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Jihadist prisoners in Spain and the application of the high security prison regime

Inmaculada Marrero Rocha and Salvador Berdún Carrión
University of Granada, Spain

Abstract

The presence in Spanish prisons of individuals linked with jihadist terrorism has alerted the authorities to the risk that these prisoners may pose as agents for radicalization and the establishment of organizational structures inside prisons. To address this risk, Spanish authorities have used similar policies to those applied to prisoners belonging to the Euskadi Ta Askatasuna (ETA) terrorist group, subjecting jihadist prisoners to a restrictive detention regime. Based on the data obtained from analysis of the judicial proceedings of 264 individuals imprisoned for jihadist acts and information from the questionnaires completed by 60 prison officers in direct contact with those persons, this article considers whether it is appropriate to indiscriminately apply a high security regime to these types of prisoners.

Keywords

High security regime, jihadist prisoners, penitentiary policy, Spain

Introduction

Jihadist terrorism has led to a growing presence in Spanish prisons of individuals linked with this phenomenon, which may be clearly differentiated from ethno-nationalist or extreme left terrorism, also known as classic terrorism. Concern that these prisoners may contribute to the radicalization of third parties and the establishment of networks for recruitment and proselytism purposes has led the authorities to adopt policies similar to those employed for prisoners linked to classic terrorism, which are aimed at avoiding politicization in prisons through different types of collective action. Even though jihadist prisoners do not adopt these behaviour patterns, similar policies have been applied based

Corresponding author:
Inmaculada Marrero Rocha, Department of Public International Law and International Relations, Faculty of Law, Granada University, Plaza de la Universidad s/n, Granada, 18001, Spain.
Email: marrero@ugr.es

on generalized use of restrictive confinement regimes. Under Spanish penitentiary law, these types of regimes are to be used only for prisoners classed as 'extremely dangerous' or 'unsuitable for the ordinary regime'.

The main objective of this article is to analyse to what extent it is necessary to indiscriminately apply such a restrictive prison regime to individuals held on remand or convicted for jihadist terrorist offences, or whether it would be more appropriate to individualize decisions regarding the classification of prisoners on the basis that they are a very disparate group with major organizational differences compared with inmates belonging to classic terrorist groups. More specifically, it seeks to clarify whether it is appropriate or necessary to apply penitentiary legislation inspired by experiences with prisoners of Euskadi Ta Askatasuna (ETA) to design generalized confinement policies for prisoners convicted of jihadist offences. Firstly, this article will analyse how the experiences of certain countries in Western Europe with prisoners belonging to classic terrorist groups have influenced the penitentiary policy applied by those countries when dealing with jihadist inmates. Secondly, it will consider the specific case of Spain and the influence that the ETA terrorist group has had on the penitentiary policy and legislation currently applied. Thirdly, it will examine the characteristics of jihadist prisoners in Spanish prisons, their judicial proceedings, the opinions of the prison officers in the prisons where they are incarcerated, the reasons why a high security regime is indiscriminately applied and the arguments pointing to the need for a review of its generalized use. Finally, a series of conclusions will be offered on the nature of recommendations for review of the penitentiary policy applied to these types of prisoners.

The methods applied in the research include qualitative methods (review of secondary data) and quantitative methods (a questionnaire completed by prison officers). Therefore, it may be considered a mixed method study. Finally, in order to achieve the research objectives, triangulation has been performed of the data obtained from the different methods.

The research is based firstly on data obtained via monitoring during the course of 2019 of a sample of 264 inmates who were incarcerated in Spanish prisons between 2001 and 2017 for offences related with jihadist terrorism, distributed across 27 prisons located across Spain. Of these 264 cases, 93.19 percent were men (246) and 6.81 percent (18) were women. The average age of the men was 30.35 years and for the women it was 27.56 years. The monitoring of the sample focused in particular on the offence they were charged with and the judicial ruling in the corresponding criminal proceedings, and more specifically whether the individual was convicted and a sentence imposed or whether they were acquitted and the case was dismissed. This monitoring was based on examination of the judicial rulings and orders available in open sources and the decisions published by the Judicial Documentation Centre (Centro de Documentación Judicial – CENDOJ) and the General Council of the Judiciary (Consejo General del Poder Judicial – CGPJ). Information available in the press on the manner in which each individual approached the criminal proceedings was also used to complement the documentation published by the CENDOJ, which does not include any personal data. This monitoring of the circumstances of each individual from the moment they are placed on remand until the conclusion of the proceedings was of major importance to identify false parallelisms with the militants of classic terrorist groups. Such parallelisms can lead to

the conclusion that prisoners linked to jihadism follow the traditional model of militants of terrorist groups such as ETA and the Irish Republican Army (IRA), who rejected the legitimacy of the courts and the Prison Service and for whom penitentiary policies were designed that are still largely applied today.

