The French “War on Terror” in the post-Charlie Hebdo Era

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ABSTRACT

The article analyses France’s counterterrorism policy in the wake of the January 2015 Charlie Hebdo attack. It traces the evolution of French counterterrorism law since 1986, highlighting shifts after major attacks, and examines post-Charlie measures including expanded intelligence powers, new databases, reinforced offences on glorification and preparation of terrorist acts, and strengthened frameworks against terrorist financing. The author discusses the rapid legislative response, its focus on surveillance and law enforcement capacities, and the tensions it raises between security objectives and the protection of fundamental rights.

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I. Introduction

France's history of terrorism is neither new nor exclusively Islamist-related. At the end of the 1970s, France experienced a wave of terrorist activity both from left-revolutionary groups, such as the *Action Directe,*[1] and from nationalist-separatist groups, especially those active in Brittany, Corsica and the Basque Country.[2] By the early 1980s, however, France had become a target of Islamist terrorist groups and has remained so ever since, as the gunmen attack on the Paris headquarters of the satirical magazine *Charlie Hebdo* on 7 January 2015 demonstrated.[3] The history of contemporary French counterterrorism legislation dates back to 1986, with the law on counterterrorism of 9 September 1986. Before the latter, France dealt with terrorist attacks by means of special laws on state security that had been enacted during the Algerian wars (1954–1962), which provided for an intensive limitation of individual rights and even for a special court to deal with the relevant offences (*Cour de Sûreté de l'État*, "Court of State Security")[4] that was abolished only in 1982. Therefore, until 1986, no specific counterterrorism legislation existed. Before 1986, terrorist acts were characterized as "serious violent acts threatening the integrity and the security of the state" and treated accordingly.[5]

This paper presents the impact that the latest terrorist attack (hereafter: the *Charlie* attack) has had so far on France's counterterrorism legislation (part III). After a brief historical overview of current legislative measures (part II), the following aspects are examined as being the effects of the attack: the enactment of a series of provisions, mainly in the Code of Internal Security (*Code de sécurité intérieure,* hereafter: Cod. Séc. Int.); the exponentially increasing number of prosecutions on the basis of already existing substantive criminal law provisions (especially the glorification of terrorism and the preparation of terrorist acts); the planning of new measures and the drafting of the relevant provisions regarding the financing of terrorism to reinforce the already existing framework on terrorist financing.

II. Historical Overview

Contemporary counterterrorism legislation in France has evolved over three distinct periods:

- The 1980s were dominated by the law on counterterrorism of 9 September 1986,[6] created in the aftermath of a series of bombing attacks by terrorist groups in various French cities – usually in Paris. Characterized as the cornerstone of French counterterrorism legislation, this law did not introduce any special "terrorist offences," but it provided for the application of new, stricter procedural rules for some of the ordinary offences typically associated with terrorist activity (e.g., murder, abduction).[7] Concurrently, the government implemented[8] the *plan vigipirate*, namely the constant presence of armed soldiers, gendarmes, and police officers in public places like railway stations or airports in order to prevent possible outbreaks of violence and particularly terrorist attacks.[9]

- The 1990s represented a different era of counterterrorism strategy, in which two "waves" of terrorist attacks mainly by Algerian Islamist groups (1993–1994, 1995–1996) initiated broad changes in legislation and the practice of law enforcement agencies engaged in counterterrorism. The legislation of this period involved the extension of the duration of pretrial detention[10] as well as the introduction of closed-circuit television (hereafter: CCTV) in public places[11] and night searches[12] as regards criminal procedure. In addition, in the field of substantive criminal law, new offences were introduced, such as membership in a terrorist organization.[13] Regarding the practice of law enforcement agencies, police custody (*garde à vue*),[14] provided in the Code of Criminal Procedure, was massively applied and implementation of the *plan vigipirate* continued, reinforced with even more human resources.[15]

