Chapter 4

FOREIGN FIGHTERS ON TRIAL: SENTENCING RISK, 2013–2017[1]

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'The youngest terror suspect ever', the Dutch yellow press journal *De Telegraaf* was titled on 16 September 2015. Rahma E., a Dutch-Somali born girl, 15 years of age, living with her mother in Maastricht was arrested for preparing to emigrate to the Caliphate in Libya and wanting to join international jihad. She was arrested in possession of a new phone with Syrian telephone numbers, travel itinerary, and after having chatted extensively about her plans with a sister in arms and having sent a gold ring as payment for her trip. Interestingly, in the verdict the judge made a sharp distinction between the different stages of preparatory actions. Rahma E. had carried out preparatory acts with respect to planning her trip to Syria to join Islamic State (IS) (see annex 1, below, nr. 31), hence preparing for committing a crime (joining a terrorist organization), but since she had not actually started her trip, she was acquitted from concrete executive actions, such as initiating the travel. This verdict implied that had she left the country for her trip, this would indeed have been considered an executive act of trying to join a terrorist organization – a departure from previous rulings that acquitted passport-carrying Dutch suspects from the same crime who were caught as far as Turkey.

The argument in this chapter is that trials against alleged foreign fighters demonstrate how the turn towards precautionary or actuarial justice[2] has progressed increasingly further in the field of preparatory acts ('left from the bang'). This transformation of terrorism law into a means of risk management with its corresponding challenges (see the above attempts to classify different kinds of preparatory acts) has been facilitated and instantiated by means of terrorism trials. Within the confines of the courtroom, scholarly models and schemes of radicalization processes are invoked to visualize linear and deterministic trajectories that inform the prosecution's attempts to prevent acquittals. The courtroom becomes a theatre of – rather crudely applied – counter-radicalization theories and solutions. Thus, criminal law in terrorism cases has come to infringe upon the existence of rehabilitative models since the objective of the legal proceedings has shifted towards control and deterrence rather than

focusing on re-integration, rehabilitation and transformation of the convicted offender.

The underlying intellectual argument builds on the theory laid out in the *Terrorists on Trial* volume,[3] and on a previous journal paper.[4] It draws out the argument of performativity and actuarial justice and adapts it to recent court cases against foreign fighters. Through zooming in on cases of foreign fighters, it becomes clear that terrorism trials increasingly serve as an instrument to imagine trajectories of radicalization. The courtroom has become the place to gauge and unequivocally establish how far along this trajectory the suspect has ventured, and to draft a corresponding conviction to reverse-engineer this envisaged process of radicalization. Thus, the nature of a trial has been transformed, rendering it an instrument of counter-radicalization and risk management in itself.

The precautionary turn in criminal law

Elsewhere, we have explained how, since '9/11', through instances of 'anticipatory prosecution'[5] and by means of a series of new laws, acts increasingly further in advance of actual attacks are brought within the remit of criminal law. This transformation of criminal law has since then been studied extensively, from legal, criminological and political perspectives.[6] The so-called precautionary turn in criminal law is not strictly a post-9/11 development.[7] Since the 1980s a 'new penology' has emerged, with the objective of 'managing' dangerous populations through techniques of classification and prediction – while the traditional penal objectives of rehabilitation and normalization were simultaneously lost out of sight.[8] Simultaneously, religious orthodoxy, most notably Islamic orthodoxy (Salafism) has been securitized since the 1990s.[9] There is thus some continuity in the manifestation of the risk paradigm in criminal law,[10] but we argued that post-9/11 terrorism law and legal practice, especially with respect to ancillary and preparatory acts, depart in important ways from the new penology.

Since 2001, the adoption of new laws and corresponding jurisprudence has resulted in substantial legal changes, initiated to enable the successful prosecution of terrorism suspects in initial stages of planning and to reduce the risk of acquittals of terrorist suspects. In Europe, the cornerstone in this new legal edifice of precautionary criminal law has been the 2002 *EU Framework Decision on Combating Terrorism*, which obliges Member States to render punishable a broadly defined set of facilitating actions, including 'participating in the activities of a terrorist group by supplying information or material resources'. The Framework states that terrorist groups do not 'need to have formally defined roles for its members . . . or a developed structure'.[11] In 2008, three further activities were included in the Framework Decision: the public provocation to commit a terrorist offence, recruitment and training for terrorism. Since then, individual states have amended their own penal codes and other administrative regulations correspondingly.

In 2004, Dutch Parliament adopted its first antiterrorism laws – before that year, no specific antiterrorist act or judicial definition of a terrorist crime had existed – criminalizing various types and sorts of terrorist crimes and preparatory acts. Legal paragraphs 83/83a have introduced the concept of terrorism crime into Dutch penal law; paragraph 140a concerns membership in a terrorist organization, 205 involves recruitment, 96 deals with conspiracy and preparatory acts, while 134 criminalizes training and preparing for training. In 2006 more competences within criminal procedure were facilitated in cases of terrorist offences (closed hearing of witnesses, use of intelligence, Stb 580).[12]

Since 2013, under the influence of the threat of (returning) 'foreign fighters'[13] moreover, existing legal paragraphs have been amended to encapsulate an even broader range of possible offences (see Table 4.1). Each subsequent paragraph has enabled the prosecution to prove purpose of travel and intent of preparatory acts committed increasingly prior to or more detached from actual travel; the collection of evidence on a broader, even associative base, the use of social media postings, or other internet-based information as admissible evidence, and the use of intelligence as admissible evidence. Even without actual involvement in plots or conspiracies to carry out concrete attacks, or having been in the country of destination or having actually joined a terrorist group or moved to the so-called 'Caliphate' in the Middle East, these laws enable prosecutors to charge suspects based on acts that can be seen as incitement, recruitment, glorification or facilitation and preparation for or on behalf of terrorist acts and groups.

This transformation of criminal law in the wake of the fight against terrorism has shifted the burden of proof and evidence into the realm of virtual threats and possible violent futures, that might be inaugurated by the defendants.[14] In this sense, the classical goals of criminal justice – retribution, deterrence, incapacitation, and rehabilitation[15] – are giving way to the executive-oriented goal of security and risk management. Security has taken over the rule of law and has come to dominate it in an increasingly pervasive, and inconspicuous manner.[16]

This trend has been intensified since 2013, with the emergence of the phenomenon of so-called 'foreign fighters', people who travel to fight in conflicts and war zones outside their country. The war in Syria and Iraq has motivated thousands of young men and some women to join rebels, opposition groups and also jihadi organizations in their struggle. Since the declaration of the Caliphate in June 2014 by the terrorist group IS, the number of individuals that decided to participate in international jihad has steeply increased. Estimates suggest that around 30,000 foreign fighters joined terrorist organizations in Syria and Iraq, among them an estimated 4,000 fighters from Europe. With attacks staged, carried out, steered or inspired by IS in Europe, the Middle East and Africa, since then governments all over the world (Brussels, Beirut, Paris, Tunis, Istanbul, London) have adopted multifarious plans, programmes and measures to counter that threat. These measures range from military action, financial tracking and tracing of 'terrorist' monies, and legal measures to deter, prevent, and to criminalize other actions within the remit of joining IS/the Caliphate to programmes in the field of 'social engineering', such as exit programmes to facilitate

and nudge people into deradicalization, disengagement, rehabilitation and re-integration projects.[17]

The security risk involving these foreign fighters has both an external and an internal component: they might reinforce the battle and conflict situation in Syria and Iraq and/or might return to their countries of residence and carry out attacks there – as has become manifest to a series of attacks in Paris, Brussels, Berlin and Munich between 2013 and 2017. The United Nations Counter-Terrorism Committee Executive Directorate (CTED) formulated the risk in these words:

> Many fighters leave their homes with no intention of returning, and instead do so with the intention of starting a new life, building a new 'state' or dying as martyrs. Not all return as terrorists, and many return precisely because they have become disillusioned and no longer wish to participate in armed conflict. However, those who do return may have been exposed to extreme violence, sophisticated training and battlefield experience. A small number of returning foreign terrorist fighters therefore pose a very significant threat to international peace and security'.[18]

Since 2013, international and national governmental organizations alike have underscored the importance of expanding the legal apparatus to bridge the gap between radicalization processes at home, travelling to join IS or other terrorist groups in Syria/Iraq or recruitment and facilitation efforts to support preparation for terrorist attacks (possibly by returning or thwarted foreign fighters) in Europe. This geographical and virtual span of potential criminal offences has been translated into attempts to draw up additional criminal paragraphs to help the prosecution of those men and women, foreign fighters or supporters, who are suspected of recruitment, incitement to hatred or terrorism, of joining terrorist organizations, preparing activities for committing terrorism and the actual participation in carrying out terrorist attacks. In September 2014, the UN adopted resolution 2178 that obliges states to develop and adopt legal measures to criminalize travel or attempt to travel for the purpose of planning, training or perpetration of terrorist acts, 'or the wilful provision or receipt of terrorist training, the provision or collection of funds to finance the travel of individuals to participate in these acts, and the wilful organization or facilitation (including acts of recruitment) of the travel of individuals to participate in these activities'.[19] Hence, new and extensive legal changes were called into existence in already extensive juridical provisions to anticipate and pre-empt terrorists.

