FRANCE
Suspicion, discrimination and surveillance: the impact of counter-terrorism law and policy on racialised groups at risk of racism in Europe

EXECUTIVE SUMMARY

European Network Against Racism
Counter-terrorism has been an area of increasing global and European policy coordination. The Council of the European Union issued its first Framework Decision on Combatting Terrorism in 2002 and first adopted a counter-terrorism strategy in 2005,¹ as well as a Strategy for Radicalisation and Recruitment to Terrorism.² The 2017 Framework Directive on Combatting Terrorism requires the European Commission to submit a report by September 2021 on the Directive’s impact “on fundamental rights and freedoms, including on non-discrimination, and the rule of law”.³

ENAR has examined the experiences of counter-terrorism and counter-radicalisation measures by members of groups that are at heightened risk of facing discrimination and racism in France, Germany, Hungary, Poland and Spain. Our research contributes to understanding how state policies are experienced and their impact on the exercise of fundamental rights and freedoms.

This summary identifies the key themes and emerging finding from the research in France and draws on:

- In-depth qualitative interviews with 11 policy makers and practitioners working in the field of counter-terrorism, counter-radicalisation and national security.
- In-depth qualitative interviews with 11 key actors from civil society, including those working in community organisations most impacted by security measures, and human rights organisations.
- 3 focus groups with 26 individuals from different Muslim communities in France.
- A review of existing research literature and policy and civil society reports.

¹ Council of the European Union, 14469/4/05 REV 4
² The European Union strategy for combating radicalisation and recruitment, EU Council document 14781/1/05, 24 November 2005
Since 2012, violent attacks by individuals affiliated to Al-Qaeda and ISIS have killed over 250 people in France. Almost 2000 French nationals or individuals resident in France travelled to Syria and Iraq to join ISIS. In November 2015, in the aftermath of the deadly attacks on Paris, the French government declared a state of emergency, empowering the executive to take extraordinary measures to prevent possible future attacks. The state of emergency lasted until November 2017 when parliament passed the Strengthening Homeland Security and Counter-Terrorism Act (SILT).

The measures taken during the state of emergency required the French government to derogate from international human rights treaties. International law allows derogations, however all measures must be strictly required to meet the emergency, must not involve discrimination, and must be consistent with the rule of law.

As French counter-terrorism policies target what the government identifies as ‘jihadism’ and Islamism, this research focuses on the experiences of Muslims in France, as they face a significant risk of discrimination and the violation of their rights in the implementation of counter-terrorism and counter-radicalisation laws and policies. While the data and analysis for this research was completed by October 2020, the trends that we identify - intensified suspicion, discrimination and surveillance - persist in the response of France to the subsequent attacks.
1. Clear and carefully defined anti-terrorism law and policy

The rule of law requires powers to be clearly and carefully defined so that any executive overreach can be identified and challenged to ensure that it acts within the powers given to it by Parliament. Laws that are vague and unclear or powers that are widely defined undermine the rule of law and risk arbitrary and discriminatory application.

Prosecutions for the offence of ‘apology for terrorism’ are increasing in use. While the offence dates back to the nineteenth century, legal changes in 2014 have seen a dramatic increase in investigations and prosecutions and a leap from three convictions in 2014 to 306 in 2016. The latter convictions were the result of 1,850 police investigations, one in five of which were of children and young people under the age of 18. By 2018, apology for terrorism was the most frequently used counter-terrorism criminal measure in France. Yet ‘cases do not typically involve direct incitement to violence but usually revolve around drunken interactions with the police or provocative – and sometimes obnoxious – statements in school courtyards or on social media’.

In the aftermath of November 2015 attacks in Paris, the French government declared a State of Emergency, empowering the executive to take extraordinary measures to prevent possible future attacks. Prior to the State of Emergency, French anti-terrorism laws had allowed the police to search homes and detain suspects only after securing a judicial warrant. The powers introduced by the State of Emergency removed this important safeguard, and allowed the executive to act without judicial warrant. Government and state officials were able to close mosques, raid homes, search premises, place individuals under residency orders, without having to present any evidence to an independent judge. Furthermore, the threshold for using the emergency powers was much wider than under the criminal law. Rather than evidence of criminal or unlawful activity, the emergency powers allowed the search of premises where it is used by a person whose ‘behaviour constitutes a threat to public order and security’.

Human rights bodies report numerous examples of racist insults and unnecessary damage to property during raids. Under the emergency powers 24 mosques were closed, 700 people were placed under residency orders, and 4,000 properties were raided and searched. This led to 61 terrorism related charges, that is in 0.3% of cases. Broad powers are open to abuse and difficult to challenge. Respondents recalled examples of actions that seemed arbitrary and targeted at Muslims because of their religious identity:

“And about the house arrest, we saw it was arbitrary. [France] screwed up, we couldn’t predict. So we are going to take revenge, we pick anyone. I saw a sport teacher, [placed under house arrest] just because he lived in Muslim majority surrounding, and the club’s members, the kids coming to do judo, they were mainly Muslims. He was a judo teacher. They made a connexion, and said it is a ‘radicalised’ club. He is doing judo; they think he is building an army… He was placed under house arrest. They made the connexion because the majority of those at the club were Muslim. Or maybe it was neighbours who were unhappy about all the Muslims … it was totally arbitrary.”