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- The beginning of the current (third) phase of counterterrorism legislation came with the terrorist attacks on the World Trade Center in New York on 11 September 2001, which triggered a chain reaction of legislative reforms at national, supranational, and international levels. France's immediate reaction to the attacks was the law on everyday security of 15 November 2001,[16] which introduced a plethora of norms aimed at the reinforcement of state security. Characterized by the creation of special (terrorist) offences and by changes in criminal procedure, the new law targeted primarily the financing of terrorism and the seizure of assets of terrorist organizations.[17] The counterterrorism legal framework was further enriched with the law on counterterrorism and other security-related provisions of 23 January 2006[18] after the bomb attacks in London in 2005 and the outbreak of a huge wave of violence in the *banlieues* of Paris in 2006. The latter was not connected to terrorism, yet led to the implementation of a state of emergency throughout France. In line with its English counterpart, the French legislature insisted on the broadening of police duties to include, for instance, controlling the movements of individuals to "dangerous" states like Pakistan. After all, since 2002, counterterrorism had been officially declared a police priority for at least the five following years, which gave a whole new dimension to the cooperation of the police and secret services.[19] Parallel to these reforms, the competences of the police, especially in conjunction with the use of new technologies (e.g., using CCTV, storing DNA data, photographing vehicles), were extended.[20] In the next few years, especially after the constitutional reform of 2008 that changed the structure of the secret services radically, the police and secret service agencies developed the pillars of a comprehensive counterterrorism strategy. This strategy focused not only on the introduction of (substantive and procedural) criminal law provisions but also on the use of intelligence to identify terrorists and terrorist suspects, as the most effective method to prevent future terrorist attacks, e.g., with the creation of databases storing personal data of terrorist affiliates.[21]

Turning specifically to the question of today's substantive criminal law, counterterrorism provisions constitute a distinct part of the French Penal Code (*Code Pénal*, hereafter: CP) in the broader section of "felonies and misdemeanours against the nation, the state and the public peace." They are regulated as ordinary offences – as opposed to political offences and offences against the press – and are characterized by particularly strict penalties and – partly – by an extended criminal liability. The relevant procedural norms are particularly tough, which is evident in the offences regarding the financing of terrorism. These provisions were introduced with the law on counterterrorism of 9 September 1986 and are divided as follows, on the basis of their form: *terrorisme par reference* (terrorism by reference) and *infractions terroristes autonomes* (autonomous terrorist crimes). "Terrorisme par reference" is defined in Art. 421-1 CP, which provides that specific, restrictively enumerated crimes of the CP, such as murder, abduction, or damage to property, when committed in conjunction with an individual or collective enterprise aiming at a severe disruption of the public order through intimidation or terror, attain a special gravity in the context of terrorism. This special gravity that the purpose of intimidating the public attributed to the commission of specific crimes is the subject matter of the aforementioned "extended" criminal liability. The "autonomous terrorist offences" refer to concrete offences the CP itself defines *ab initio* as terrorist acts. These offences are ecological terrorism (Art. 421-2 CP), the financing of terrorist attacks (Art. 421-2-2 CP), "supposed" terrorism or the fact that resources available to an individual affiliated with terrorists and terrorist suspects do not correspond to his lifestyle (Art. 421-2-3 CP), encouragement to be recruited by a terrorist organization (Art. 421-2-4 CP), direct provocation of terrorist acts and the public glorification of terrorist acts (Art. 421-2-5 CP), as well as the preparation to commit a terrorist act as defined in the Penal Code (Art. 421-2-6 CP).

III. Impact of the *Charlie Hebdo* Attack on Counterterrorism Legislation

1. Introducing new legislation on the use of intelligence against terrorism

Before discussing the proposed legislation on the use of intelligence for counterterrorism purposes, it is necessary to present the relevant current legal framework. The use of intelligence[22] has been a typical practice of the French police and the intelligence services[23] since 1978.[24] This includes, in particular, retaining personal data of offenders or suspects in special databases (*fichiers*) for the different areas of crime by the police and the intelligence services in order to facilitate the surveillance of specific individuals. The only database used specifically for counterterrorism purposes by the listing of personal data for the purposes of surveillance was the *Fichier Informatisé du Terrorisme* (hereafter: FIT). However, the intelligence services had practiced use of the FIT since 1978, without being regulated by law. In 1990, the intelligence agencies underwent an extensive reform in their structure (and competencies), which, of course, could not leave the *fichier* practice intact. Two new databases were created on the same day by decrees for the *Renseignements Generaux* (hereafter: RG) [25] and covered the entire spectrum of data used by this agency. This led to a fierce public debate on the collection and management of sensitive data of individuals and, ultimately, to the withdrawal of the decrees and their replacement by two new ones in 1991. They had the same names as their predecessors but were clearer as to the management of the data by the RG. One of those new decrees regulated the (already used in practice) FIT, which also included, alongside the typical data (contact, profession, etc.) a description (*signalement*) of the appearance and the behaviour of the individual in question. Stored in the FIT was also the social circle of the individual, which meant that the database was extended to also contain concrete data of the contact persons of the terrorist or terrorist suspect. The FIT was abolished along with all databases of the RG during the reform of the secret services in 2008[26] and replaced by the new database called *Exploitation Documentaire et Valorisation de l'Information Générale* (hereafter: EDVIGE).[27] Among other data, EDVIGE included data of individuals, organizations, or legal entities whose (individual or collective) activities threatened the public order; hence, terrorists, terrorist suspects, and terrorist organizations were also dealt with under this category. Access to such data was limited to specialized agents of specific secret services and police agencies. With EDVIGE, the spectrum of sensitive data became so broad as to include data on sexual orientation, state of health, racial or ethnic origin, and political and religious views of the enlisted individuals.