Trials as a performative space

Notwithstanding this range of new legal paragraphs, the act of translating precautionary law in practice is not an easy undertaking. Given this difficulty, I have argued elsewhere that terrorism trials are important, even necessary, performative spaces where this precautionary turn in criminal law needs to

become manifest. Terrorism trials are the place where potential future terror is imagined, invoked, contested and made real, in the proceedings and verdict, as well as through its wider media- and societal echoes.[20] Trials highlight the 'productive power of legal arguments' and the ways in which 'legal arguments are embedded in and reproduce deeper-lying social and symbolic structures'.[21] The courtroom is the place where the performative dimension of precautionary law becomes palpable. Through closely following terrorism trials, we can identify and map how the chain of translating the fear of terrorism and the suspicious behaviour of alleged foreign fighters in concrete convictions plays out and evolves over time.

Therefore it can be stated that terrorism trials often hinge on techniques of 'premediation'. Premediation denotes the post-9/11 media logic geared towards the mediation of multiple potential futures. For Grusin, premediation is not the same as prediction – it does not involve actuarial or statistical calculations of possible risks.[22] Instead, premediation refers to the cultural fantasies of how risk scenarios may play out, and the concomitant mobilizations of collective anxieties and political possibilities in the present. This is exactly the process that unfolds in the courtroom. The act of convicting terrorism suspects caught in the stage of preparation requires not only evidence, but also imagination, images and associations to tie together inchoate bits and pieces of indices – especially if the concrete execution of the trip or participation in the international jihad abroad or at home has not (yet) taken place.[23]

This paper builds on this debate by inquiring specifically into the way in which uncertain and potentially violent futures are configured into terrorism trials and their public mediation in cases built against 'foreign fighters'. In these trials, present criminal offences involving the *aims* and *intent* of alleged 'foreign fighters' are constituted through the appeal to potential future violences that they may engage in or facilitate. In most trials against foreign fighters, offences and potential plots were adjudicated that were 'more aspirational than operational'.[24] In these trials, the premediation appeal is frequently made by appropriating, citing and presenting (visual) schemes and models of radicalization, as furnished by the growing body of radicalization literature since 2001.

Criminal law meets radicalization theories

A few words must be spent on the increasing use of radicalization theories by the prosecution and in the courtroom in cases against terrorism suspects and alleged 'foreign fighters'.

In presenting the legal argument against the terrorist defendants in cases of preparatory activities (rather than actual attacks), the prosecution needs to tie inchoate facts and events together to prove the actual criminal offence. Moreover, it needs to prove terrorist intent. Underlying these attempts of interpellating and premediating a violent future evidence through notions of intent is the suggestion that this particular act is one step in the chain of an ongoing radicalization process.

Frequently, radicalization theories from the academic and scholarly domain are borrowed, appropriated and applied to underpin this legal argument.

Interestingly enough, parallel to the extension of the body of criminal law with the abovementioned paragraphs on terrorist related offences, since 2001 a whole corpus of radicalization studies has been developed. With the accession of (social) psychologists to the 'invisible college of terrorism researchers' – Pape, Horgan, Stern, Moghaddam and others[25] – terrorist and radical behaviour and belief systems, motives and intentions, were identified and charted. The existing field of terrorism studies (mostly historians, focusing on actual terrorist groups and attacks) expanded into the field of radicalization studies. According to most researchers, radicalization denotes 'to be extreme relative to something that is defined or accepted as normative, traditional, or valued as the status quo'.[26] They furthermore stress the important difference between extremism and terrorism: 'nearly all terrorists are extremists, but most extremists are not terrorists'.[27] This field also taps into the '*Extremismusforschung*' from the Scandinavian countries, Germany and Italy (dealing with right- and left-wing extremism)[28]; it makes use of research into political violence in Italy and the US,[29] and has broadened its scope with Social Network Analysis, discerning between multifarious roles of activists, radicals and facilitators in a given network.[30] As contested and open as the field still is, a few dominant radicalization theories (or scholarly narratives) have surfaced.

These narratives mostly ascribe to a linear process, as exemplified in the words of terrorism expert Neumann: 'violent radicalization is a process of changes in attitude that lead towards sanctioning and ultimately the involvement in the use of violence for a political aim'.[31] Although Neumann and other radicalization researchers will acknowledge that radicalization trajectories are unpredictable and hardly ever follow a generic path, such theories and models do implicitly assume such a linear trajectory. Neumann's definition has achieved a received status as a commonly accepted definition of non-legal and non-admissible political violent activism; as such, it has been integrated into EU and Dutch criminal law.

The most commonly used model for mapping and understanding radicalization processes – as well as understanding the phenomena of deradicalization and disengagement – is the metaphor of the 'staircase'. According to Moghaddam, radicalization is a psychological process, including cognitive, affective and behavioural components, starting with (1) perceived injustices and (2) perceived options to fight these injustices and unfair treatment, followed by (3) displacement of aggression and (4) moral engagement with violent activities, resulting in the sidestepping of final inhibitions and entering into radical violent behaviour. In this psychological model, not all that tread the first step will climb all the way up. Nor is descending the staircase impossible, although deradicalization can and should not be considered a straight reversal of the same order in which the steps were ascended. Counter-radicalization, then, has as its goal the 'transformation of the psychological citizen, [and] the psychological characteristics citizens need to have in order to participate effectively in and sustain a particular political system'.[32]

Within academia, such models are highly contested, since they leave open what exactly prompts the elevation to the next step (religious praxis or dogmas, peer group pressure or disturbing personal events), who is entitled to discern between legal and non-legal radical activities (incitement to hatred, discrimination, glorification, enabling and supporting, etc.), or where exactly the fine line between radical convictions and violence should be drawn.[33] Are the Muslim Brotherhood, AEL or the Ku Klux Clan criminalized, or designated terrorist organizations, or is that epitaph only attributed to groups such as al-Qaeda and IS?[34] Radicalization can also be considered a mere 'tendency to see one's own perspective representing the absolute truth and pure virtue, while other perspectives represent falsehoods or evils and can free one to believe that any sort of action that supports the dominance of that perspective within society is itself a virtuous act'.[35] Others hold that radicalization should not (only) be studied from a security perspective (and inevitably leading towards terrorism) but should be considered more a stage in a developmental psychological trajectory, an expression of adults discovering their identities.[36] Not every radical turns into a terrorist, and not every terrorist neatly climbs Moghaddam's radicalization steps. The perpetrator of the Nice attacks, on 14 July 2016, Mohammed Lahouaiej Bouhlel, did not develop ties to fundamentalist networks (Moghaddam's transition towards the second floor), nor had he become alienated or entrenched in rigid us-versus-them thinking within some sort of isolated sect (the third floor).[37] He most probably had not visited a mosque and had not been a devout Muslim at all, and turned to terrorism only a few weeks in advance of his deed.

Notwithstanding these academic quavers and quarrels regarding the use of radicalization schemes and models, a whole industry emerged providing training in the field of exit programmes (be they directed towards deradicalization, disengagement or desistance strategies[38]), some of them with quite promising results.[39] However, such schemes have become so much engrained in the debate on terrorism, that they have pervaded jurisprudence as well, as we will demonstrate below – and in a far more simplified way than the original theories purport.

Since 2013, the increasing gap between ancillary acts committed here and the purported plans to join IS far away, has driven the system of criminal law into the domain of radicalization theories, as a means of offering the connection between these disparate acts and the end goal of terrorism. The consequence of this encounter of criminal law and radicalization theories since 2013 has been substantial: the boundaries between criminal law and counter-radicalization efforts (in the non-legal, social, political and pedagogical sphere) has become fuzzy. We could argue that the 'soft' and 'hard' ways of counterterrorism are meeting each other here. Counter-radicalization programmes are often considered a 'soft', community-based mode of fighting terrorism – as opposed to court processes which belong to the 'hard' way. But in the courtroom, the two approaches are increasingly connected and overlapping.