Secondly, during the research stage 60 prison officers (77.43 percent security surveillance staff guards, 19.35 percent treatment officers and 3.22 percent health staff) from eight prisons who were in direct contact with jihadist prisoners completed a closed-ended questionnaire to determine their opinions regarding the conduct of the target group in the prison and the appropriateness of keeping them under a high security regime. The questionnaire consisted of 13 questions, which were aimed at obtaining data on the individual and group behaviour of jihadist prisoners ('Did you find it more difficult to deal with jihadist prisoners than the rest of the prisoners?' 'Do they avoid contact with prison staff or the rest of the prisoners?' 'Are jihadist inmates vehement in their defence of certain religious and political ideas?'), vindication of militancy ('Do they claim to have a status that distinguishes them from other prisoners or their terrorist militancy?'), the existence of organized structures ('Do they constitute an organized group as in the case of prisoners linked with terrorist organizations such as ETA and GRAPO?') and the existence of parallelisms with the prisoners of other terrorist groups ('Do they have group behaviour similar to the prisoners of ETA?').

The disruptive nature of groups of prisoners linked with terrorism

The entry of prisoners linked with terrorist groups into European penitentiary systems gave rise to the need to develop a differentiated system to manage this sector of the prison population. According to Alexander and Pluchinsky (1992: 41), on occasions the survival of terrorist organizations is dependent upon the existence of active fronts in prisons, converting prisons into a further scenario for clashes with the state. In the case of the IRA, the militants in prison imposed a change in the group's structure to substitute the military organization for one based on cells with a long-term strategy. Prisoners linked to paramilitary organizations began to constitute a significant percentage of the prison population, accounting for as much as 70 percent. This radically transformed the nature of the prison population, generating a perfectly organized internal political and military structure with important family and community support and making it impossible to manage them under the ordinary prison regime (Moen, 2000; McEvoy et al., 1999). A similar situation occurred following the imprisonment in 1972 of key members of the Red Army Faction (RAF), with the prison becoming the main battleground for clashes with the German government for this organization during the period from 1972 to 1977 (Pekelder, 2010).

ETA and the RAF also had important organizational structures in prison, and pushed their respective states to adopt penitentiary policies to counteract the attempts by these organizations to politicize prisons through disruptive behaviour that these institutions were not prepared to deal with. In the case of the RAF, the prison system of the German Federal Republic was pushed to its limits, forcing the adoption of custody measures that involved isolation of individuals in maximum security prisons or sections and the assumption by prison authorities that these individuals introduced 'a new dimension

when defining the danger of subjects under custody' (Diewald-Kerkmann, 2014: 237). In the case of the IRA, McEvoy (2001: 225–226) points out that its organization allowed it to dispute and limit institutional control of certain spaces inside prisons.

Page (1998: 29–30) highlighted that these types of prisoner constituted a group that opposed prison authorities through collective actions and whose disciplined and organized behaviour, together with a tendency to non-compliance with prison rules, gave rise to problems that were beyond the normal capabilities of prison systems and forced them to grant greater priority to prison security to the detriment of other considerations.

Penitentiary policy in Spain and terrorism: The precedent of ETA

In Spain, for decades now the penitentiary system has had to deal with prisoners linked with terrorist organizations such as ETA and GRAPO (Grupos de Resistencia Antifascista Primero de Octubre – the First of October Anti-Fascist Resistance Groups). ETA prisoners have been the most numerous and united group, pending a collective outcome associated with an amnesty, and they acted with a single voice, with the majority of them forming part of Euskal Preso Politikoen Kolectiboa (EPPK – Basque Political Prisoners Collective). These imprisoned militants acted in accordance with a complex structure dubbed Hormak Apurtuz Laster Borrokalariak Kalea ('Breaking the walls, soon street fighters') and a coordination apparatus known as Koordinazio Taldea (Coordination Group), which directed the activities inside prisons. In 2008, the year when the greatest number of ETA militants were imprisoned in Spanish prisons (615), they represented 44.41 percent of prisoners classified as first degree.[1] The integration of the EPPK in the structure of the terrorist organization limited the prisoners' capacity to adopt individual decisions or strategies with a view to their defence or access to prisoner privileges.

The capacity to coordinate collective protests provided the impetus for the policy of dispersing prisoners (De Castro Antonio and Álvarez, 2013). Together with the conflict that they represented in the prisons, the administration tried to facilitate the acceptance of individual exits by the prisoners and considered dispersion necessary as a mechanism to circumvent the control that the organization exercised over them. In addition, dispersion policy was part of the fight against the ETA political apparatus of which the EPPK was part (Domínguez Iribarren, 2016). Exceptional measures were also adopted, such as the application of the First Final Provision of the Spanish General Penitentiary Organic Law to allow internal surveillance of a Special Section or High Security Facility by police officers for reasons of public security. A Central Prison Supervision Court was established under Spanish Organic Law 7/2003 to unify the criteria for the application of sentences imposed for offences heard by the Spanish National Court. The preamble to Spanish Organic Law 7/2003 states that prisoner privileges should not be converted into instruments 'at the service of terrorists', above all because they were individuals whose behaviour in prison was subject to a coordinated strategy. Spanish penitentiary legislation therefore introduced regulatory measures that led to a generalized classification in the first degree of prisoners linked with terrorism, avoiding what had occurred on other occasions in relation to the grant of prisoner privileges with criteria contrary to those of the Public Prosecution Service and Penitentiary Institutions (Cano Paños, 2012). This modification of the penitentiary policy and regulations with which it was intended to

break the group of prisoners meant pushing the legislative limits and Ríos Martín (2018: 4) points out that Spanish prison policy deviated from the constitutional values that had inspired it and established a subsystem of exception for prisoners according to the charges they faced.