The reactions triggered by this extension led to its replacement by the French Ministry of Home Affairs: Once again, two new databases were created,[28] one of which is the still in force *Prévention des Atteintes à la Sécurité Publique* (hereafter: PASP). Described as the database for processing and analyzing information on persons whose individual or collective activities are indicators for their aim to harm the security of the state, and despite the fact that it mainly targeted disruptive incidents in football matches and in the urban context, PASP has until today also been the counterterrorism database, as terrorism is the principal activity harming state security. For the PASP, it was prohibited to include data on state of health, sexual orientation, race or ethnic origin, and it only allowed for data on political and religious views if they were related to terrorist activities. Apart from PASP, however, an even more controversial database in conjunction with counterterrorism is the *Centralisation du renseignement intérieur pour la sécurité du territoire et des intérêts nationaux* (hereafter: CRISTINA), which was introduced by decree in 2008 along with the founding of the *Direction Centrale du Renseignement Intérieur* to which it belongs. CRISTINA was defined as "defense secret," namely a highly confidential database requiring high-level clearance to be consulted, since it includes data on terrorism and espionage that are characterized as state secrets. It cannot be known which data exactly are

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retained in CRISTINA, or for how long; a special control by a judge is required after the application by a person who wishes to clarify whether he is on the CRISTINA list. The specific data is deleted as soon as the purpose of the listing has been served, in other words, when the person no longer constitutes a possible threat to the state and state security.

In the aftermath of the *Charlie* attacks, the French government decided to give even more prominence to the intelligence services and particularly to the generation of intelligence. Prime Minister *Valls*, in his speech before the Parliament to commemorate the victims of the attacks on 13 January 2015, announced a series of measures in this direction. These aim at reinforcing the war on terror in a variety of ways, e.g., increasing the human resources of the counterterrorism operations; strengthening the surveillance of air travel by preparing the ground for the implementation of the proposed Directive on the exchange of passengers data (PNR), which provides for the creation of a database with passenger data from all EU countries; or the creation of special departments in penitentiaries for radicalized individuals. Among the measures, the following two are of greatest importance for this paper: first, the creation of a new database for individuals that have been sentenced for terrorism; secondly, the new bill aiming at reinforcing the secret services.[29]

The originality of the proposed database lies in the fact that refers exclusively to terrorism. It will include only individuals that have already been prosecuted and sentenced for terrorist acts, and not generally for acts jeopardizing state security, as it has been the case so far. Moreover, the database will include persons suspected of having joined armed terrorist groups. Persons whose personal data (most important: residence address) is to be stored on this list will have to report frequently to the nearest police stations or will be subjected to frequent controls by police officers. So far, a consultation between the Ministries of Justice and of Home Affairs has been launched in order to clarify the legal prerequisites for its creation.

The proposed legislation on reinforcing the intelligence services was adopted in its entirety by the Assemblée Nationale by 438 votes (against 86) on first reading on 5 May 2015. This "intelligence bill" (*Projet de loi relatif au renseignement*) constitutes an amendment of the Code of Internal Security (*Code de sécurité intérieure,* hereafter: Cod. Séc. Int.), as it adds to the latter a section dedicated to *renseignement*, namely to the intelligence services[30] and intelligence in general. The core of this comprehensive bill is the definition of the mission of specialized intelligence services and the conditions under which these services are allowed to use technology (such as security interceptions, GPS systems, etc.) to access massive (connection) data in order to collect information relevant to restrictively enlisted public interests. With respect to these intervention techniques, the bill provides that they can be used by the specialized intelligence services after relevant authorization by the Prime Minister, who has to consult the independent (administrative) authority *Commission nationale de contrôle des techniques du renseignement* (hereafter: CNCTR)[31] first. This bill provides that the CNCTR will also receive the complaints of any person having a direct and personal (relevant) interest in the information. The bill also regulates how long the collected data will be preserved by the intelligence services, provides for a specific regime of authorization and control for international surveillance measures, and establishes a judicial remedy before the Conseil d' État that is open to the CNCTR as well as to anyone having a direct and personal interest. At the same time, procedural exemption rules are also provided by the bill in order to safeguard national security secrets.