If trials serve to adjudicate defendants based on their perceived stage of radicalization, the judge's sentence and the suspect's conviction are brought into the remit of counter-radicalization efforts, albeit in a highly obfuscated way.

Whereas counter-radicalization measures are in theory intended to map and chart radical patterns and trajectories of engaging in violence, and to prevent future terrorist crimes from occurring[40], criminal law has always been the 'ultimum remedium', the meting out of sanctions after counter-radicalization has failed and the radical individual has overstepped the legal boundaries. However, through precautionary logics informed by radicalization theories, politics of counter-radicalization and legal counterterrorism become increasingly entangled. Criminal law not only absorbs notions of risk management, but it also acquires the social engineering dimension intrinsic to counter-radicalization programmes. In this light, terrorism trials morph into instruments of counter-radicalization – markedly without the stated end goal of re-integration and rehabilitation[41] that are intrinsically part of the deradicalization paradigm. They become entrepreneurs in Moghaddam's 'transformation of the psychological citizen', the process in which radicalized youngsters are being guided back towards the state of possessing 'the cognitive and behavioral characteristics people need in order to function effectively as part of, and to sustain, a sociopolitical order'.[42]

Terrorism trials under scrutiny

By focusing in depth on some relevant case studies of terrorism trials against suspected foreign fighters, we seek to address the following questions: How are techniques of premediation tied to new scholarly insights on radicalization trajectories? Or, in other words, how are academic theories and models of radicalization processes invoked to visualize these possible terrorist futures, and the purported stage of the defendant's radicalization trajectory? And how are these premediated futures and stages of radicalization incorporated into actual sentencing?

Since 2013, most terrorism trials involved suspects indicted for crimes connected to their (attempts of) travelling abroad to join terrorist organizations, most notably those in Syria and Iraq. Of the forty-two persons that have been indicted between 2013 and 2016, and who have stood trial in that period, a simple database has been created to identify the indictment, the conviction (in first instance, for some in appeal as well), the sentence and the legal paragraphs that have been invoked. As follows from this table, the legal paragraphs involving preparatory activities have increased. Recruitment is one of the most frequent charges brought against the suspects, as are the charges of 'public abetment' to commit terrorist felonies, or attempting to 'acquire knowledge' in preparation for attacks or preparing to take part in a terrorist organization. Remarkably, as compared to earlier trials and sentences (e.g. against the Hofstad group), even the attempt to travel abroad can now, after 2013, be seen and used to indict the suspect for the 'preparation of murder/manslaughter with terrorist intent'. Since Islamic State is considered a terrorist organization, and the Caliphate is under the rule of this group, every attempt to travel to that area can and has been used to indict a suspect for the attempt to join this organization and hence to participate in its activities, for example manslaughter and murder with terrorist intent.[43]

Since 2013, the prosecution has been able to operate a series of new legal instruments to penalize preparatory actions. For this transformation and expansion of the legal instruments, see Table 4.1.

To illustrate this broadening of legal paragraphs and instruments that are adopted in cases against terrorism suspects where an actual attack has not yet taken place, but attempts to travel abroad have been made, we will offer a detailed reading of three case studies. These cases comprise recent trials in the Netherlands, where alleged 'foreign fighters' were involved between 2013 and 2017. We have selected three prominent cases, involving inchoate plots and very low levels of actual past physical harm. The cases attracted a large amount of media attention, and were subsequently subject to political debate and public contestation over the legal and legitimate approach to risk and danger in relation to the contemporary terrorist threat. To what extent is the law allowed to

Table 4.1 Transformation of Dutch material law, regarding terrorism related legal paragraphs since 2013

Criminal code of procedure	Content of the crime	Transformation that has taken place through this law
Art. 83	Law defining terrorist crimes	Heavier punishments have been introduced; terrorist crimes will receive aggravated sentences.
Art. 46	Expansion of the description of preparatory actions	'Monies' replaced by 'objects', bringing every object in the remit of evidence for preparatory acts.
Art. 140a	Taking part in a terrorist organization	Definition of 'organization' has been expanded; not just participation in an attack, but links to the organization itself is now a felony.
Art. 96	Conspiring against the state	The article on conspiracy has now also been linked to terrorism related offences.
Art. 205	Recruitment with terrorist intent	Not the success of the recruitment, but the attempt is considered an offence as well.
Art. 134a	Preparing for terrorist related actions	Every action, including the ones not resulting in a terrorist attack are included. This paragraph provides a safety net function for the authorities.
Art. 135, 136	Legal paragraphs penalizing the omission to inform the authorities of a (pending) crime	These paragraphs are specifically linked to terrorism.
Art. 189	Obfuscating a crime or the perpetrator of a crime	This is specifically linked to terrorism.
Art. 132	Paragraph regarding the initiation of a criminal investigation	Removal of the obligatory notion of 'suspicion'. Indication is now enough to start a criminal investigation, and to deploy special competences.

Source: Author composition based on scrutiny of legal records on terrorism trials.

prevent 'persons of risk' from carrying out their movements in the Netherlands and abroad?

Mohammed G.

The first trial involves Mohammed G., an Iraqi-born Dutch national living in Maastricht (see annex 1, nr. 1, 42, 43). In 2013 he was arrested, together with Omar H., for preparing for departure to Syria in order to join the 'international jihad'. This case was the first in the dozen or so to come involving apprehended individuals that were caught before they had left the country. Mohammed G. was charged with executing activities ('*uitvoerende handelingen*') with respect to committing a terrorist crime, in particular visiting websites on which violent jihad and martyrdom were glorified, booking reservations for tickets to Turkey, possessing large sums of money and a suitcase, and stating in chats and e-mails how he wanted to fight alongside the *mujahideen*. Moreover, the defendant was charged with engaging in chat sessions with the other suspects over the purchase of specific goods (waterproof wind and rain jacket, jungle boots, laptops, maps, cameras), the sale of other possessions that they no longer needed (computers, lounge suit and other household effects) and discussing to denounce their rent.[44]

In the verdict, the judge concluded that Omar H. and Mohammed G. did not go to Syria after all, but carried out activities to prepare for their departure. These actions (the chats and the website visits) were therefore considered preparatory actions for the commitment of murder and the causing of explosions. With this verdict, the judge turned actions that – taken on their own, isolated account – could still be considered relatively innocent, into a coherent set of steps leading towards participating in the violent jihad in Syria. Moreover, contrary to the defence's argument that these actions could also be viewed as 'training to prepare for terrorist crimes' (another penal paragraph, with a lower maximum sentence of eight years), the judge ruled that H. and G. were 'far beyond' mere training activities. According to the judge their actions were taken with the intent of really carrying out the crimes, and should therefore be assessed in a 'terrorist perspective': 'In her [the court's] eyes, their behaviour and utterances point to the fact that they adhered to the jihadist creed. Within this context she takes into consideration that terrorism is considered one of the most serious infractions of the rule of law and the democratic principle and hence takes account of this in her decision'.[45] However, Mohammed G. was discharged from prosecution and committed to a psychiatric hospital due to severe mental disturbances (psychosis and schizophrenia).

Three years later, Mohammed G. had been out of jail for almost two years when he was arrested and put on trial again, this time charged with 'the attempt to participate in a terrorist organization'. As the judge ruled: 'Attempt is illegal, when the perpetrator's intent has been revealed/laid bare though a beginning of an execution [executive act]'.[46] In August 2016, Mohammed G. was convicted on the combined evidence of the purchase of a false passport, the attempt to marry a female compatriot to accompany him to Syria (who turned out to be a police informer), tied together with a series of utterances, that according to the judge, put

the other leads into a terrorist perspective. Mohammed G. was recorded saying 'I want to fight, I want to kill, I want to be'. According to his defence lawyer, Andrée Seebregts, G. was a 'vulnerable man', highly impressionable, with a low mental age or even retarded, who in a 'childlike fashion' wanted to achieve appreciation and recognition and had 'grandiose thoughts'. Seebregts urged the judges to take this into consideration in studying the produced 'evidence'. He even went further, attacking the court on the grounds that it blurred the lines between 'socially undesirable attitudes' and 'criminal behaviour'. He suggested that instead of sentencing G. for his actions, the court and the public prosecutor were judging his (feeble minded) convictions by putting them in a linear scheme of steps onto a radicalization ladder. G. had not collected information on bombs, attacks or weapons, but merely visited jihadist websites. Moreover, Seebregts – on behalf of his defendant – indignantly rejected the demand voiced by the prosecutor to ordain compulsory psychiatric treatment, explained by a mere 'just to be sure'. He exclaimed, 'We are not such a country, I would say'.[47]

Again, as in other cases of failed foreign fighters, the defence kept reiterating the dichotomy between 'beliefs and behaviour', between 'actions or convictions'. But for the prosecution and the judges this dichotomy was highly irrelevant, since the mere criminal act itself as a construction, was made up by the combination of mundane acts and projections of future violences as invoked by the defendants' jihadist utterances. Such utterances were in themselves not criminal, as the judges repeatedly stressed, but taken together with the other incidents, and embedded within the context of the envisaged radicalization process (as a combination of convictions, beliefs, attitudes and activities) they substantiated the suspicion of preparing to join international jihad. Not truth finding, but the establishing of possible future truths in order to manage the potential risk by means of invoking radicalization steps towards a premediated violent future was central to the attempts of the prosecution. Therefore, the sentence was not intended to criminalize jihadist statements as such, but designed to prevent and manage future risks as invoked and premediated through the offender's activities.