Jihadist terrorism and its influence on penitentiary policy in Spain

The problem posed by prisoners linked to jihadism is different from that of individuals linked with classic terrorist organizations operating in Europe. The majority of Western penitentiary systems have opted for the application of measures to separate prisoners linked with jihadist terrorism in maximum security prisons in the belief that prisons constitute an ideal scenario for radicalization (Rushchenko, 2018).

Jones (2014) questions this policy, considering that it is based on an overestimation by prisons of the potential for radicalization and affirming that a generalized application of highly restrictive prison regimes could be counter-productive. Jones and Narag (2018: 7) consider that the application of ordinary prison regimes for inmates linked with jihadist terrorism could be beneficial in order to break the links between these types of prisoners, and that the application of security measures involving separation of the prison population should be considered only for individuals who persistently cause problems. Uniform treatment of these types of prisoner could also be counter-productive, particularly when applied to individuals who have been convicted of minor offences such as self-indoctrination or glorification of terrorism, because it only further perpetuates their perception of injustice and victimization (Leman, 2019: 143; Rushchenko, 2018).

Characteristics of prisoners linked with jihadist terrorism. The first arrest for jihadist terrorism in Spain took place in 1995 in Barcelona.[2] During the 2000s only independent cells and lone actors were detected, reflecting a reduction in the importance of complex organizations in jihadist activity (Jordán Enamorado, 2012). This organizational simplicity with a more limited operational capacity prevailed during the first half of the second decade of the 21st century, and the presence of individuals not linked with overarching jihadist organizations began to be more significant than those integrated in more complex structures (Alonso, 2015: 72). Reinares, García-Calvo and Vicente (2019: 134–5) found that, in the period between 2012 and 2017, none of the jihadist cells, groups and networks operating in Spain were integrated in a higher structure. On the contrary, 84.3 percent were integrated in cells, groups and networks related via some kind of link and only 15.7 percent were integrated in cells, groups and networks directly connected with organizations based outside the country. The number of lone actors engaging in jihadist activities between 2012 and 2017 accounted for 11.5 percent of the total. This situation was also replicated at a European level, with a predominance of activity by lone actors, who often maintain 'loose networks or small unstructured groups, and may receive support from like-minded individuals' (Europol, 2019: 32).

The informal nature of most jihadist terrorism structures is one of the factors differentiating them from classic organizations and has led to legislative amendments in the Spanish Criminal Code (Codigo Penal). The reform of 2015 introduced new offences for other forms of participation in jihadist terrorism activities that do not necessarily involve

formal connection of the subject with an organized structure (Carou-García, 2019a).[3] New offences such as recruitment, indoctrination and training with jihadist purposes are a preventive response to address the problem of terrorism by individuals, extending the scope of the law to include abstract dangerous conduct distanced from the effective execution of illegal acts (Cano Paños, 2017). These amendments to Spanish legislation have resulted in the incarceration of individuals linked with the jihadist cause but without any formal links with any organizational structure or with other inmates.

For Spanish prison authorities, the possibility that groups of prisoners linked to terrorist organizations could influence other prisoners represented only a temporary concern, until it soon became apparent that ETA prisoners sought to differentiate themselves from the rest of the prison population. In order to explain the relationship between groups of prisoners such as ETA and GRAPO and the rest of the prison population, Rodríguez Yagüe and Pastor Comín (2016: 101) described them as 'differentiated penitentiary universes' because the construction of the identity of political prisoners was in conflict with state penitentiary systems and sought to 'avoid the stigmatising effect of being classed as a common prisoner at a cultural and symbolic level' (Oliver Olmo and Rubio, 2019: 217).

Warnes and Hannah (2008: 408) concluded that radicalization in prisons does represent a concern, but there appears to be no solid basis for this assertion. In Australia, a study by Brown (2008) demonstrated the hyper-politicization of criminal justice due to the threat of terrorism and its influence on the application of increasingly restrictive prison regimes as a result of media pressure. In 2009, the Bureau of Prisons of the U.S. Department of Justice highlighted that jihadist radicalization and recruitment did not constitute a significant problem and there had been no indications of organized recruitment efforts nor any evidence of widespread attempts at radicalization and recruitment (U.S. Department of Justice, 2009: 36). Useem (2012: 39) asserted that the idea the US prison system was the preferred location for radicalization was false or exaggerated, and Khosrokhavar (2013) considered radicalization was occurring in the West on a small scale and was due to the conditions of the prisons; accordingly, general theories regarding radicalization are only partially applicable to the prison environment. Rhazzali (2017) concluded that the Italian prison system is not characterized by the presence of organized groups that may be categorized as radical Islamists.

It seems that the classification of inmates and the choice of confinement model are derived from a perception by the authorities that prisoners linked to jihadism constitute a real threat. According to Spain's National Counter-Terrorism Strategy, prisons constitute the 'ideal environment for recruitment by radical inmates of individuals inclined to use violence, and so that some of them may justify their hostility towards the prevailing values of democratic states' (Government of Spain, 2019: 20–38). The strategic lines in the field of prevention of radicalization focus on prisons, the detection and neutralization of these processes and the development of tools to assess risks. Actuarial logic is present in these risk management techniques whose definition does not correspond to their real attributes according to empirical evidence. On the contrary, Brandariz García (2014) explains that they are the product of collective constructions based on political and cultural elements that in the prison field have conditioned the design of the risk profiles of prisoners and their subsequent treatment, so that the neutralization of this supposed risk becomes the fundamental end of the penalty.