It is not the purpose of this paper to analyze the intelligence bill in detail, since it refers to internal security in general. Nonetheless, it is useful to stress the following points in conjunction with terrorism:

- In the (proposed) Art. L.811-3 Cod. Séc. Int. regarding the public interests served by the collection of information by secret services, explicit reference is made to the prevention of terrorism as a distinct public interest (along with national security, the essential economic and scientific interests of France, fundamental interests of foreign policy, as well as prevention of the continuation of activities of dissolved combat groups and militia) for which the collection of information is permitted.

- Arts. L.851-3, 851-4 Cod. Séc. Int. refer to the collection of information and documents mentioned in the new Art. L.851-1 Cod. Séc. Int., namely information and documents of the networks of electronic services (bulk data, such as a list of incoming and outgoing calls of a subscriber, the date and duration of the communication, the location of a terminal piece of equipment, etc.). The provision declares that only for counterterrorism needs can the collection of the aforementioned information relating to an individual previously recognized as a threat be operated in real-time on the networks and operators of electronic communication. Such data collection procedures can be operated by specialized agents of the intelligence services that have been individually commissioned for this purpose and after consultation with the CNCTR.[32] These agents can request the Prime Minister to lift the anonymity of the data circulated by operators of electronic communication networks, on the sole basis of the automatic processing of anonymous elements that may constitute a potential terrorist threat (Art. L. 851-4 Cod. Séc. Int.). The Prime Minister then has to address the request to the CNCTR for consultation, as described in the bill.

- Following the authorization described in the bill, Art. L.821-4 Cod. Séc. Int., once again explicitly for the purpose of preventing a terrorist attack, allows for the use of a device of proximity (e.g. radar, antenna or any kind of sensor) for a strictly defined period in order to intercept directly the communications sent or received by terminal equipment.

In other words, the intelligence services can request the right to put hidden microphones in a room, in computers or on objects, such as cars, or to use antennae to capture telephone conversations or mechanisms that capture text messages; in this way, the bill actually legalizes tools of mass surveillance.

2. Reinforcing the counterterrorism legislation: Glorification and preparation of terrorist acts

The provisions on directly provoking or publicly glorifying terrorist acts and on preparing a terrorist act were recently introduced with the law on reinforcing the counterterrorism provisions in November 2014.[33]

The direct provocation to commit terrorist offences and the public glorification of terrorist acts were criminalized as a result of a long period of gradually intensifying terrorist threats due to the activities of the Jihadi-Salafist organization Islamist State (ISIS). In France, in particular, the activity of subgroups of ISIS consisted of French citizens travelling to Syria in order to take part in the armed conflict initiated by ISIS.[34] Furthermore, the use of the Internet for the commission or the facilitation of the activity that directly provokes or publicly glorifies a terrorist act is considered to be an aggravating circumstance. The law of November 2014 follows the general trend of establishing the use of Internet as an aggravating circumstance for the commission of an offence due to the possibility of a broad and extremely fast transmission of a (criminal) message, as is, for instance, the case when sexual offenders use the Internet to contact their victims.[35]

The preparation of the commission of a terrorist act constitutes an individual enterprise taking the form of one of the actions described exhaustively in Art. 421-2-6 CP. The article provides the following exhaustive list of actions that are defined as individual terrorist enterprises:

- Research, procurement, or production of dangerous objects or substances, whether the procurement or the maintenance of these objects or substances are illegal or not (Art. 421-2-6 para.1 n^{O} 1 CP);

- Collection of information on places or persons that facilitates their surveillance with a view for to a terrorist attack (Art. 421-2-6 para. 1 n^{O} 2a CP);

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- Training for armed conflict and production of the relevant means (Art. 421-2-6 para. 1 n^{O} 2b CP);
- Visiting websites for the procurement of documents to instigate terrorist acts (Art. 421-2-6 para. 1 n^{O} 2c CP);
- Staying in a terror camp abroad (Art. 421-2-6 para. 1 n^{O} 2d CP).

This provision also applies explicitly in the cases of *terrorisme par reference* and *terrorisme écoloqique* in accordance with Art. 421-2-6 para. 2 CP.[36] The norm depicts the will of the French legislator to refrain from deriving criminal liability in cases of terrorist offences from participation in a terrorist organization according to Art. 421-2-1 CP. This step was necessary for the prosecution of persons committing or preparing terrorist offences by themselves, namely operating individually and not in their role as members of a specific terrorist organization. This could be the case, for instance, when a person plans a terrorist attack without belonging to a terrorist organization, e.g., looking for instructions on the making of explosives on the Internet, preparing videos with communiqués to be broadcast after the terrorist attack, or travelling to a terror camp abroad to take part in the militants' training. Such individuals clearly show a terrorist potential; without this provision, however, under the old regime, these persons could at best be prosecuted for preparatory acts, e.g., the illegal procurement of illegal weapons and explosives, meaning that terrorist potential was more or less disregarded.[37]