The judge corroborated this line of reasoning and sentenced G. to three years of prison, with a suspended sentence of entrustment (*Terbeschikkingstelling*, 'TBS'), although the forensic experts had ruled G. 'mentally responsible' and 'sane' this time. TBS entails a provision in the Dutch criminal code that allows for a period of inpatient treatment (within a detention centre) following a prison sentence for mentally disordered offenders. Therefore, after having served his prison sentence of three years, Mohammed G. will have to submit himself to psychiatric treatment. And although ambulatory in his case, this treatment is compulsory, implying that if he doesn't comply, he can be ordered back inside the detention centre for further treatment. In sum, this verdict produced two instances where risk averse reasoning supplanted old fashioned truth finding by the judge and raised serious questions: First of all, as the defence lawyer repeatedly stressed, what had Mohammed G. actually done 'wrong' apart from buying a false passport and attempting to marry – and even that could not be considered such a serious crime? And secondly, why was he sentenced to psychiatric treatment following prison without experts

testifying to a problem of insanity?[48] The sentence was neither retributive nor particularly conducive to truth finding – it was conceived as a particular design of risk management, intended to limit recidivist behaviour by controlling and treating the defendant's alleged unstable mental state. Thus, the sentence resembled more of a human engineering project – to render this specific individual less radical and thus less of a threat – than an instance of classical adjudication.

Rahma E.

In this verdict (see annex 1, nr. 31), again, projected violent futures were interpellated to connect the bits and pieces of evidence into a clear-cut security threat and criminal case. As described above, the 15-year-old Somali-Dutch girl was indicted for having chatted extensively with 'sisters' in the Netherlands and Syria and for allegedly preparing for *hijra* (emigration) to Libya, in order to join the local IS branch there. She had also sent a ring as a first deposit to pay for her trip. The judge ruled that since she had been apprehended at home, without actually having purchased tickets or having left for Libya, she could not be convicted for actually having committed a terrorist crime (joining a terrorist organization). Her sentence was therefore based on preparatory acts rather than on executive ones. However, these preparatory acts were again projected into a linear future of radicalization and violent jihad: by citing Rahma's radical beliefs, her increasing turn towards other radical friends, her dissemination of texts and images from IS websites and by linking this behaviour to the intentions and propaganda of IS as an organization.

Interestingly, the content of Rahma's religious beliefs as such were not considered illegal – it was rather her social behaviour that prompted the court to qualify her as 'radicalized'. The defendant adhered to a 'fundamentalist' interpretation of the Qur'an, but the prosecution had 'not encountered ideas that show the desire to violently overthrow democracy'. What was held against the defendant was the fact that she had immersed herself in the study of the Qur'an, was neglecting school, displayed a 'tunnel vision' and was out of reach for her parents. Without invoking Kruglanski or Moghaddam by name, the verdict cites forensic researchers and experts who used the 'staircase' metaphor to 'visualize the process of racialization'. This staircase comprised 'an edifice with five floors, that narrows down with each subsequent step, making it harder to descend again'. According to the forensic experts, the defendant had very likely reached the 'third floor' (of forming a sect-like organization – in correspondence with Moghaddam's third floor), 'but factual radicalization had been averted on time by outside interference'. 'The possibility that the suspect would still take the stairs further up is not ruled out'.[49] Again, with this premediation of a staircase, winding upwards, with increasingly less possibilities of descending again, the defendant was squarely framed into a linear model, in which reversals or U-turns were considered highly unlikely (without outside interventions). The direction of the vector was thus pointing to a terrorist future, only disrupted by the act of her arrest. Thus, the prosecution effectively incorporated and straightened out the 'logic of radical

uncertainty in legal reasoning'.[50] The court followed along and seemed to accept the claim to know where the radicalization trajectory would have ended up. Thus, the linear narrative of the radicalization model transformed the radical uncertainty into a certain legal narrative.

The sentence mirrored this analysis and diagnosis. For managing the risk of taking the escalator once again, Rahma E. was sentenced to eight months in a juvenile detention centre (plus a suspended sentence of seven months) and ordered to attend sessions with a theologian (to re-assess her interpretation of Islam). Moreover, for the first six months of her probation period, she was prohibited to contact her five 'sisters', and for twelve months, she was to stay away from international airports and wear a GPS bracelet.

Remarkable in this case, as in Mohammed G.'s case, were the 'creative' attempts by the judges to come up with restrictions that were designed to facilitate Rahma's re-integration: she was tasked to have obligatory discussions with a theologian, and was also held to start some kind of education and find a part-time job – intended to expand her 'tunnel vision', to break through her isolation by means of finding new friends and contacts outside her Islamic network, facilitate a 'healthy identity development' and improve her 'resilience'. Rather than putting her away for three years, as in other cases, the judge used the instrument of restrictions to steer the offender in the direction of a 'normal life', to hold off her descent of the staircase of radicalization, and to transform her isolated and insulated engagement into more outgoing behaviour.[51] As in Mohammed G.'s case, the sentence was informed by risk management techniques geared towards 'human engineering' and re-programming the individual's potential violent attitude.

Context Case

One of the last major cases in the Netherlands, involving several male and one female jihadist suspects (see annex 1, the Context Case includes the nrs 6, 7, 11–20, 37–40), pertained to a The Hague-based network of alleged recruiters, who supported international jihad by disseminating violent footage, inciting others to hatred and terrorism, recruiting for the violent jihad and even participating in that jihad themselves (for some of the group members). The file comprises 17,000 pages (plus 6,500 additional pages on methods and requestrations); fifty witnesses in the Netherlands and the UK were heard, and hundreds of shreds of evidence were bundled together to evoke and (re)construct the real or virtual crimes perpetrated.[52] Six male suspects were convicted for membership in a terrorist organization, and received sentences ranging from three to six years imprisonment. Two of the male suspects were considered 'hangers-on' (*meelopers*), and merely received sentences for incitement (forty-three days). One suspect, who did participate in a jihadist training camp in Syria received a sentence of 155 days' imprisonment and six months on probation. The single female suspect was acquitted of the membership charges, only convicted for retweeting an inciting tweet and sentenced to seven days' imprisonment.

As in the above, and almost all other foreign fighter cases, the court addressed and rejected the frequently voiced criticism that only acts and not convictions

should be the subject of adjudication. No '*Gesinnungsstrafrecht*' [which penalizes thought and intent rather than material deeds and actions] had prevailed, according to the judges. The trial was – from a procedural point of view – a 'normal trial', as stated in paragraph 1.11 in the verdict.