In Spain, prisons classify inmates and remand prisoners linked to jihadism as first degree prisoners. Of the total prison population managed by the General Secretariat of Penitentiary Institutions (50,129 inmates), prisoners imprisoned for jihadist offences constituted only 0.29 percent.[4] According to the figures of the General Secretariat of Penitentiary Institutions, of the 797 inmates classified as first degree or remand prisoners subject to the high security regime in 2019, prisoners linked with jihadist offences constituted 16.31 percent of the total and were located in 30 prisons of the Spanish penitentiary system.[5] According to data from the Association of Victims of Terrorism (Asociación Víctimas del Terrorismo – AVT),[6] of a sample of 149 jihadism-related inmates in Spanish prisons, 130 were classified as first degree prisoners or were subject to a high security regime (87.24 percent) and 19 had been assigned as second degree prisoners (12.76 percent); 59.07 percent of the total were held on remand and 40.93 percent were already serving time. No breakdown is offered of prisoner classification according to whether they are convicted or on remand. A high security regime is applied in a generalized manner, when it should be applied as an exceptional measure (Freixa Egea, 2014).

Regulation of the high security regime in Spain. The high security regime is regulated by the two main sources of penitentiary law in Spain: the General Penitentiary Organic Law 1/1979 of 26 September 1979 (Ley Orgánica *General* Penitenciaria – LOG P) and the Penitentiary Regulations (Reglamento Penitenciario – RP) approved by Royal Decree 190/1996 of 9 February 1996. Owing to concerns regarding the problems posed by jihadist terrorism and the risk of radicalization in prisons, the RP were reformed by Royal Decree 419/2011 of 25 March 2011, which introduced measures aimed at establishing profiles of inmates who required greater control. The database of prisoners under 'special control' (Ficheros de Internos de Especial Seguimiento – FIES) was also revised to include individuals held on remand and convicted for jihadist offences, and amendments were made to section 65 of the RP, which regulates the security measures according to the potential risk of inmates and expressly includes inmates belonging to terrorist organizations.

Classification of an inmate in the first degree signifies application of a high security regime pursuant to section 101(3) of the RP. Meanwhile, section 102(5)(c), which establishes the criteria and variables to be taken into account for prisoner classification, provides for the application of the first degree to inmates who are dangerous but are not considered to have the status of 'members of criminal organizations or armed groups, if in both cases there are no unequivocal indications of having abandoned the internal discipline of those organizations or groups'. Classification in the first degree of individuals linked with jihadism is therefore a consequence of their supposed membership of terrorist organizations. Nonetheless, generalized application of this type of regime to prisoners linked to jihadism as if they were a uniform group poses serious issues. Freixa Egea (2014: 4) considered that the high security regime should be applied when 'it is proven that there is a link to the internal discipline of organisations or groups' and that 'it will be necessary to consider their conduct in prison along with the previous criteria'.

The high security regime is also applied for remand prisoners, although it must be exceptional and justified, given that, pursuant to section 5 of the LOG P, 'the principle of presumption of innocence will be applied in the remand prison regime'. Generalized

application of the high security regime, as is currently done with individuals remanded for jihadist terrorist acts, is contrary to the spirit of the law. The high security regime involves a series of limitations on the ability of these individuals to interact with the rest of the prison population and engage in their everyday lives. Apart from additional control measures, they are also incarcerated in special facilities with the highest security level in the Spanish penitentiary system.

Article 25(2) of the Spanish Constitution establishes that sentences involving deprivation of liberty are oriented towards the 'social rehabilitation and reintegration' of prisoners. This constitutional principle is further developed in the LOG P, which provides as follows in section 1: 'The primary aim of Penitentiary Institutions regulated by this Act is the social rehabilitation and reintegration of inmates convicted of sentences and penal measures involving deprivation of liberty, along with the holding and custody of persons arrested, imprisoned and convicted', and section 2 of the RP provides that 'the primary aim of penitentiary activity is the social rehabilitation and reintegration of persons sentenced to measures involving deprivation of liberty'. Accordingly, the penitentiary regime and the issue of security are not considered under Spanish legislation as two distinct realities.[7] There is an indissoluble connection between the two (López Melero, 2014: 332). Although Article 62 of the LOG P points out that treatment should be individualized based on a scientific, complex and dynamic study, the high security regime is applied to individuals linked with terrorism in a quasi-automatic manner. Such a generalized approach may be very counter-productive for future the rehabilitation of inmates (Castro Liñares, 2019). Concerns regarding proselytism in prisons led the Prison Service to issue a series of Instructions. Instruction 4/2008 created specialized groups of prison officers for inmates linked with jihadist terrorism, and Instruction 12/2011 of 29 July established the details and functioning of the FIES database to subject these inmates to a greater degree of control, limiting the sections they could be assigned to and applying a more intense surveillance and observation regime. Subsequently, Instruction 8/2014[8] of 11 July 2014 on the New Programme for Prevention of Radicalization in Prisons classified these types of inmates as 'high danger' inmates, which once again introduced limitations in terms of the sections they could be assigned to, access to extra activities, enjoyment of prisoner privileges, changes of prisoner regime and eligibility for parole.