Of the 251 proceedings in conjunction with the *Charlie* attack, 117 persons have been prosecuted on the grounds of terrorism glorification and direct provocation, only 20 of them ending up with imprisonment sentences. Since the *Charlie* attack, a vast amount of prosecutions has been initiated on the basis of this provision. As demanded in a circular[38] of the Minister of Justice, the criminal justice system should be particularly intolerant as regards any expression of glorification of terrorist acts and anti-Semitic ideology or instigation to hatred. Consequently, the practice of criminal justice to massively prosecute individuals on the grounds of this provision has been heavily criticized, especially in the context of the criminal law doctrine that considers such prosecutions to be "exceptional justice."[39]

3. Reinforcing the legal framework with new provisions (on the financing of terrorism)

The financing of terrorism is defined as to supply (*fournissant*), to gather (*reunissant*), or to manage (*gérant*) money, valuable items, or other goods, which are either used in the actual commission of a terrorist attack or designed to be used for terrorist purposes in general. In both variations, it is necessary that the financing individual is aware of the assets and the purpose of their use. Criminal liability for the terrorist financing acts is not connected to the actual commission of the terrorist attack for which the assets have been offered. This has enabled the French criminal justice system to prosecute the financing ringleaders of terrorist organizations. Their prosecution had always been quite problematic, since the mere (neutral) act of offering one's assets could not in itself be considered criminally relevant.[40]

Approximately two months after the *Charlie* attack, the French Finance Minister *Sapin* announced a new "national action plan" targeting particularly terrorist financing, as the most effective way to stop terrorist attacks at their source, by depriving terrorist organizations of their logistics. The plan consists of eight principal measures divided into the following three categories or "pillars" (on the basis of the purpose they serve):

- Reducing anonymity in the economy in order to facilitate the tracking of suspicious transactions (the identification pillar);

- Increasing the exercise of due diligence by financial stakeholders, so that they can fully benefit from this transparency (the surveillance pillar);
- Reinforcing the capacities to freeze assets aimed at the funding of terrorist attacks (the action pillar).

The first pillar already addressed during the (current) first semester of 2015 is the action pillar, by consulting financial stakeholders in order to find the best practices for the implementation of freezing measures on both movable and immovable assets as well as by calling for greater diligence by on the part of banking institutions and large-scale financial establishments. The implementation of the identification pillar measures will start with the entry into force of an amendment to the French Monetary and Financial Code on 1 September 2015, which reduces the limit on authorized cash payments both for residents and for non-residents of France. In addition, a decree issued after consultation with the Conseil d'État will be enacted on 1 January 2016 to increase the capacities of the French agency for the fight against money laundering and terrorism financing (*Traitement du renseignement et action contre les circuits financiers clandestins*, hereafter: TRACFIN),[41] so as to include the monitoring of every transaction over €10,000 within one account (deposits and withdrawals alike). On the same date, the obligation of declaration of capital transferred physically from other EU countries to France by natural persons when it exceeds the (present) limit of €10,000 will be extended to apply further to freight and express freight in order to enable customs. Also on 1 January 2016, the proposed 4th European "Anti-money Laundering" Directive[42] is to be incorporated into French law, putting a limit to the use of reloadable prepaid cards by requiring an ID of the card holder (or the purchaser of a card) when the transaction exceeds a specific (relatively small) amount of money.

As far as the surveillance pillar is concerned, by decree enactment starting on 1 January 2016, the requirement to provide an ID for currency exchange transactions will be established for all such transactions over €1,000. Furthermore, payment accounts used by natural persons to deposit or withdraw cash and receive or send transfers, such as the Nickel-accounts,[43] estimated to total approximately 80,000 accounts by April 2015, will be included in the National Centralized Bank Accounts Register (*Fichier national des comptes bancaires et assimilés,* hereafter: FICOBA[44]), making it possible to monitor suspicious transactions. In the meantime, since the first half of 2015 already, consultation with financial institution stakeholders has started with the purpose of setting the threshold for the so-called "transactions of unusually high sums." It will require enhanced due diligence on the part of financial institutions and firms, in the form of checks regarding the origins of funds, the identity of the recipients, and the grounds for such transactions.[45]

IV. Conclusion

This paper has shown that, in a very short time, France has engaged in a legislative fever, aiming to boost – once more – the capacities of the criminal justice system and the law enforcement agencies in the prevention of terrorist attacks. The paper has highlighted that the will to increase surveillance lies at the core of these developments, with the introduction of the various counterterrorism databases, the forthcoming simplified authorization of procedures for collection and management of data and intelligence, as well as the planned elimination of anonymity for financial transactions. Apart from these legislative developments, individuals have been fiercely prosecuted on the basis of the latest provisions of the CP with regard to the public glorification and preparation of terrorist acts.