After ten weeks of hearings, from September until mid-December 2015, the judges sided with the prosecution in confirming the charge that the suspects effectively had created a 'The Hague-based recruitment organization'. Some of them had participated in BehindBars/StreetDawah,[53] mobilizing support for imprisoned terrorist convicts or suspects and disseminating jihadist thought. Notwithstanding the fact that utterances and statements are in themselves legal, the judge concluded with the prosecution that the purpose of the 'The Hague-based network' had been to transcend 'mere' propaganda and to really set out to incite, recruit, finance and facilitate youngsters to travel to Syria and join the international jihad. Indeed, from the six suspects indicted, two were still waging jihad in Syria as of the day of the verdict. A third suspect had returned to his home town again. The judge admitted that 'no clue whatsoever' had been uncovered which pointed to the intent or preparation of a concrete terrorist attack in the Netherlands, nor to attempts to incite such an attack. However, and this was a central argument in all the cases under adjudication since 2013, 'the Netherlands are under obligation to fight terrorism wherever it occurs, and [to] take steps to stem the flow of Dutch (young) Muslims that want to participate in violent jihad in Syria'.[54] Moreover, 'Terrorism is considered internationally as one of the most heinous crimes and compels all states to fight this transgression. In this, it is the function of the criminal justice system to, as much as possible, both prevent acts of terrorism and prosecute and adjudicate them'.[55]

The process of compiling the legal evidence, as in the other cases, relied heavily on the premediation of the above stated acts of terrorism by connecting a multifarious and vast body of documents, statements and social media postings – with the argument that taken together, these (sometimes totally legal) acts 'reinforced' each other and prepared the hearts and minds of the targeted recruits for the violent jihad.[56] To ice the cake, the testimony of expert Martijn de Koning – who had been called as first witness for the defence to contextualize the activities undertaken by the defendants and to underline their theological nature – was appropriated by the prosecution and the judges instead. His two days' testimony was used to substantiate the indictment's claim that the defendants had indeed constituted a recruitment organization. Instead of relieving the defendants of that severe indictment, De Koning's remarks on the communication within the group and the defendants' jihadist beliefs were appropriated to underpin this claim.[57]

Taken together with the other cases since 2013 (see Annex 1), these three cases are exemplary of and delineate some trends and development in the transformation of turning penal law into an instrument of risk management: for example, preventing youngsters from climbing the radicalization staircase, and ending up either as a 'foreign fighter' or recruiting others to become one. In this, the end goal in previous years (preventing people from carrying out attacks) had been moved

forward to the objective of preventing them from preparing to travel abroad to terrorist territories at all.

First of all, in almost all cases a whole series of legal paragraphs were used to construct an indictment and arrive at a verdict based on evidence pointing predominantly to preparatory actions only (save four actual foreign fighters who left for Syria in the Context Case) and not to attacks that had been actually committed. As can be seen from the last column in Annex 1, sentences invoking more than ten criminal paragraphs were no exception.

Second, as follows from the verdicts, judges came to different conclusions and assessments in similar cases, rendering an element of wilfulness and arbitrary rule to the criminal justice system.

Third, as a first intuitive remark and without further empirical research, premediation and anticipation of violent futures seem to have been applied in the cases of male defendants in a more negative manner than in those of the female defendants – evidence in cases of female (alleged) foreign fighters seems to have been discarded quicker by the judges, acquitting them from recruitment or incitement in most of the cases, leading to smaller or no sentences at all. This ties in with findings that point to the non-neutral character of actuarial justice, in which gender biases seem to be ingrained more than we think.

Fourthly, the process of gathering and presenting evidence in every case relied heavily on techniques of assemblage:[58] combining associative reasoning and premediation (invoking virtual violent futures) was used to build a unified body of evidence out of a disparate and inchoate set of activities and acts (social media postings, legal acts such as marriages, utterances, leafleting, possession of IS flags). This assemblage was then forged together by suggesting a 'reinforcement' and cumulation of a series of illegal and legal activities alike. Thus, taken together, the disparate activities and incidents were – by means of a wide array of legal paragraphs – forged to construct a veritable criminal 'act'.

Sentencing as risk management

Three conclusions can be drawn from this short oversight of foreign fighter cases:

First of all, with trials against suspected foreign fighters that have been caught before actually joining the jihad, premediation as a risk management technique has gained increasing importance in securing a verdict. The trial as such has become the disruptive moment to thwart risky youths in climbing further up the staircase, as was the explicitly formulated goal in the Rahma E. verdict. Here, the court used a 'thin' reading of a classic radicalization model, in doing so discarding all the caveat and nuances that radicalization research (sometimes) offers, and simply reproduced a linear narrative in sentencing. This trend towards appropriating the trial as a counter-radicalization tool might result in pushing other classical goals to be obtained by the sword of justice (such as rehabilitation or re-integration) further aside, as became clear in the Context Case. Given the

context of fear and terror as well as frequently invoked international 'obligations', judges may have limited room for manoeuvre to issue milder verdicts or even acquittals, and are in danger of incurring substantial (international) public and political critique.[59] While overseeing the verdicts and sentences, it became clear that judges do differ in their interpretation of and in the premediation of anticipated violent futures. However, they all combined an increasing amount of novel and different legal paragraphs to assemble a cumulation of criminal offences leading to longer sentences (see table 1).

In the second place, these cases underscore the importance of reading and understanding terrorism trials as a performative space; as existing literatures have established, one distinguishing aspect of terrorism trials is that, for suspects as well as for security forces, the public presentation and contestation of narratives of justice and injustice are especially important.[60] This performative aspect is most salient in the battle between prosecution and defence over the dividing line between beliefs and behaviour, convictions and acts. In many of the verdicts, the judges have tried to overcome this divide in sticking to the criminalization of preparatory acts of travelling abroad, as well as combining this with more mundane legal actions cast in an incriminating light. At the same time, however, the judges tried to draw a stricter line between preparatory actions and executive activities. In the case of Rahma E., for example, the court tried to flesh out different stages of anticipated risks, dividing the risk in two categories, making it more tangible to convict the defendants on minor charges. In concentrating on such preparatory *acts*, the mere *convictions* of the defendant became less important than in previous trials. Rahma's interpretations of the Qur'an were considered 'fundamentalist' but not 'violent'; it was rather her use of IS texts, flags and images, her inclination to isolate herself from school and her family, and her turn towards 'sisters' already abroad, that prompted the prosecution and the judge to qualify her as having transgressed towards the 'third step' along the radicalization staircase.

In the third place, the trial becomes a theatre of counter-radicalization, a 'disruptive moment' in the process of risk management. The trial simultaneously serves to produce criminal acts through premediated violences, largely based on radicalization theories, and functions as the disruptive moment to bring the radicalization process to a halt. The verdict, subsequently, aims to reverse that process by issuing concrete attempts to transform the defendant into a 'psychological citizen'. In this, criminal law has transformed into a means of legal and enforced counter-radicalization – a transformation informed by models and theories developed by academics and scholars in the field of terrorism and radicalization studies. Their 'radicalization models' (such as Moghaddam's staircase), and even their testimonies (De Koning's in the Context Case), are appropriated for actuarial purposes, thereby rendering academia an instrument in the hand of criminal justice.

With this transformation of a trial and a verdict as an instrument of counter-radicalization, penal law has acquired a managerial function. Hence, the addition of various restrictions to the sentence, intended to facilitate controlling and monitoring the offender even after his release, and to submit the suspect to attempts

of human engineering. If this managerial goal of the criminal justice system is taken seriously, the question that arises next is how these risk management techniques in preventing defendants from ascending the staircase of radicalization further, actually work out in practice. With an increasing number of young Muslims being sentenced based on an expanding body of legal paragraphs (see table 1), the number of convicts with relatively short sentences has grown as well. This prompts us to the next question of what to do with these convicts after their release.[61]

Inasmuch as terrorism convicts are increasingly sentenced – by means of a plethora of legal paragraphs – to relatively short periods of imprisonment, society will soon find itself confronted with the even bigger challenge of helping all these former inmates in finding their way back into society. The precautionary and actuarial turn in criminal law therefore requires a much stronger emphasis on the rehabilitative and re-integrative responsibilities that also belong to the classical goals of criminal justice. Rather than relying on simplistic interpretations of linear radicalization models, terrorism trials could and should draw on much more fine-grained, sophisticated theories on desistance and disengagement.

Notes

1 The author wishes to thank Hannah Joosse, Céline Mureau and Eva van de Kimmenade for assisting with the table and list of terrorist trials; and Martijn de Koning and Marieke de Goede for their helpful comments and suggestions.