In 2016, the new 'Guidelines for prison and probation services regarding radicalisation and violent extremism' were adopted by the Committee of Ministers on 2 March (Council of Europe, 2016). These guidelines formed the basis for Instruction 2/2016 of 25 October, which introduced the Framework Programme for Intervention in Cases of Violent Radicalization of Islamist Inmates (Spanish Ministry of the Interior, 2016). This programme developed individualized levels of intervention, avoiding general approaches that do not take into account the personal circumstances of each inmate and in particular inmates linked to terrorism who reject violence and are not associated with recognized criminal organizations. The new guidelines establish mechanisms to adapt the restrictive measures applied to prisoners according to the real risk they pose, limiting their use so as not to foster feelings of victimization. They are also noteworthy in that they encourage the establishment of relationships of trust between prison staff and inmates. However, in reality it is very difficult for these recommendations to be followed in a maximum

security regime and, in the case of Spain, the concerns regarding jihadist radicalization in prisons have intensified the application of restrictive measures.

The need to review the generalized application of the high security regime for jihadist prisoners

As highlighted by Carou-García (2019b), the application of a restrictive penitentiary regime is considered to be justified in the case of prisoners linked with terrorism, because the existence of prisoners linked with terrorist organizations in prisons could potentially pose a threat to the order and security of those prisons. Application of the high security regime to jihadist terrorists is justified if the threat they pose is sufficiently large and appreciable in a generalized manner, and for this reason Rushchenko (2019: 308) qualifies his support for the argument that separation and isolation of prisoners should be applied to the most conflictive inmates. However, in light of the data obtained via monitoring of the judicial proceedings of the sample of 264 prisoners, the closed-ended questionnaire completed by 60 prison officials and the information on the different police operations carried out in these prisons, we have come to a series of conclusions regarding whether these prisoners meet the fundamental conditions for indiscriminate and disproportionate application of the high security regime. The first of these conditions is that they must act as radicalization agents and form solid jihadist structures engaging in proselytism. The second condition is related to the terrorist offences it has been proven these individuals have actually committed and for which they have been convicted.

Risk of radicalization and development of organizational structures. The majority of inmates linked to jihadism are concentrated in a limited number of prisons, mainly those with the highest security conditions (Acaip, 2017). The scale of radicalization and the risk that prisoners linked with terrorism represent have been the object of profound debate. Cuthbertson (2004: 15) has referred to prisons as 'universities for terrorists' and Brandon (2009: 1) has a similar opinion. However, prison does not appear to be the preferred vehicle for radicalization and recruitment, and the 'Guidelines for prison and probation services regarding radicalisation and violent extremism' (Council of Europe, 2016) recognize that the risk of radicalization in prisons of the European Union is small. In Spain, in order to determine the scale of this phenomenon and the need to apply the high security regime to prisoners linked with jihadism, it is necessary to ascertain whether an organized group is behind the process and establish the existence of possible radicalization networks.

Penitentiary institutions have identified two groups of individuals. The first group consists of individuals classified as subjects who have undergone a radicalization process and may be agents for the radicalization of other prisoners (Group B). The second group comprises prisoners in the process of radicalization or susceptible to radicalization owing to their vulnerability, even though they are in custody for crimes not related to terrorism (Group C). In 2019, the General Secretariat of Penitentiary Institutions identified 49 prisoners in Group B as possible recruiters owing to their leadership role or proselytism and 76 inmates in Group C as susceptible to radicalization. This made a total

of 125 inmates, a very small percentage compared with the general prison population (0.26 percent) and of the Muslim prison population in particular (2.84 percent).[9]

Although the Prison Service has established a series of criteria for the inclusion of individuals in these categories, it is also true that there is a certain degree of subjective assessment when evaluating radical behaviour. In Spain, there is no reference to a possible abuse of power or a lack of guarantees in the reports relating to possible cases of radicalization, although the Annual Report on the Status of Religious Freedom in Spain in 2017 (Spanish Ministry of Justice, 2018: 71), when referring to religious assistance in prisons, highlights the concern of the Islamic Commission of Spain regarding identification of requests for Muslim religious assistance 'with potential radicalization of the inmate'. At the same time, the Islamic Commission of Spain criticized the fact that, 'when a Muslim inmate requests assistance, it is seen as being suspicious and is subject to a regime of special monitoring'. Accordingly, the possibility exists that the number of cases of radicalization detected may be subject to a margin of error as a result of a lack of knowledge or subjective interpretations by the staff responsible for monitoring inmates. In this area, the criteria of the supervisory bodies themselves are vague in relation to jihadist terrorism. For example, the Council of Europe (2017: 33–9) refers in the conclusions of its report on Spain to the difficulties that prisoners linked to jihadism have in obtaining religious assistance. However, as regards doubts as to the use of this type of regime, these concern not the specific case of jihadist prisoners but the lack of individualized case reviews and its automated extension for the general prison population, in particular, for those who under Article 91.2 and 91.3 of the RP were considered misfits in the ordinary regime or had seriously assaulted prison staff or other inmates.