Key Findings

7 Houry, ‘France’s Creeping Terrorism Laws’ (n2)
9 Ibid
10 All quotes are from the focus groups unless otherwise indicated.
According to human rights defenders, Muslim religious practices were cited by officials as evidence that an individual was a national security threat:

“I found completely innocuous facts of Muslim religious practice that were shown to be something dangerous... The fact of starting to grow a beard, the possession of religious documents without defining them, the possession of CDs of Koranic chanting or recitation, the style of dress, the expression of one’s will to live in a Muslim country, presumed links with people who have a rigorous practice of Islam and more generally the manifestation of religious practice... I have a family that was searched and they say that the police immediately went to get the Koran and looked inside as if they were going to find something special”

Local public servants working with marginalised young people criticised the closure of mosques and prayer rooms in their neighbourhood as unnecessary collective punishment, removing vital community facilities with little understanding of the impact on elderly Muslims and young people:

“The closing down of praying rooms in our districts, does it count? It’s ridiculous to me, it’s more than just a measure, it’s a lame excuse. There is something wrong with all that... Again, these are measures taken without knowing the districts areas. Violence doesn’t come out the small praying room. If you look at the users, it’s mostly over 70 years old persons. So if you want to turn down the over 70’s grandpas, I don’t get what you want to turn down. And, the kids, where are they going to learn now?”

Our findings echo reports by human rights organisations documenting the arbitrary use of powers during the emergency.

The State of Emergency lasted until November 2017, when Parliament passed the Strengthening Homeland Security and Counter-terrorism Act (SILT). The SILT law retains and normalises pre-emptive administrative measures. It grants broad powers to the executive and transfers powers to authorise security perimeters, close places of worship for up to six months, place individuals under house arrest and carry out surveillance, search and seize from the judiciary to the executive. This amounts to a profound rebalancing of the national counter-terrorism framework toward greater executive power with weakened a posteriori rather than a priori judicial oversight.

2. The securitisation of religious practice

France adopted its first counter-radicalisation policy in 2014, with the creation of the National Centre for the Assistance on the Prevention of Radicalisation. Over 11,000 new positions have been created in the security services and six million euros provided to prefects to implement this new policy. In 2015, it launched the Stop-Jihadism website, as part of its counter-radicalisation policy. It calls on the public to report signs of radicalisation. A revised Action Plan Against Radicalisation and Terrorism (PART), adopted in 2016, aimed to detect radicalisation as early as possible. The Action Plan seeks to prevent radicalisation but provides no definition of radicalisation. Alongside the lack of a clear definition, a central problem for any radicalisation prevention policy is the weak scientific evidence base for reliable indicators of radicalisation; models and indicators fail to explain and identify which individuals holding lawful radical ideas will engage in unlawful violence.

The labelling of ordinary Muslim religious practices as potential signs of radicalisation stigmatises Muslims as potential terrorists. For example, Interior Minister, Christophe Castaner, suggested that rigorous religious practice, particularly during Ramadan, should trigger investigations by security services. He also named growing of a beard, not kissing someone on the cheek as a greeting, the refusal to “team up with a woman”, a “regular and ostentatious practice of ritual prayer”, and the “wearing of the full-face veil for a female civil servant in public spaces” as signs of radicalisation requiring police investigation. Muslims feel unable to exercise their religious freedom without risking securitised surveillance.


13 Plan d’Action contre la Radicalisation et le Terrorisme
The impact of such statements came through in the daily experiences of our interviewees. Muslim youth workers who support marginalised young people, recalled having to explain basic religious practices to their colleagues because so many officials view any expression of Islamic religious practice as a sign of radicalisation:

"... it was necessary to deconstruct a whole representation to the supervisors of certain directorates on the difference between having a prayer mat, doing your prayer, and Ramadan, and being supposedly radicalised, and then violently radicalised, just this distinction. Also, between the possibility of going to a violent act and just being radicalised or having a rigid practice, no one knew anything about it"

An interviewee who works with prisoners reports that some Muslim prisoners are too afraid to pray while in prison, as they feared this could lead to them being labelled as potential extremists.

3. Laïcité, Discrimination and Islamophobia

Muslim religious practices and manifestations of religious identity have been at the centre of national debates on laïcité and identity in France for at least three decades. Counter-terrorism measures intensify and exacerbate existing experiences of exclusion and discrimination. State surveillance and identification of Muslim religious practice as indicators of radicalisations, and government counter-radicalisation websites like ‘Stop-Jihadism’ encourage and enable ordinary citizens to challenge and question Muslim religious practices in the name of national security. Muslim women who wear the hijab are the frequent targets of verbal and at times physical abuse.

A respondent, who wears the hijab, recalls a physical assault in 2015 in which a man tries to pull her veil off.