France had a fairly comprehensive – and constantly updated – counterterrorism legal framework in place that increasingly provided broad competences to the law enforcement agencies, even without the aforementioned forthcoming developments; yet terrorist attacks of the extent of the *Charlie* attack still take place. Inevitably, considerable concerns emerge as to the efficiency of existing legislation and its application by the law enforcement agencies. As far as legislation on intelligence and surveillance mechanisms are concerned,

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the *Charlie* attack has exhibited the systemic failures or weaknesses: According to French officials, the surveillance of one of the perpetrators had offered nothing for over two years, and the monitoring of another had already been abandoned for the same reason; their case was no longer deemed a priority, and the competent counterterrorism team allowed the surveillance order on them to expire.[46] Several months after the expiration of the order, the *Kouachi* brothers burst through the doors at *Charlie Hebdo* and killed 12 persons. Limited (human) resources, mistakes in the analysis of products of intelligence, slow action due to the complicated competences of the French intelligence agencies? No matter which factors led to the failure of surveillance, the French legislature insisted on considering the incident not to be a failure, but an insufficiency in relation to a disproportionate imminent (terrorist) threat: this is the reason why an increase in the surveillance measures was opted for, even if this solution may not be quite compatible with the French tradition of respect for human rights and fundamental freedoms. It remains to be seen whether this scheme of practically turning post-*Charlie* France into post-9/11 US will be the right approach or not, in terms of ensuring effectivity, fairness, and respect for human dignity in the criminal justice administration.