This suspicion is corroborated by the results of the questionnaires completed by prison officers during this research. In terms of risk of radicalization, 73 percent of prison officers indicated that prisoners linked to jihadist terrorism were different from the rest of the prison population. However, these differences referred to matters such as more frequent religious activity, better social skills and better personal habits in terms of health, hygiene and sports activity. According to 51.85 percent of the staff who answered the questionnaire, the religious practices of these prisoners did not give rise to problems of coexistence with the rest of the prison population or the prison staff. The 48.14 percent who stated that the religious practices of these prisoners did give rise to problems mentioned minor issues such as not answering during prisoner counts if they were praying or the fact that during searches of cells they objected to anyone touching certain objects. Of the prison officers surveyed, 72.72 percent indicated that they had not seen radical material at any time, and those who thought they had seen such material identified certain verses of the Koran or prayer timetables as 'radical material'. This shows there is a certain degree of ambiguity when defining the radical content of these items. It is also equally concerning that, whereas 60 percent categorically affirmed they were incapable of identifying radical material, some of those who affirmed that they knew how to identify such material with total certainty could not base their opinion on reasons justifying why that material was radical.

Although one of the reasons justifying application of the high security regime to prisoners linked with jihadist terrorism is the supposed risk of radicalization of third parties, Torres Soriano (2014: 246–7) concluded that jihadist prisoners deny being militant or having any link with other prisoners jailed for the same type of offence. Veldhuis (2016:

97–101) also highlighted the scarcity of conflict situations arising with these types of inmates and the limited concern of the personnel responsible for their custody regarding the risk of radicalization of third parties. The conclusion was even reached that some of them were perfectly adapted to the ordinary regime and that the policy of concentrating these prisoners in the same prisons also had an adverse effect, given that it facilitated attempts by supposedly radicalized inmates to influence the others.

The perceptions of Spanish prison staff support Veldhuis's conclusions because they indicate that these types of prisoners do not present a source of conflict. Of the staff we surveyed, 63.63 percent considered that jihadist prisoners do not constitute an organized group and 84.61 percent stated that these prisoners do not admit to being militant; 88.46 percent affirmed that they did not constitute a problem for order and coexistence in the prison, and 73.07 percent denied that they acted in an organized manner to achieve differential treatment as special prisoners; 55.55 percent considered that dealing with these types of prisoners was easier than dealing with those linked to other terrorist organizations and even common prisoners. However, the prison officers did mention the fact that, when various individuals coincided (as tends to happen in high security regimes), it led to the establishment of a hierarchy, which seems to suggest that perhaps it is more appropriate to locate them in ordinary regimes mixed with the rest of the prison population. Although 73 percent of prison officers considered that these prisoners had a precarious status, with no strong social or family support, and this was said to generate a certain degree of group solidarity, there was no evidence of an organized system of external support.

As for the risk of these prisoners generating terrorist structures in prison, between 2004 and 2019 eight police operations were carried out in Spanish prisons involving a total of 61 inmates. The organizational structures associated with radicalization processes in Spanish prisons involved lone actors or non-permanent groups of between two and five individuals developing inside the prison but with not contacts or solid organizational apparatus on the outside. During this period only two organizational structures of a more complex nature were detected. The first of these was dismantled by Operation Nova and involved as many as 32 individuals, 21 of whom had met each other in prison.[10] However, the Spanish Supreme Court convicted only six of them, one of whom was not part of the nucleus of the cell created in prison.[11] In 2018, under Operation Escribano, the Guardia Civil dismantled another supposed network devoted to recruitment in prisons (López-Fonseca, 2018). According to the investigation by the Guardia Civil, the purpose of this network was to establish itself as an organization to demand differential treatment as political prisoners linked to jihadism in Spain. Based on the information released by the Guardia Civil, all those involved in this supposed network had significant prior connections that facilitated the maintenance of contact between them even though they were dispersed to different prisons.

Judicial background of prisoners linked to jihadism in Spain. In Spain there is a significant discrepancy between the criminological assessment of Islamist radicalization processes and the assessment by National Court judges. Cano Paños and Castro Toledo (2018: 15) even assert that 'Spanish courts tend to see much more than there really is, leading to use of categories such as "radicalized" or "member of a terrorist organization" for certain subjects when in reality it could be a question of merely sympathizing with these causes'.

In fact, a high percentage of cases have concluded with agreements with the Public Prosecution Service involving admission of facts and confessions that resulted in a considerable reduction in the sentence, although, according to Cano Paños and Castro Toledo (2018: 31), in practice this involved 'admitting and/or confessing to terrorist offences that from a criminological perspective they had not actually committed'.

The analysis of the case law by Núñez Fernández (2019) regarding late confession as a mitigating factor in cases of jihadist terrorism concluded that the fact that, over the previous five years, numerous rulings had applied late confession as a mitigating factor could act as an incentive to abandon terrorist activity; it also showed that acts such as the severing of links, confessions and cooperation with the authorities are not uncommon and lead to a greater likelihood of social rehabilitation of those people. In the majority of cases these individuals are not dedicated militants. This facilitates the severing of links with terrorism and constitutes an argument in favour of the introduction of changes in the policies applied for controlling these subjects.

