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Allocation of roles among the authorities in countering violent extremism and terrorism

Federal Council Report in Fulfilment of Postulate
21.4598 Marti Min Li dated 16 December 2021

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List of abbreviations

FNIA	Foreign Nationals and Integration Act, SR 142.20
AS	Official Compilation of Federal Legislation
OAG	Office of the Attorney General of Switzerland
OFCOM	Federal Office of Communications
FOCBS	Federal Office for Customs and Border Security
BBI	Federal Gazette
BGE	Federal Supreme Court ruling
FSCA	Federal Supreme Court Act, SR 173.110
FCP	Federal Criminal Police (part of fedpol)
SCA	Swiss Citizenship Act, SR 141.0
SCO	Swiss Citizenship Ordinance, SR 141.01
Cst.	Federal Constitution of the Swiss Confederation, SR 101
ISA	Internal Security Act, SR 120
FDJP	Federal Department of Justice and Police
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), SR 0.101
fedpol	Federal Office of Police
FST P	Police Command Staff
JCLA	Juvenile Criminal Law Act, SR 311.1
JCrimPC	Juvenile Criminal Procedure Code, SR 312.1
CTM	Cantonal threat management
CAPA	Child and adult protection authority
SCG	Security Core Group
CCJPD	Conference of Cantonal Justice and Police Directors
CCPCS	Conference of Cantonal Police Commanders of Switzerland
CIS	Cantonal intelligence service (in each canton)
NAP	National Action Plan to Prevent and Counter Radicalisation and Violent Extremism (NAP 1: 2017-22; NAP 2: 2023-27)
NATA	National Counter-Terrorism Committee
FIS	Federal Intelligence Service
IntelISA	Intelligence Service Act, SR 121
IntelISO	Intelligence Service Ordinance, SR 121.1
NCPT	National Commission for the Prevention of Torture
PCTA	Federal Act on Police Counterterrorism Measures, AS 2021 565
RIPOL	Computerised Police Search System
SEM	State Secretariat for Migration
FCSC	Federal Council Security Committee
SIS	Schengen Information System
SCEPP	Swiss Centre of Expertise in Prison and Probation
SR	Classified Compilation of Federal Legislation
CJAA	Criminal Justice Authorities Act, SR 173.71
SCC	Swiss Criminal Code, SR 311.0
CrimPC	Swiss Criminal Procedure Code, SR 312.0
SSN	Swiss Security Network
DDPS	Federal Department of Defence, Civil Protection and Sport
ISSO-FIS	Ordinance on the Federal Intelligence Service Information and Storage Systems, SR 121.2
PESA	Precursors Act, SR 941.42

Overview

On 8 June 2022, the National Council adopted Postulate 21.4598 Marti Min Li 'Overview of measures to fight terrorism and extremism'. The text of the postulate reads:

'The Federal Council is instructed to present a report setting out which levels and bodies are responsible for combating which forms of terrorism and extremism and what legal basis exists in each case. This report must also describe the allocation of responsibilities and powers, for example, between the federal police and cantonal police forces, the federal police and the intelligence service, as well as the criminal justice system.'

The justification for the postulate is given as follows:

'In an effort to fight terrorism and violent extremism, additional powers and tasks have been granted to the federal police, cantonal police forces, the intelligence service and the criminal justice system in recent years. In particular, their ability to act before a criminal offence is committed has been enhanced. In addition, different terms and definitions are used depending on legislation. In some cases, the responsibilities and boundaries do not always seem clear. This can create problems from both a legal and security policy standpoint. An overview could help to avoid duplication of efforts and identify any legislative gaps.'

This report presents three fictitious case studies to illustrate the following:

- the tasks, powers and responsibilities of the various federal, cantonal and communal authorities in relation to the phase of radicalisation or the activity;
- the distinction between extremism, violent extremism and terrorism;
- any shortcomings in the fight against violent extremism and terrorism along with suggested improvements where needed.