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Annex 1 Table of Dutch terrorism verdicts, 2013–2018

No.	Name	Date	Conviction	Sentence	Law article
1	Mohammed G.*	23/10/13	Dismissal of charges and placed in a psychiatric hospital due to insanity.	–	–
2	Omar H.	23/10/13	Sentenced for purchasing materials capable of causing an explosion and spreading writings/pictures with intent of abetting.	12 months	Art. 14a, 14b, 14c, 33, 33a, 46, 57, 132 and 157 of the Dutch Criminal Code
3	Soumaya S.	25/03/14	Sentenced for taking part in a criminal organization and the possession of weaponry with terrorist intent.	3 years	Art. 33, 33a, 36b, 36d, 47, 55, 57 and 140a of the Dutch Criminal Code and Art. 26 and 55 of the Law on Weaponry and Ammunition
4	Hannan S.	25/03/14	Sentenced for the possession of a machine gun with ammunition and silencer.	74 days	Art. 26 and 55 of the Law on Weaponry and Ammunition
5	Lahbib B.	25/03/14	Sentenced for taking part in a criminal organization that intends to commit terrorist felonies and the possession of weaponry, both with terrorist intent.	104 days	Art. 47, 57, 140 and 140a of the Dutch Criminal Code and Art. 26 and 55 of the Law on Weaponry and Ammunition
6	Shukri F.	01/12/14	Indicted for: 1. Recruiting for armed conflict; 2. Public abetment to commit terrorist felonies and the spreading of and being in possession of magazines, imagery and files in which terrorist felony is abetted. Finally, subpoena partially annulled. Indictments 1 and 2 are not considered as lawful/convincing and the suspect is acquitted.	–	–
7	Maher H.	01/12/14	Sentenced for the preparation of murder/manslaughter with terrorist intent and to acquire the opportunity, means and intelligence for it. Also sentenced for spreading writing and imagery that abet a terrorist felony.	3 years	Art. 57, 83, 83a, 96 lid 2, 132 paragraph 3, 288a, 289 and 289a paragraph 2 of the Dutch Criminal Code
8	Hakim B.	09/02/15 15/03/16	Declared innocent of all charges. Declared innocent of all charges.	–	–

9	Mohammed el A.	09/02/15	Indicted for preparation of common crimes, preparation of terrorist crimes, conspiration to commit terrorist crimes – acquitted, declared innocent.	18 months	Art. 14a, 14b, 14c, 46, 140 and 140a of the Dutch Criminal Code
		15/03/16	Appeal: 1. Preparation/promotion of going to Syria to commit murder/ manslaughter with terrorist intent; 2. A. Preparation/promotion of a terrorist crime (murder/ manslaughter); B. Preparation of participation in a terrorist organization; 3. Participation in a terrorist organization; 4. Conspiracy to commit murder/manslaughter with terrorist intent. Acquitted of indictments 1, 2A, 3 and 4. Sentenced for indictment 2B. Cassation	Decided the case should be examined again	Art. 57, 96 and 289a of the Dutch Criminal Code
		14/03/17			
		19/12/17	Appeal		
			Finally sentenced for preparation/ promotion of going to Syria to commit murder/manslaughter with terrorist intent and for preparation/promotion of a terrorist crime (murder/ manslaughter).	8 months	
10	Burcu T.	22/07/15	Indicted for raising finances and transferring money to intermediaries in Turkey who transferred these finances to terrorist organizations. Thus, indicted for: 1. Taking part in an organization that has the intent to commit terrorist felonies; 2. Assisting the continuation of a forbidden organization; 3. Violating the Sanctions Act of 1977. Finally, acquitted of indictments 1 and 2. Sentenced for indictment 3.	6 months	Art. 57 of the Dutch Criminal Code Art. 1, 2 and 6 of the Law on Economic Offences Art. 2 and 3 of the Sanction Act 1977 Art. 2 of the Sanction Regulation Osama Bin Laden Art. 2 and 4 of the Regulation no. 881/2002 of the Council of the European Union of 27 May 2002 Art. 1 of the Regulation 198/2008 of the Commission of the European Communities of March 3, 2008

No.	Name	Date	Conviction	Sentence	Law article
11	Soufiane Z.	22/10/15	The suspect is supposedly deceased. Therefore according to Art. 69, the prosecutor is inadmissible to prosecute.	–	–
12	Imane B.	10/12/15	She did not take part in a terrorist organization, but is convicted for one abetted retweet.	7 days	Art. 83, 83a and 132 of the Dutch Criminal Code
13	Oussama C.	10/12/15	Sentenced for taking part in a criminal organization with terrorist intent.	3 years	Art. 14a, 14b, 14c, 14d, 57, 77b, 83, 83a, 131, 132, 140, 140a and 205 of the Dutch Criminal Code
14	Azzedine C.	10/12/15	Sentenced for taking part in a criminal organization with terrorist intent.	6 years	Art. 57, 83, 83a, 131, 132, 137c, 137d, 140, 140a, 261 and 267 of the Dutch Criminal Code
15	Rudolph H.	10/12/15	Sentenced for taking part in a criminal organization with terrorist intent.	3 years	Art. 14a, 14b, 14c, 14d, 57, 83, 83a, 131, 132, 140 and140a of the Dutch Criminal Code
16	Jordi de J.	10/12/15	Sentenced for participation in a Syrian training camp.	155 days detention	Art. 14a, 14b, 14c, 14d, 83, 83a and 134a of the Dutch Criminal Code
17	Moussa L.	10/12/15	Sentenced for abetting.	43 days detention	Art. 14a, 14b, 14c, 14d, 57, 83, 83a, 131, 132, 266, 267 and 285 of the Dutch Criminal Code
18	Hicham el O.	10/12/15	Sentenced for taking part in a criminal organization with terrorist intent.	5 years	Art. 57, 83, 83a, 96, 134a, 140, 140a, 157, 176b, 288a, 289 and 289a of the Dutch Criminal Code
19	Hatim R.	10/12/15	Sentenced for taking part in a criminal organization with terrorist intent.	6 years and repeal of Dutch citizenship	Art. 57, 83, 83a, 96, 131, 132, 140, 140a, 157, 176b, 288a, 289 and 289a of the Dutch Criminal Code
20	Anis Z.	10/12/15	Sentenced for taking part in a criminal organization with terrorist intent.	6 years and repeal of Dutch citizenship	Art. 57, 83, 83a, 96, 134a, 140, 140a, 157, 176b, 288a, 289 and 289a of the Dutch Criminal Code

21	Salim S.	18/02/16	Case number 02/800190-15: Sentenced for recruiting persons for armed terrorist conflict. Case number 02/665539-15: Sentenced for: 1. Raising finances (with knowledge about criminal goal); 2. Withholding information about personal financial situation.	24 months	Art. 10, 14a, 14b, 14c, 14d, 27, 33, 33a, 57, 205, 227b and 420bis of the Dutch Criminal Code
		17/02/17	In appeal sentences confirmed.	12 months	
22	Seyed H.	18/02/16	Sentenced for: 1. Preparation of: – intentional arson – murder/manslaughter with terrorist intent – causing others to commit crimes – providing the opportunity to commit crimes 2. Taking part in an organization that has the intent to commit terrorist felonies; 3. Membership of an organization that has the intent to commit terrorist felonies; 4. Preparation of a crime with terrorist intent, including intentional arson, murder/manslaughter.	42 months	Art. 14a, 14b, 14c, 14e, 47, 55, 57, 96, 140a, 157, 176b, 288a, 289a and 421 of the Dutch Criminal Code
		06/10/17	In appeal, sentenced for: 1. Preparation of: – intentional arson – murder/manslaughter with terrorist intent – causing others to commit crimes – providing the opportunity to commit crimes 2. Preparation/promotion of terrorist crimes by joining IS; 3. Participation in a terrorist organization; 4. Financing terrorism.	42 months	Art. 14a, 14b, 14c, 47, 57, 96, 140a, 157, 176b, 288a, 289a and 421 of the Dutch Criminal Code
23	Adil C.	18/02/16	Indicted for: 1. Membership of a terrorist organization; 2. Raising finances for the jihad; 3. Having knowledge about the provision of financial support used to commit a crime (or preparation of a crime) with terrorist intent. Sentenced for indictment 2.	12 months	Art. 14a, 14b, 14c, 14e, 47 and 421 of the Dutch Criminal Code