If we consider the result of the judicial proceedings for the sample of 264 inmates in Spanish prisons, whether convicted or on remand, during the period from 1995 through to 2018 the application of the high security regime to the majority of these individuals was justified under section 10(1) of the LOG P owing to their 'extreme danger' and their links to criminal organizations or armed groups (section 102(5)(c) of the RP). However, of the total of 264 prisoners, 108 were distanced from any type of terrorist activity, denying the facts alleged or their participation and even condemning violence of a jihadist nature. This attitude reveals a lack of the discipline found in organizations such as ETA or the IRA. In addition, it has also been demonstrated that individuals charged with jihadist terrorism in Spain act in different ways, with 47 of them eventually reaching a plea bargain.[12] This implies acceptance by the accused of the facts, the judgment and the criminal liability attributed (Sánchez Gómez, 2014: 32). On occasions, cooperation by the accused with the Court led to the application of mitigating circumstances under the Spanish Criminal Code, which in the case of 18 individuals allowed them to reduce their sentence.[13] Their repentance during the trial and their acceptance of the sentence proposed is contradictory to the terms of section 102(5)(c) of the RP, which provides for the application of the high security regime and the first degree category for these prisoners, because they do not appear to be subject to the discipline of terrorist organizations.

It is also important to take into account the high percentage of individuals who are acquitted by the National Court or subsequently by the Supreme Court: 75 individuals were acquitted and 23 were released after the case was dismissed by the National Court.[14] This suggests that these individuals had been in a high security regime while on remand and they had subsequently been acquitted or the case had been dismissed owing to a lack of evidence of commission of an offence. In addition, there are also cases in which, owing to excessively long judicial proceedings, dysfunctions have arisen that have led to the application of the high security regime for a longer period than the sentence imposed on the individual. Such was the case of F.M.M.A., for whom the Spanish Supreme Court reduced the sentence imposed from four to two years (Ruling 750/2019 of 13 March 2019), but the time spent on remand exceeded the actual length of the sentence. Another case in question is that of S.M.M. and B.M.A.L., who were held on remand for making terrorist threats and were subsequently convicted for an offence of public disorder,[15] which in principle precludes application of the high security regime. The effect of this

has been the disproportionate and unjust application of a stricter penitentiary regime for people who were subsequently declared innocent or whose criminal liability did not meet the standard required for terrorist charges.

The potential risk of these prisoners as agents of violent radicalization in the prison context is more the result of the information and messages disseminated by a variety of social and political organizations and institutions, which generate a climate of fear and alarm (Gray and Ropeik, 2002; Moreras, 2015). As a consequence, the neutralization of this supposed risk becomes the fundamental aim of the sentence (Fernández Abad, 2020). It is for this reason that the instrument for assessing jihadist risk in Spanish prisons is not based on the search for psychological causes or cognitive dissonances that explain the phenomenon of violent radicalization, as is inferred from Article 64 of the Penitentiary Regulations. In practice, the authorities seek to detect a series of variables based on political and cultural elements that take into account gender, ethnic or class considerations in the prison environment, which condition the design of risk profiles of prisoners and their subsequent treatment without a solid scientific basis or an individualized study (Altheide, 2006). New criminal policies have been established based on a conception of prisoners that does not correspond to their actual attributes shown by the empirical evidence. The assessment of the risk of jihadist radicalization has been built on religious behaviour that conflicts with the hegemonic perception in Europe that religion should belong exclusively to the individual camp (López Bargados, 2016).

Conclusions

The Spanish Prison Service has applied the high security regime in a generalized manner for prisoners linked to jihadist terrorism. This measure has been justified on the basis of the supposed danger posed by the link these individuals have to a terrorist structure or the risk of proselytism and recruitment of third parties. However, following an analysis of the questionnaires completed by prison officers, it may be concluded that such prisoners are not perceived as a real threat and their conduct may be compatible with an ordinary detention regime. The fact that a regime intended for prisoners linked with terrorist structures has been applied to individuals whose guilt has not been established during the criminal proceedings poses serious problems. The absence of links with violence and terrorist organizations in the case of many of these individuals should be taken into account when determining their prisoner category and the regime applicable to them, particularly when in many cases they have admitted the facts and even confessed to the crime. In cases in which a sentence has not been imposed, the principle of exceptionality should be applied when applying regimes that are stricter than the ordinary regime.

Spanish prison authorities have developed a perception of risk in the case of jihadist prisoners that is not based on empirical data, subjecting them to a situation of confinement that may foster a feeling of victimization and reinforce the hierarchization of these subjects, even though at a small scale within the limits of the high security regime. Accordingly, equating these jihadist prisoners to prisoners of classic terrorist organizations linked to terrorist structures that continue to operate from prisons may not only lead to mistreatment of these individuals and a contradictory application of the constitutional principles governing the Spanish penitentiary system, but also lead to results that are contrary to those sought. The detention regime for jihadist prisoners in Spanish prisons must be

assessed and determined individually, based on the real danger that each of them poses to coexistence and security in Spanish prisons.