The report is structured as follows: Firstly, an introduction (Chapter 1) outlines the general forms of violent extremism and terrorism in Switzerland and the range of measures taken to address them. The report also discusses the process of radicalisation and the interaction between the relevant actors. The main part of the report (Chapter 2) sets out the tasks, powers and responsibilities of the Confederation, cantons, communes and civil society when it comes to recognising and fighting violent extremism and terrorism. This is done by presenting three fictitious case studies that focus on the onset of radicalisation, criminal acts and their consequences, and incident management following a terrorist attack. These fictitious case studies are the best way to explain the individual thematic aspects and the roles of the various actors. Specific aspects are described in further detail in information boxes. Finally, the report contains a summary and recommendations (Chapter 3).

1 Introduction

Violent extremism undermines public safety and order and poses a threat to Switzerland's internal and external security.¹ Terrorism also poses a threat to Switzerland's internal and external security, giving rise to terrorist attacks such as the fatal knife attack in Morges in 2020 and the one in Lugano that same year, which left two people injured. Also worth mentioning is the anti-Semitic attack of 2 March 2024 in Zurich, which has not yet been tried in court. This latter case involved a fifteen-year-old teenager who stabbed and seriously injured an Orthodox Jew. However, terrorist attacks are not a new phenomenon in Switzerland. The Palestinian attacks on aviation in Kloten in 1969/1970 are a good case in point.² In 1993, Jura separatists detonated a car bomb in the old town of Bern. Overall, the Western world has seen an increase in the prevalence of terrorist support and attacks, with the last few years being heavily characterised by jihadist-motivated attacks. In November 2023, FIS counter-terrorism officials identified 41 individuals posing a potential risk.³ Since 2012, the FIS has identified 779 users who have spread jihadist ideas over the Internet in or from Switzerland or who have networked with like-minded people in Switzerland and abroad. In addition, there have been 92 cases since 2001 in which jihadist-motivated individuals have travelled from Switzerland to conflict zones (Syria, Iraq, Somalia, Afghanistan, Pakistan or the Philippines) or are still in these areas.⁴

How do the Swiss authorities deal with this? What roles do the Confederation, cantons and communes have, which authorities are responsible for what and on what legal basis? This report examines these questions. In order to clarify the **tasks, powers and responsibilities of the authorities**, it is important to understand the following:

- **Extremism should not be equated with violent extremism** even though both non-violent and violent extremism reject the values of liberal democracy and the rule of law.⁵ In the case of **violent extremism**, there are certain objectives that one seeks to achieve by **committing** acts of violence (e.g. damage to property; offences against life and limb; violence and threats against authorities and officials; arson attacks; explosives attacks), **spurring** acts of violence (e.g. by producing and disseminating violent propaganda; calling for the use of violence; planning, carrying out or supporting actions by violent extremist groups; actively participating in meetings of violent extremist groups) or **endorsing** acts of violence (e.g. through membership in a violent extremist group, repeated participation in meetings of violent extremist groups or the distributing of depictions of violence and violent extremist propaganda).⁶
- **A distinction should also be drawn between violent extremism and terrorism.** Both the IntelSA and the ISA⁷ describe **terrorist activities** as *'attempts to influence or change the framework of the state that are realised or encouraged by committing or threatening to commit serious offences or by*

¹ See Federal Council Dispatch on the Foreign Nationals Act, BBl [2002 3709](#) p. 3814

² In 1969, the Popular Front for the Liberation of Palestine (PFLP) attacked an aircraft belonging to the Israeli company El Al while it was on the tarmac at Zurich-Kloten Airport, fatally injuring the co-pilot. In 1970, the PFLP brought down a Swissair aircraft over Würenlingen - none of the 47 passengers and crew members, including 10 Swiss nationals, survived. In the same year, the PFLP hijacked a Swissair aircraft and three other aircraft from other airlines, forcing them to land in the Jordanian desert. They held the 400 or so passengers hostage for nearly a month before releasing them in exchange for prisoners.