"After the Charlie Hebdo events I was at the library with a friend of mine, both wearing the veil. At some point this old guy, a man, walked by us. He totally tried to rip her veil off... I was shocked... He totally wanted to. Yes, I had never felt such an excluding feeling about my hijab before. And when I saw this, I was so shocked. And my friend was so traumatised. And now it has been a while, anyway, but I was so shocked. He really wanted to take it off her, he was determined... But you know, she started to question herself and her hijab a lot."

She explains that she did not report this incident to the police, as she feared that she would not be taken seriously and would in fact be blamed for provoking the attack because she is wearing the veil:

"At the time and even now, you are saying, we are in France, it might disturb them. There's a point where you feel like you actually might be the problem. I don't know if you understand. I went through different phases with my hijab. At one time, it's true, you are wondering why so much fury, it's crazy. Maybe it actually really is a problem. [...] it's like with the girls who were assaulted on public transport. When they go to file a complaint they are told ‘it's your fault’ [...] so yes, I felt like it is kind of the same. We don't really trust [the police]. We're afraid of being humiliated.”

Laïcité requires Muslims to restrict religious practice to their private life, yet Muslims find that a double standard applies as officials and politicians readily call on Muslims to condemn terrorism:

"We ostracise Muslims who are no longer citizens belonging to the republic, it's a bit of a paradox: we ask you to integrate, you have to be a republican before being a Muslim, ok no problem! People say, ok! However, there is an attack, then we forget that you are republicans, today you are Muslims before being republicans, and to become republicans again you must condemn the attack."
Another interviewee, who works on national security issues, recalls the acute feeling of exclusion when politicians talk of ‘the French’ in ways that place Muslims outside the imagined national community:

“I have heard politicians say: "I think the French have been very dignified and have shown a lot of responsibility because after these attacks we could have expected...", reprisals against whom? It’s almost an incitement to hatred. How can you be a politician and say it’s good enough that they didn’t happen to you? As a Muslim when we receive this, we wonder if it is a masked threat, because he said ‘the French’ yet we too belong to the national community, any French Muslim or French Muslim - they determine themselves as they want - can legitimately ask themselves this question, do I, now, today, in 2014, the day after the attacks, do I belong to the national community?”

A local civil society organisation that works with young people that are excluded from schools faced questioning from local elected officials when it offered Arabic language classes in its premises. The organisation also offered English language classes but these did not attract suspicion or adverse attention. The organisation’s director believes the hostility towards them arise from the fact that many of their clients are women wearing the hijab, and the association of the hijab and Arabic language with extremism and terrorism:

“... we are impacted mainly because there are veiled women who attend the association, they bring their children for example for the Arabic language course and therefore the image we give outside, it’s not terrorists but the Muslim in quotation marks who is afraid of and that’s why we’ve been accused of proselytising and suspected, it’s in relation to that and therefore there is an impact.”

4. Monitoring discrimination and engagement with civil society

President Macron recently emphasized the need to fight discrimination as part of the comprehensive approach to counter-terrorism. He said that, “the Republic must keep its promises, we must fight against discrimination, we must put meritocracy everywhere. But on the other side we must fight against separatism, because when the republic does not keep its promises, others try to replace it.”

The data in this research as well as reports of international human rights organisations Amnesty International and Human Rights Watch have raised concerns about the discriminatory impact of counter-terrorism policies and laws in France. The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in her 2018 report on France, expressed deep concern that French Arab and Muslim communities are being constructed in political discourse and legal practice as a “suspect community” through the sustained application of counter-terrorism laws. She criticised “the stigmatisation and polarisation that has resulted from the use of emergency powers” in France, she highlights the need for positive and proactive response from the government, particularly to enable trust and re-engagement with communities and individuals.

The 2018-20 policy on tackling racism and anti-Semitism provides for the creation of “racism and anti-Semitism and discrimination focal points within the departmental public security directorates and gendarmerie units”, it does not identify discrimination in the application of counter-terrorism laws and policies as a priority area. A policymaker on human rights argued that they deal with discriminations likely to fuel radicalisation, notably through “cooperation between the DILCRAH and the CIPDR”, and by remaining “very cautious in producing alternative discourse and ensuring that campaigns are never perceived as discriminatory”. However, they remain reluctant to recognise and engage with civil society organisations that work with those most directly impacted by the measures.

14 interview, counter-terrorism practitioners
15 Interview, director of a civil society organisation.
17 https://www.ohchr.org/Documents/Issues/Terrorism/A_HRC_37_52.pdf
19 Interview with policymaker.
RECOMMENDATIONS

1. The SILT law should be amended to require a priori judicial authorisation of any executive actions.

2. Prosecution for the offence of ‘apology for terrorism’ should not be used unless there is evidence of a clear intention to incite terrorism.

3. The government should publish the evidence base for its understanding of radicalisation processes and the indicators for radicalisation, ensuring that these do not infringe rights to freedom or expression of religious belief.

4. The government should establish an effective and comprehensive strategy for combatting Islamophobia as a form of anti-Muslim racism and discrimination in all areas.

5. Public officials and institutions must engage with civil society organisations that have experience in combatting Islamophobia/anti-Muslim racism and discrimination to understand the efficacy and impact of counter-terrorism and counter-radicalisation measures on human rights and the rule of law.