In short, it is necessary for the Spanish authorities to mitigate the subjective factors in the processes of assessing radicalization. This requires distinguishing between the prevention of radicalization and intervention in radicalized subjects, as well as rethinking this intervention in radicalized inmates with more effective measures that do not necessarily include the use of the closed regime. Likewise, the authorities should avoid alarmist interpretations by delimiting the concept of the jihadist narrative by disassociating it from an amalgamation of concepts of indeterminate content, such as 'jihadist', 'Islamist' or 'radical Islamist', and also by allowing the person being assessed to understand the reasons for considering them to be radicalized and to have the opportunity to refute their inclusion in that categorization.

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ORCID iDs

Inmaculada Marrero Rocha https://orcid.org/0000-0003-3491-9747

Salvador Berdún Carrión https://orcid.org/0000-0001-5376-0925

Notes

1. We have estimated this percentage assuming that the first degree category applied to 76 percent of ETA prisoners convicted also applied to those on remand in an identical proportion. This meant that in some high security sections they could even represent 36 percent of the population in the section.
2. An Algerian arrested in Barcelona was attempting to deliver weapons to an Islamic terrorist. *El País*, 15 March 1995. URL (accessed 6 May 2021): https://elpais.com/diario/1995/03/15/espana/795222007_850215.html.
3. The reform of the Spanish Criminal Code under Spanish Organic Law 2/2015 of 30 March 2015 included major amendments to Chapter VII of section XXII of Book II of the Code ('On terrorist organizations and groups and terrorist offences'). This resulted in the drafting of section 571 of the Criminal Code regulating the definition of terrorist organizations and of section 572, which establishes the sentences to be imposed depending on the type of integration of individuals in the terrorist organization. In addition, a new definition of the crime of terrorism was established in section 573. Section 575 also prohibits training to commit acts of terrorism through either receipt of training from third parties or self-training, and contemplates the possibility of obtaining training via the Internet. Another variation included is acquisition or possession of documents designed to incite membership in or cooperation with terrorist organizations.
4. These figures refer to December 2019. However, the figures remain largely the same over the course of the year. See the website of the General Secretariat of Penitentiary Institutions, URL (accessed 13 May 2021): http://www.interior.gob.es/web/archivos-y-documentacion/instituciones-penitenciarias3.
5. These figures refer to December 2019 and are available on the website of the General Secretariat of Penitentiary Institutions. URL (accessed 13 May 2021): http://www.interior.gob.es/web/archivos-y-documentacion/instituciones-penitenciarias3.

6. These figures are included in the quarterly publication of the AVT on the regime applied to prisoners linked to terrorism in Spanish prisons and refers to the period from September to December 2019. URL (accessed 7 May 2021): https://avt.org/es/n/1641/obseyvatoyio-de-situacin-penitenciayia.
7. Section 41(1) of the LOG P provides that the purpose of the regime is to 'guarantee security and ensure orderly coexistence'.
8. URL (accessed 13 May 2021): http://www.interior.gob.es/web/archivos-y-documentacion/instituciones-penitenciarias3.
9. These percentages are calculated in two ways. With respect to the general prison population, we have cross-referenced prison data relating to individuals classified in Groups B and C and the total number of inmates under the General Secretariat according to the official website. The percentage with respect to the Muslim prison population is achieved based on the number of inmates who consider themselves to be Muslim (4400 inmates) based on the 2017 Annual Report on the Status of Religious Freedom in Spain (Spanish Ministry of Justice, 2018: 69).
10. The Judgment of the Spanish Supreme Court of 7 July 2008 justified its reasoning on this basis: 'The police action in this case was correct, and the judicial authorities have tried them based on sound reasoning. This does not mean that in a democratic state that guarantees the rights of all citizens; religious outbursts of any kind which incite hatred of those different from us may be categorized as a criminal offence. . . The ideas may be contagious, but that does not necessarily make them illegal [and] manifestation of the intent to commit a crime requires the individual to have crossed the line of glorification to commit a measurable and verifiable intentional act.'
11. Subsequently, the Spanish Constitutional Court upheld the appeal brought by one of those involved in the network who was held on remand for three years and five months, considering that his right to the presumption of innocence had been breached by the Spanish Ministry of Justice. Ruling 10/2017 of the Spanish Constitutional Court of 30 January. URL (accessed 7 May 2021): http://hj.tribunalconstitucional.es/es-ES/Resolucion/Show/25236.
12. Plea bargaining is regulated by section 655 of the Spanish Criminal Procedure Act (LEcrim) for ordinary proceedings, ss. 784(3) and 787 LEcrim for summary proceedings and ss. 800(2) and 801 LEcrim for fast-track trials applicable to certain offences.
13. This was application of the mitigating factor of confession contemplated in section 21(4) of the Criminal Code, which states as follows: 'The guilty party, before being aware of the judicial proceedings brought against them, has confessed to committing the crime to the authorities.'
14. The stay of proceedings can lead to early termination of criminal proceedings and may also suspend the proceedings until new evidence is available, allowing the proceedings to be reinstated, which will depend on the type of stay of proceedings – whether general or totally or partially provisional.
15. The change in the offence they were convicted of meant they were no longer subject to the application of section 102(5)(c) of the RP, which justified application of the high security regime. This meant that a priori they should have been dealt with under the ordinary regime.

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