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1. The *Action Directe* was a radical left-wing underground organization, active in France between 1979 and 1987, which perpetrated a series of gun assaults and assassinations. See more in: M. Y. Dartnell, *Action Directe: Ultra-left terrorism in France 1979–1987*, London 1993, 73–165; W. Dietl, K. Hirschmann and R. Tophoven, *Das Terrorismus-Lexikon: Täter, Opfer, Hintergründe*, Frankfurt 2006, 87–88.↩
2. On the activities of these separatist groups in France, see: A. Pérez Agote, *Prophétie auto-réalisée et deuil non résolu. La violence politique basque au XXI^e siècle*, in: X. Crettiez and L. Muchielli (eds.), *Les violences politiques en Europe: un état des lieux*, Paris 2010, 105–137; W. Dietl, K. Hirschmann and R. Tophoven, *Das Terrorismus-Lexikon: Täter, Opfer, Hintergründe*, Frankfurt 2006, 57–61; H. Kushner, *Encyclopedia of Terrorism*, Thousand Oaks 2003, 256–257; R. Ramsay, *The Corsican Time-Bomb*, Manchester 1983, 118–119 ; 200–201 and 205.↩
3. As factors for the targeting of France by Islamist organizations have usually been considered the expansionist policy in France's history (from the crusades era till the second colonial empire), the military presence of France in Muslim territories (e.g., in Djibouti), support for regimes that dissociate themselves from Islamist values (e.g., in the Maghreb countries), the French principle of *laïcité* and the relevant laws that are seen as opposing to Islamic symbols, as well as the determination of the criminal justice system to eliminate terrorists and their accomplices. N. Cettina, *The French Approach: Vigour and Vigilance*, in: M. van Leeuwen (ed.), *Confronting Terrorism: European Experiences, Threat Perceptions and Policies*, The Hague 2003, 72–75.↩
4. On the French Court of State Security, see: A. Oehmichen, *Terrorism and Anti-Terror Legislation: The Terrorised Legislator?* Antwerp 2009, 295–296.↩
5. A. Oehmichen, *Terrorism and Anti-Terror Legislation: The Terrorised Legislator?* Antwerp 2009, 291.↩
6. Loi n° 86-1020 du 9 septembre 1986 relative à la lutte contre le terrorisme.↩
7. See among others: S. Dagron, *Country Report on France*, in: C. Walter et al. (eds.), *Terrorism as a Challenge in National and International Law: Security versus Liberty?*, Berlin 2004, 267–309; D. Bigos and C. Camus, *Overview of the French anti-terrorism strategy* (WD 2), in: R. Neeve et al. (eds.), *First inventory of policy on counterterrorism (research in progress)*, The Hague 2006, 1–76.↩
8. Ordonnance n° 59-147 du 7 janvier 1959 portant organisation générale de la défense.↩
9. More on the *plan vigipirate* is available on the official website of the French government: http://www.risques.gouv.fr/menaces-terroristes/le-plan-vigipirate. See also: N. Cettina, *L'antiterrorisme en question: De l'attentat de la rue Marbeuf aux affaires corses*, Paris 2001, 112–115; N. Cettina, *The French Approach: Vigour and Vigilance*, in: M. van Leeuwen (ed.), *Confronting Terrorism: European Experiences, Threat Perceptions and Policies*, The Hague 2003, 76; A. Oehmichen, *Terrorism and Anti-Terror Legislation: The Terrorised Legislator?* Antwerp 2009, 296.↩
10. Loi n° 96-1235 du 30 décembre 1996 relative à la détention provisoire et aux perquisitions de nuit en matière de terrorisme.↩
11. Loi n° 95-73 du 21 janvier 1995 d'orientation et de programmation relative à la sécurité.↩
12. Loi n° 95-73 du 21 janvier 1995 d'orientation et de programmation relative à la sécurité ; Loi n° 96-1235 du 30 décembre 1996 relative à la détention provisoire et aux perquisitions de nuit en matière de terrorisme.↩
13. Loi n° 96-647 du 22 juillet 1996 tendant à renforcer la répression du terrorisme et des atteintes aux personnes dépositaires de l'autorité publique ou chargées d'une mission de service public et comportant des dispositions relatives à la police judiciaire.↩
14. See the frequently reformed Art. 62-2 of the Code of Criminal Procedure.↩
15. A. Oehmichen, *Terrorism and Anti-Terror Legislation: The Terrorised Legislator?* Antwerp 2009, 108–113.↩
16. Loi n° 2001-1062 du 15 novembre 2001 relative à la sécurité quotidienne.↩
17. More in: A. Oehmichen, *Terrorism and Anti-Terror Legislation: The Terrorised Legislator?* Antwerp 2009, 314–317.↩
18. Loi no 2006-64 du 23 janvier 2006 relative à la lutte contre le terrorisme et portant dispositions diverses relatives à la sécurité et aux contrôles frontaliers.↩
19. D. Bigos/C. Camus, *Overview of the French anti-terrorism strategy* (WD 2), in: R. Neeve et al. (eds.), *First inventory of policy on counterterrorism (research in progress)*, The Hague 2006, 55.↩
20. A. Oehmichen, *Terrorism and Anti-Terror Legislation: The Terrorised Legislator?* Antwerp 2009, 291–292.↩
21. See among others: F. Foley, *Countering Terrorism in Britain and France: Institutions, Norms and the Shadow of the Past*, Cambridge 2013, 121–129.↩
22. The relative French term is "*renseignement*." This term can be interpreted – according to the context – either as "information" or as "intelligence" and is used to refer to the French intelligence services. The term *renseignement* is (also) defined in the dictionary *Petit Robert 2008* as the information that relates to the enemy and which poses public order and security at risk.↩