No.	Name	Date	Conviction	Sentence	Law article
24	Hardi N.	18/02/16	Indicted for: 1. Preparation/promotion of terrorist crimes (including arson, murder, manslaughter) and/or possession of means to commit a crime and/or convincing others to commit a crime; 2. Participation in a terrorist organization. Sentenced for indictment 1, but acquitted of indictment 2.	24 months	Art. 14a, 14b, 14c, 14e, 47, 95, 157, 176b, 288a, 289a of the Dutch Criminal Code
		6/10/17	In appeal, sentenced for indictment 1 and acquitted of indictment 2.	24 months	Art. 14a, 14b, 14c, 14e, 47, 95, 157, 176b, 288a, 289a of the Dutch Criminal Code
25	Suleymaan R.	15/03/16	Indicted for: 1. Financing of terrorism; 2. Intentionally breaking the Sanctions Act of 1977 and the Sanctions Regulation Al-Qa'ida 2011; 3. Intentionally breaking the Sanctions Act of 1977 and the Sanctions Regulation of Terrorism 2007-II; 4. Accomplice to forgery with intent to prepare a terrorist crime. Sentenced for indictments 1, 2 and 4.	24 months	Art. 14a, 14b, 14c, 14d, 47, 57, 225 and 421 of the Dutch Criminal Code
26	Mohammed A.	30/03/16	Acquitted of terrorist-related crimes. Sentenced for preparing an armed robbery.	30 months	Art. 14a, 14b, 14c, 36b, 36c, 46, 47, 57, 312 and 317 of the Dutch Criminal Code Art. 26 and 55 of the Law on Weaponry and Ammunition
27	Ilyas H.	26/05/16	Indicted and sentenced for: 1. Preparation of a terrorist crime (arson/murder/manslaughter); 2. Preparation of a terrorist crime (arson/murder/manslaughter) (different location); 3. Intention to take part in an organization with intent to commit terrorist crimes.	18 months	Art. 14a, 14b, 14c, 33, 33a, 45, 57, 96, 140, 140a, 288a, 289 and 289a of the Dutch Criminal Code
		27/07/17	Sentences in appeal upheld and penalty increased.	3 years	Art. 14a, 14b, 14c, 33, 33a, 45, 47, 57, 96, 140a, 157, 176b, 288a, 289, 289a of the Dutch Criminal Code
28	Rachid el J.	03/06/16	Indicted for: 1. Membership of an organization with terrorist intent; 2. Preparation to take part in an organization with terrorist intent; 3. Actions with intent to prepare for terrorist crimes. Acquitted of 1 and 3; sentenced for 2.	A custodial sentence of 9 months and 240 hours of community service	Art. 9, 14a, 14b, 14c, 22b, 22c, 33, 33a, 46, 140 and 140a of the Dutch Criminal Code

29	Wail el A.†	15/06/16	Indicted for: 1. Preparation to become a member of an organization with terrorist intent; 2. Conspiring to commit arson/ murder/manslaughter with terrorist intent. Acquitted of indictment 2; sentenced for indictment 1.	2 years	Art. 10, 27, 45, 47, 140 and 140a of the Dutch Criminal Code
30	Nadeem S.†	15/06/16	Indicted for: 1. Preparation to become a member of an organization with terrorist intent; 2. Conspiring to commit arson/ murder/manslaughter with terrorist intent. Acquitted of indictment 2; sentenced for indictment 1.	3 years	Art. 10, 27, 45, 47, 140 and 140a of the Dutch Criminal Code
31	Rahma E.	16/06/16	Indicted for: 1. Attempt to take part in a terrorist organization; 2. Writing/imagery in which terrorist felonies are being abetted. Sentenced for 1.	8 months youth detention	Art. 27, 46, 77i, 77x, 77y, 77z, 77gg, 77za and 140a of the Dutch Criminal Code
32	Mohammed B.	20/06/16	Indicted for: 1. Preparation of felonies with terrorist intent (arson/ murder/manslaughter); 2. Providing opportunity and/or information and/or acquiring the skills to commit a terrorist crime and/or preparing for a terrorist crime. Acquitted of indictment 1; sentenced for indictment 2 (acquiring knowledge to make explosives).	12 months	Art. 134a of the Dutch Criminal Code
33	Walid B.	05/07/16	Indicted for: 1. Co-perpetration of preparing murder/ manslaughter with terrorist intent; 2. Co-perpetration training for terrorism; 3. Attempt at taking part in a terrorist organization. Acquitted of 1 and 2; sentenced for 3.	27 months	Art. 14a, 14b, 14c, 14d, 14e, 45, 47, 57, 134a and 140a of the Dutch Criminal Code
34	Alaa-Eddine B.	05/07/16	Indicted for: 1. Co-perpetration of preparing murder/ manslaughter with terrorist intent; 2. Co-perpetration training for terrorism; 3. Attempt at taking part in a terrorist organization. Acquitted of 1; sentenced for 2 and 3.	27 months	Art. 14a, 14b, 14c, 14d, 14e, 45, 47, 57, 134a and 140a of the Dutch Criminal Code
35	Maher H.	07/07/16	Sentenced for the preparation of murder/manslaughter with terrorist intent, and the intentional familiarization of oneself with the skills needed to commit a terrorist felony, and the spreading of writing and imagery that abets to committing a terrorist felony.	4 years	Art. 14a, 14b, 14c, 14e, 57, 83, 83a, 96 lid 2, 132, 134a, 288a, 289 and 289a of the Dutch Criminal Code

No.	Name	Date	Conviction	Sentence	Law article
36	Shukri F.	07/07/16	Indicted for: 1. Recruiting for armed terrorist conflict; 2. Abetting criminal acts (preparation of terrorist felony); 3. Spreading of writing/imagery in which terrorist felonies are being abetted. Acquitted of 1 and 2. Sentenced for indictment 3: An image in which a terrorist felony is abetted and spread, while the suspect knows or has serious cause to suspect that the image contains such abetment to commit terrorist felonies.	6 months	Art. 14a, 14b, 14c, 57 and 132 of the Dutch Criminal Code
37	Driss D. In absentia	22/07/16	Indicted and sentenced for: 1. Membership of a terrorist organization; 2. Preparation of murder/manslaughter and/or causing an explosion with terrorist intent; 3. Abetting to commit terrorist felonies.	6 years and repeal of Dutch citizenship	Art. 47, 57, 83, 96, 131, 140a, 157, 176a, 176b, 288a, 289 and 289a of the Dutch Criminal Code
38	Abdellah R.	22/07/16	Found guilty of taking part in a criminal organization, preparation of terrorist attacks and abetting publicly via the written word and imagery to commit terrorist felonies.	6 years	Art. 47, 57, 83, 96, 131, 132, 140a, 157, 176a, 176b, 288a, 289 and 289a of the Dutch Criminal Code
39	Noureddin B.	22/07/16	Found guilty of taking part in a criminal organization, preparation of terrorist felonies and intentionally acquiring knowledge and skills in order to commit terrorist felonies.	6 years and repeal of Dutch citizenship	Art. 47, 57, 83, 96, 134a, 140a, 157, 176a, 176b, 288a, 289 and 289a of the Dutch Criminal Code
40	Thijs B.	22/07/16	Found guilty of taking part in a terrorist organization with the intent of causing manslaughter/murder, and causing an explosion with terrorist intent.	6 years	Art. 47, 57, 83, 96, 134a, 140a, 157, 176a, 176b, 288a, 289 and 289a of the Dutch Criminal Code
41	'Asylum seeker'	28/07/16	Indicted for: 1. Intentionally acquiring knowledge/ obtaining objects to provide financial support for committing a terrorist crime; 2. Membership of a terrorist organization; 3. Directly or indirectly providing finances for a terrorist organization. Acquitted of 2; sentenced for 1 and 3.	180 hours of community service	Art. 9, 14a, 14b, 14c, 22c, 22d, 36c, 57 and 421 of the Dutch Criminal Code Art. 1, 1°, 2 and 6 of the Economic Offences Act Art. 2 and 3 of the Sanctions Act 1977 Art. 2 and 2a of the Sanctions Regulation Al-Qa'ida 2011

42	Mohammed G.	04/08/16	Acquitted of training for terroristic actions (lack of evidence). Sentenced for the attempt to take part in an organization with terrorist intent.	Suspect declared guilty without imposition of penalty	Art. 45, 140 and 140a of the Dutch Criminal Code
43	Mohammed G.	29/08/16	Sentenced for preparing for migration to Syria or Iraq to join the jihad and Islamic State and for preparing to commit crimes with terrorist intent.	3 years plus sentence of entrustment (TBS, a provision in the Dutch Criminal Code that allows for a period of treatment following a prison sentence for mentally disordered offenders)	Art. 33, 33a, 37a, 38, 38a, 38b, 96, 157, 176a, 176b, 288a, 289 and 289a of the Dutch Criminal Code
		02/10/17	Sentenced for intentionally preparing for a crime described in articles 157 and/or 176a and/or 176b and/or 289(a) and/or 288a (arson/murder/manslaughter/explosion).		
44	Mohanned B.	29/08/16	Sentenced for participation in a terrorist organization.	10 months	Art. 140a of the Dutch Criminal Code
		12/12/17	In appeal acquitted of participation in a terrorist organization.	Acquitted in appeal	
45	A. 5144 (1997)	26/09/16	Acquitted of preparation/promotion of murder/manslaughter/ arson/explosion with terrorist intent; acquitted of distribution/ projection of seditious material. Sentenced for participation in a terrorist organization with intent to commit a crime.	12 months of youth detention	Art. 27, 33, 33a, 45, 77a, 77i, 77k, 77m, 77n, 77x, 77y, 77z, 77za and 140a of the Dutch Criminal Code
		19/07/17	Sentenced for preparation/promotion of murder/manslaughter/ arson/explosion with terrorist intent. Sentenced for participation in a terrorist organization with intent to commit a crime. Acquitted of distribution/projection of seditious material.	15 months	Art. 14a, 14b, 14c, 14d, 14e, 33, 33a, 24, 45, 56, 77b, 96, 140 and 176b of the Dutch Criminal Code
46	N.n. 7126 (1991)	01/11/16	Sentenced for preparation/training. Acquitted of sedition.	14 months	Art. 14a, 14b, 14c, 14d, 14e, 33, 33a, 36b, 36c, 36d, 45, 55, 57, 96, 134a, 140a, 157, 170, 287, 288a, 289 and 289a of the Dutch Criminal Code

