project entitled the "Centre for Prevention, Integration and Citizenship", which was modelled on a programme called Epide whose goal was the integration of young people into French society. Unfortunately it turned out that the programme was a total fiasco, as the students were given lessons in French history and religion, among other things. "'Several errors were made,'

Amelie Boukhobza, a clinical psychologist for Entr'Autres, an association that manages the state's deradicalization cases, [said]. 'The issue of volunteering was very problematic.' But to Boukhobza, the "full-frontal" approach of "flag raising in the morning, courses in secularism, etc.," was too aggressively nationalistic. 'They've built a program in total opposition to the particular mental universe of the individuals. I don't think it's the right solution'" (Crowell, 2017, p 25, e- source). One more programme that French Government began is RIVE (Research and Intervention in Extremist Violence), a new programme whose goal is to help with deradicalization, but where an individual programme is made for each person. The expectations for better results are higher. In 2016 France also established a "Centre for Reintegration" staffed with psychologists, educators, and medical practitioners, with classes in laïcité [secularism], the arts, conspiracy theories and their background, and pre-professional training (Esman, 2016, e-source).

Discussion and conclusion

Foreign fighters, historically speaking, are not a new aspect of military action. However, in this conflict, because of the sheer numbers of them, they have brought a great deal of insecurity and open questions to the states from which they came. When they first began to join the conflicts in Syria and Iraq, their states did not see this situation as alarming, even though it was analyzed and discussed a great deal, especially in the mainstream media, who saw this "foreign fighters" situation as very interesting from the beginning of the strengthening Islamic State. However, the situation of not caring changed when the first foreign fighters began to return, now with war experience, military knowledge, and having taken part in violent action. All of this made governments react to this situation and begin to see it as a cause for concern.

The solution, as we have shown, is not a specific fix that brings instant results, but consists of trial and error. The situation with RFFs is for the first time happening on such a broad scale that governments should search for new solutions and approaches.

The countries included in the research part of this paper do not seem to have any form of clear and consistent policy towards foreign fighters. They are countries with a large number of citizens who left their homes to join the Islamic State, and so are particularly interesting for research.

In the main problems that have been presented in this research, we should seek fundamental questions as to why there were so many foreign fighters in the first place, why countries allowed the recruitment of citizens, and why did they not care about the routes of radicalization. In accordance with this, there are a large number of theoretical experts in the areas of terrorism, counter terrorism, radicalization and deradicalization, extremism and violent extremism who have been successful in explaining what led to people becoming foreign fighters, and what mistakes were made by systems so that citizens actually wanted to fight for a foreign cause. Although experts have enough knowledge to try to assume what can help in these

matters, their knowledge, for the most part, is theoretical. This means that they can only assume that some approaches could be successful.

There are some countries that had programmes for foreign terrorists in the 2000s, such as Indonesia and Saudi Arabia. These are countries that can present a good framework of appropriate ways of behaving towards foreign fighters. Even though the conditions might not be the same, from them we can see what could be successful and what not to use.

For this paper we researched countries in the European Union – France and Belgium – in order to see what means they were using to deal with RFFs. The countries of Europe are doing their best to successfully deal with RFFs. But it is a fact, which has been shown in this paper, that countries have not developed common systematic approaches. Some are using soft approaches, while others are using harder methods; some mix the two. But not one of these countries is confident about these approaches and their success in dealing with the problem.

Research has shown that it would be irresponsible to let people who have come back from the Islamic State manage alone, without any support. This would not lead to the successful reintegration of foreign fighters, but only to a situation that creates problems for the future. For the process of deradicalization to be successful it needs to begin during the period of imprisonment, and to continue long enough for the community to be safe after they have left prison. The deradicalization and re-integration of foreign fighters is vital not only for the fighters and their families, but also for the other citizens and national security itself.

The Islamic State and the whole idea of jihad has given foreign fighters a meaning to their lives, playing on their emotions and talking about things that each individual could understand. IS found and offered reasons why life is important and gave value to the young people's lives. At the same time, while IS was finding meaning for them, their governments and the system that was supposed to help them was not; they only offered statements like "This is not good", "You are doing something bad", without offering alternative solutions or any help. This turned out to be a key reason why so many foreign fighters left Europe and other countries for IS. However, it could also be a key moment for any successful deradicalization and re-integration. Governments must realize that the only way you can help foreign fighters is to give them an alternative to the life that organized terrorism offers – but they must offer that life before people are even approached by the terrorist organization.

It is essential that information is shared between countries about foreign fighters, potentially dangerous returnees, ways of reintegrating RFFs, successful programmes, problems, and opportunities, and especially to have cooperation at all levels of authority, from the government, intelligence and security services, ministries and judges, to social workers and local authorities. They must all work together for success in dealing with foreign fighters, especially local secular and religious

authorities, because they are the ones with the best information about the potential threats, and can be the first to notice individuals who are changing and becoming more radicalized.

Support must also be given to the families of foreign fighters. They are crucial in helping someone who is being radicalized and in removing them from those surroundings.

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