On 3 May 2016, the interdepartmental working group FDFA-FDJP-DDPS drafted a report entitled '1970', which provides a complete account of the incident. The report is available here (in German):

https://www.eda.admin.ch/dam/eda/de/documents/publications/Geschichte/interdepartementale-arbeitsgruppe-1970_de.pdf

³ The terms 'person at risk of radicalisation' and 'potential perpetrator of a terrorist offence' are clarified in the info box on p. 17

⁴ See: <https://www.vbs.admin.ch/de/terrorismus> (posted on 30 November 2023)

⁵ See [Federal Council Report](#) in fulfilment of Postulate [17.3831](#) Glanzmann-Hunkeler 'Griffige Instrumentarien gegen Gewaltextremismus' ('Effective tools to counter violent extremism'), p. 3: 'The Federal Council defines extremism as those political tendencies that reject the values of liberal democracy and the rule of law. Movements and parties, ideas, attitudes and behavioural patterns that reject the democratic constitutional state, the separation of powers, the multi-party system and the right to opposition are generally described as extremist. Extremists replace political opposition with the distinction between friend and foe. As a consequence, they strictly reject other opinions and interests and believe in certain, supposedly irrefutable political and social aims or laws.'

⁶ [Federal Council Report](#) in fulfilment of Postulate [17.3831](#) Glanzmann-Hunkeler 'Griffige Instrumentarien gegen Gewaltextremismus' ('Effective tools to counter violent extremism'), p. 3 ff.; Art. 19 para. 2 let. e IntelSA

⁷ Several new provisions were added to the ISA following enactment of the PCTA. These provisions came into effect on 1 June 2022.

spreading fear and alarm'.⁸ The Swiss Criminal Code describes terrorism as '*committing violent felonies aimed at intimidating the population or coercing a State or an international organisation to act or refrain from acting*'.⁹

- The **boundaries** between violent extremism and terrorism are **often fluid**, because violent extremism can develop into terrorism.¹⁰ If, for example, violent extremist groups or individuals aiming to change the state order no longer 'only' commit acts of violence to achieve their goals, but go on to threaten or commit serious criminal offences, such as the killing of people, or spreading *fear and terror*, the threshold for terrorism is crossed.¹¹ In many cases, it is only possible to say in retrospect whether violent extremism or terrorism took place.¹²
- Violent extremism and terrorism can also have ties to organised crime. The relationship between normal criminal activity and politically motivated terrorist violence is referred to as the '**crime-terror nexus**'. The term expresses the notion that the activities of terrorists and organised crime can reinforce each other. On one side, terrorists can be directly or indirectly involved in organised crime activities, e.g. by financing themselves through drug trafficking or buying weapons and ID cards from criminal groups. On the other side, criminal groups may resort to terrorism-like forms of violence in order to achieve their goals.¹³
- A distinction should also be made between **rampage attacks (e.g. mass shootings)** and acts of terrorism. In such cases, the offence is not mainly committed for political, ethnic or religious reasons,¹⁴ but rather in response to exceptional personal circumstances and/or psychological stress: The term 'rampage' implies anger or rage.¹⁵ Rampage attacks are not intended to change the state order as such. In contrast, terrorist and violent extremist activities are carried out with the intention of influencing or changing the state order.¹⁶ The difference between rampage attacks and terrorism or violent extremism lies in the motive. In most cases, however, the perpetrator's motives are not clear and can only be assessed after the act.
- The **ideological reasons** for violent extremist and terrorist activities **can come from a wide spectrum of sources**. In addition to jihadism, other ideologies (ethno-nationalist, right-wing, left-wing or monothematic extremism) can also serve as motivation for terrorist activities. The ideologies or aspects of these can also be mixed (e.g. anti-Semitism among right-wing extremists and jihadists). Terrorism has existed for centuries and can be found in all cultures and religions.¹⁷

⁸ Art. 19 para. 2 let. a IntelISA and Art. 23e para. 2 ISA

⁹ Art. 260^{ter} para. 1 let. a no 2 SCC (Participating in a terrorist organisation), Art. 260^{quinquies} para. 1 SCC (Financing terrorism), Art. 260^{sexies} para. 1 SCC (Recruiting, training and travelling with a view to committing a terrorist offence); see info box on p. 21 for definitions.