No.	Name	Date	Conviction	Sentence	Law article
47	Lieke S.‡ (currently called Hayat S.)	10/8/17	Analysts did not find any mental disorder.	Preliminary imprisonment. Then released but obliged to wear a GPS ankle monitor and attend sessions with an Islamic theologian. She also lost custody of her daughter.	–
48	Martijn N.	22/02/17	Case number 09/767093-15: Indicted for: 1. Complicity in preparation/promotion of murder/manslaughter/arson/explosion with terrorist intent; 2. Complicity in attempting to participate in a terrorist organization. Acquitted for 1; sentenced for 2. Case number 09/767070-16: (Different time period.) Indicted for: 1. Attempting to participate in a terrorist organization; 2. Preparation/promotion of murder/manslaughter/arson/explosion with terrorist intent. Acquitted for 1; sentenced for 2.	31 months	Art. 14a, 14b, 14c, 14d, 14e, 36b, 36c, 45, 47, 57, 83, 96, 140a, 157, 176b, 288a, 289 and 289a of the Dutch Criminal Code
49	N.n. 2258	23/03/17	Sentenced for participation in a terrorist organization.	18 months	Art. 140a of the Dutch Criminal Code
50	Azziza A.	28/03/17	Declared innocent of all charges.	–	–
51	Mohammed A.	26/04/17	Indicted for: 1. Recruitment for armed conflict; 2. Possession/distribution of pictures and audio files in which terrorist felonies are abetted; 3. Participation in a terrorist organization. Sentenced for indictments 1 and 3. Partly acquitted for indictment 2 (not proven that he distributed the files, but proven that he possessed them).	4 years	Art. 14a, 14b, 14c, 33, 33a, 55, 56, 132, 140a and 205 of the Dutch Criminal Code

52	Behzad R.	24/05/17	Indicted for: 1. Performance of actions to prepare for or foster terrorist crimes; 2. Preparation for participation in a terrorist organization. Acquitted of indictment 1; sentenced for 2.	300 days	Art. 14a, 14b, 14c, 33, 33a, 46, 140 and 140a of the Dutch Criminal Code
53	N.n. 6924 (1993) In absentia	27/06/17	Sentenced for: 1. Participation in a terrorist organization; 2. Convincing somebody to commit (or possess the means to commit or provide the opportunity to commit) a terrorist crime.	6 years	Art. 47, 57, 83, 96, 134a, 140a, 157, 176a, 176b, 288a, 289 and 289a of the Dutch Criminal Code
54	N.n. 6922 (1981) In absentia	27/06/17	Sentenced for: 1. Preparation/promotion of murder/manslaughter/arson/explosion; 2. Sedition to commit terrorist crimes.	6 years	Art. 57, 63, 83, 96, 131, 132, 157, 176a, 176b, 288a, 289 and 289a of the Dutch Criminal Code
55	N.n. 6927 (1993) In absentia	27/06/17	Sentenced for: 1. Complicity in participation in a terrorist organization; 2. Complicity in preparation/promotion of murder/manslaughter/arson/explosion with terrorist intent and/or complicity in intentionally facilitating (preparing for) a terrorist crime.	6 years	Art. 47, 57, 83, 96, 134a, 140a, 157, 176a, 176b, 288a, 289 and 289a of the Dutch Criminal Code
56	Yusuf S.	11/07/17	Sentenced for: 1. Participation in a terrorist organization; 2. Preparation/promotion of murder/manslaughter/arson/explosion.	6 years	Art. 57, 83, 96, 140a, 157, 176a, 176b, 288a, 289 and 289a of the Dutch Criminal Code
57	Ahmet U.	11/07/17	Indicted for: 1. Complicity in attempting to participate in a terrorist organization; 2. Preparing to participate in a terrorist organization; 3. Complicity in preparation/promotion of murder/manslaughter/arson/explosion with terrorist intent. Acquitted of indictment 1. Sentenced for 2 and 3.	18 months	Art. 14a, 14b, 14c, 14d, 45, 46, 47, 57, 83, 96, 140a, 157, 176a, 176b, 288a, 289 and 289a of the Dutch Criminal Code
58	N.n. 6394 (1994)	10/10/17	Declared innocent of all charges.	–	–
59	N.n. 7369 (1979)	10/10/17	Sentenced for an attempt to participate in a terrorist organization.	24 months	Art. 14a, 14b, 14c, 14d, 14e, 36b, 36c, 45 and 140a of the Dutch Criminal Code

No.	Name	Date	Conviction	Sentence	Law article
60	Jaouad A.	02/11/17	Indicted for: 1. Preparation of felonies with terrorist intent (including arson/murder/manslaughter); 2. Possession of weapons intended for a terrorist crime; 3. Money laundering (1,600 euros); 4. Possession of professional fireworks for personal use. Acquitted of 1, 3 and 4. Sentenced for 2.	4 years	Art. 33, 33a, 36b, 36c, 57, 83a, 96, 157, 176a, 288a, 289 and 289a of the Dutch Criminal Code Art. 26 and 55 of the Arms and Ammunition Act Art. 1a, 2 and 6 of the Economic Offences Act Art. 9.2.2.1. of the Environmental Management Act. Art. 1.2.2. and 1.2.4 of the Fireworks Decree
61	N.n. 8497	02/11/17	Sentenced for participation in a terrorist organization.	3 years	Art. 14a, 14b. 14c and 140a of the Dutch Criminal Code
62	Laura H.	13/11/17	Indicted for: 1. Complicity/participation in a terrorist organization; 2. A. Attempting to coerce another to commit a terrorist crime; B. Providing the opportunity to commit a terrorist crime; C. Having the means available which are destined for committing a terrorist crime. Acquitted of indictment 1; sentenced for indictment 2.	2 years	Art. 14a, 14b, 14c, 14e, 83, 83a, 96, 157, 176a, 288a, 289 and 289a of the Dutch Criminal Code
63	Marlon G.	30/11/17	Indicted for: 1. A. Abduction of a minor from his/her custodian; B. *Intentionally* causing serious physical injury; 2. Intentionally unlawful deprivation of freedom and continued withholding of freedom; 3. Preparation of terrorist crimes; 4. Preparation to participate in a terrorist organization. Sentenced for indictment 1A. Party acquitted of 1B (but sentenced for causing serious physical injury). Sentenced for indictment 2. Acquitted of indictments 3 and 4.	2 years and compensation to the victim	Art. 10, 24c, 27, 36f, 57, 279, 282 and 300 of the Dutch Criminal Code

64	Hasan A.	01/12/17	Sentenced for: 1. Deliberately gathering information and acquiring knowledge to commit a terrorist crime; 2. Preparation of felonies with terrorist intent (including arson/murder/manslaughter); 3. Acting against article 26 (possession of (a) weapon(s)).	30 months plus TBS (a provision in the Dutch Criminal Code that allows for a period of treatment following a prison sentence for mentally disordered offenders)	Art. 36b, 36c, 36d, 37a, 38, 38a, 57, 83, 83a, 96, 134a, 157, 176a, 288a, 289 and 289a of the Dutch Criminal Code Art. 26 and 55 of the Arms and Ammunition Act
65	N.n. 9915	18/12/17	Sentenced for participation in a terrorist organization.	48 months	Art. 140a of the Dutch Criminal Code
66	18-year-old female	19/12/17	Case number 03/721031-16: Indicted for: 1. Attempting to participate in a terrorist organization; 2. Preparation of participation in terrorist organization. Acquitted. Case number 03/702658-17: Indicted for collusion to perform a terrorist felony (murder/arson). Acquitted.	270 days of youth detention	Art. 27, 47, 77a, 77h, 77i, 77x, 77y, 77z, 77gg and 140a of the Dutch Criminal Code

Source: Author composition from Dutch judicial files, verdicts and newspaper clippings.
Notes: * All Mohammed G.'s in this table refer to the same person.
† Appeal still pending.
‡ Court ruling has not yet taken place. The information about this case in the table is based on news articles, since there are no official published documents about this case.