23. The main French intelligence services were the (*Direction Centrale des*) *Renseignements Généraux* ["(Headquarters of) General Intelligence Services," hereafter: RG] and the *Direction de la Surveillance du Territoire* ("Direction for the Surveillance of the territory," hereafter: DST) until 2008, when they were subjected to an extensive reform by President Sarkozy. Since then they co-exist as one *Direction Centrale du Renseignement Intérieur* ("Headquarters of Home Intelligence," hereafter: DCRI). The (former) DST and its department nowadays within the DCRI are also responsible for the prosecution of (potential) terrorists.↩
24. Loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés.↩
25. The RG was established by decree (*Décret n° 85-1057 du 2 octobre 1985 relatif à l'organisation de l'administration centrale du ministère de l'intérieur et de la décentralisation*, reformed in 2010) and it belonged to the Ministry of the Interior. Its duty was the collection of information on potential terrorists and terrorist suspects on French territory. For more, see G. Segell, *The French Intelligence Services*, in: T. Jäger/A. Daun (eds.), *Geheimdienste in Europa: Transformation, Kooperation und Kontrolle*, Wiesbaden 2009, 44–45.↩
26. On the re-organization of the databases in the context of the 2008 reform, see: D. Batho and J. A. Bénisti, Rapport d'information n° 1548 sur les fichiers du police (submitted to the Assemblée Nationale), Paris 2009, 63–65.↩
27. Décret n° 2008-632 du 27 juin 2008 portant création d'un traitement automatisé de données à caractère personnel dénommé « EDVIGE ».↩
28. The databases were created by decrees: Décret no 2009-1249 du 16 octobre 2009 portant création d'un traitement de données à caractère personnel relatif à la prévention des atteintes à la sécurité publique and Décret no 2009-1250 du 16 octobre 2009 portant création d'un traitement automatisé de données à caractère personnel relatif aux enquêtes administratives liées à la sécurité publique.↩
29. For a brief listing of the measures: http://www.gouvernement.fr/action/la-lutte-contre-le-terrorisme ; http://www.francetvinfo.fr/faits-divers/attaque-au-siege-de-charlie-hebdo/manuel-valls-annonce-une-serie-de-mesures-pour-lutter-contre-le-terrorisme_796077.html.↩
30. The terms "intelligence services" and "secret services" are used interchangeably.↩
31. For the authority's composition and mission, see Arts. L.831-1–L.833-6 Cod. Séc. Int. (as proposed in the intelligence bill).↩
32. According to Art. 6, nonies ordonnance n° 58-1100 du 17 novembre 1958 relative au fonctionnement des assemblées parlementaires.↩
33. Loi n° 2014-1353 du 13 novembre 2014 renforçant les dispositions relatives à la lutte contre le terrorisme.↩
34. S. Pietrasanta, Rapport fait sur le projet de loi (n° 2110), renforçant les dispositions relatives à la lutte contre le terrorisme (submitted to the Assemblée Nationale), Paris 2014, 10–13.↩
35. J.-J. Hyest and A. Richard, Rapport sur le projet de loi, adopté par l'Assemblée Nationale après engagement de la procédure accélérée, renforçant les dispositions relatives à la lutte contre le terrorisme (submitted to the Sénat), Paris 2014, 42–48; S. Pietrasanta, Rapport fait sur le projet de loi (n° 2110), renforçant les dispositions relatives à la lutte contre le terrorisme (submitted to the Assemblée Nationale), Paris 2014, 91–94.↩
36. Ibid., 91–94.↩
37. For a detailed analysis of the counterterrorism provisions in the French Penal Code, see: V. Chalkiadaki (dissertation, forthcoming), *Gefährderkonzepte in der Kriminalpolitik – Rechtsvergleichende Analyse der deutschen, französischen und englischen Ansätze*.↩
38. http://www.justice.gouv.fr/publication/circ_20150113_infractions_commises_suite_attentats201510002055.pdf.↩
39. See more online: http://www.lexpress.fr/actualite/societe/apologie-du-terrorisme-peines-d-exception-ou-justice-exemplaire_1642597.html; http://tempsreel.nouvelobs.com/societe/20150120.OBS0379/apologie-du-terrorisme-les-juges-vont-ils-trop-loin.html; http://www.lexpress.fr/actualite/societe/la-repression-de-l-apologie-du-terrorisme-se-durcit_1640337.html.↩
40. C. André, *Droit Pénal Spécial*, Paris 2013, point n° 436; E. Dreyer, *Droit Pénal Spécial*, Paris 2012, point n° 761–762; V. Malabat, *Droit Pénal Spécial*, Paris 2013, point n° 899.↩
41. TRACFIN is an intelligence services unit belonging to the Ministry of Finance and is responsible for the tracking of suspicious financial activity, such as money-laundering or terrorist financing. It has national jurisdiction for the collection of the relevant information and the production of intelligence, as provided by the *décret n° 2011-28 du 7 janvier 2011 relatif à l'organisation et aux modalités de fonctionnement du service à compétence nationale TRACFIN*). For more information: http://www.economie.gouv.fr/files/tracfin_avril2015.pdf .↩
42. CELEX n° 52013PC0045.↩
43. The Nickel-accounts are low-cost accounts launched in 2013 by the company "Financière des Paiements Électroniques" (Electronic Finance and Payment). They are very easily opened at specific certified tobacconists and aim to lure people on the fringes of the social system who may be unable to open a conventional bank account. See more online: http://compte-nickel.fr/.↩
44. FICOBA is the database for the identification of every bank account in France and for the provision of information on accounts of individuals or companies to specific individuals or organizations for the pursuit of their missions. For more information: http://www.cnil.fr/documentation/fichiers-en-fiche/fichier/article/ficoba-fichier-national-des-comptes-bancaires-et-assimiles/.↩
45. More on the official website of the French Ministry of Finance: http://www.economie.gouv.fr/direct-presentation-plan-daction-pour-lutter-contre-financement-terrorisme; http://www.economie.gouv.fr/files/dp_en_countering_terrorist_financing.pdf.↩
46. http://www.nytimes.com/2015/02/18/world/gaps-in-surveillance-are-clear-solutions-arent.html.↩

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