¹⁰ See info box on p. 12

¹¹ [Federal Council Report](#) in fulfilment of Postulate [17_3831](#) Glanzmann-Hunkeler '*Griffige Instrumentarien gegen Gewaltextremismus*' ('Effective tools to counter violent extremism'), p. 6. Fear and terror can be spread, for example:

- through targeted and systematic interference against elected officials or the functioning of institutions (e.g. by sending bomb threats to judges or by physically assaulting national councillors),
- by influencing electoral and voting behaviour through the threat of acts of violence against the population (e.g. attacks on polling stations), or
- by committing acts of grievous bodily harm against dissidents or minorities ('mass murders', assassinations) in order to deliberately eradicate certain views, lifestyles or values and/or to instil fear and terror in entire sections of the population.

¹² See [Consultation 2022 on the amendment of the Intelligence Service Act, Explanatory Report](#) p. 10: 'Whether an individual case can be considered a violent extremist or terrorist activity depends on the aims, intensity and severity of the act and its context. More often than not, this can only be determined after the crime has been committed. In some cases, however, the motive remains unclear even after the act. Moreover, the factors that influenced the motive (general glorification of violence, psychological disorders, social exclusion, ideological radicalisation without being truly ideological in nature, etc.) cannot be ascertained.'

¹³ See RAJAN BASRA and PETER R. NEUMANN, 'Criminal Pasts, Terrorist Futures: European Jihadists and the New Crime-Terror Nexus', in: *Perspectives on Terrorism*, Vol. 10, No 6 (December 2016), p. 25-40. NEUMANN identifies four components that can transform criminal behaviour into subsequent terrorist activity. Firstly, he suggests that a criminal can easily be radicalised by extremists if they use the redemption narrative. Secondly, Neumann notes that prisons can act as a networking opportunity in cases where people are otherwise vulnerable and removed from traditional social support networks. Thirdly, he explains how the skills required for criminal activities can be transferred to terrorist activities. Ex-offenders tend to be more familiar with covert behaviour and potentially have better access to weapons. Finally, Neumann reports that petty crime is itself a method of financing terrorist activities. With the typical focus being placed on large banking transactions, such financing sources typically fall under the radar.

¹⁴ See MADLEN SELL, '*Anatomie des Amoklaufs*' ('Anatomy of a rampage'), Diss. Heidelberg 2018 / Springer VS Wiesbaden 2021, p. 9

¹⁵ MARTIN H. W. MÖLLERS Hrsg., '*Wörterbuch der Polizei*' ('Police Dictionary'), 3rd edition, Munich 2018, Term '*Amoklauf*' ('rampage')

¹⁶ See Fn. 8

¹⁷ See MARCEL WÜRMLI, '*Einleitung / Terror woher - Terror wohin?*' ('Introduction / Where does terror come from and where does it lead?'), in: PHILIPP JUCHLI, MARCEL WÜRMLI, '*Auswirkungen des Terrorismus auf Recht, Wirtschaft und Gesellschaft*' ('Effects of terrorism on law, economy and society'), St. Gallen / Bern, 2006, p. 1-13, in particular p. 3f.; WILHELM DIETL, '*Terrorismus gestern und heute*' ('Terrorism then and now'), in: Hanns Seidel Foundation eV, '[Politische Studien](#)' ('*Political Studies*') [53/2002](#), p. 23 ff.

Violent extremism and terrorism are countered through **prevention** and **repression (criminal prosecution)**; **coordination** between the relevant federal and cantonal authorities and other countries is particularly important. This includes with **judicial enforcement** (prison) authorities, which have a mandate for **social rehabilitation and reintegration**. It is worth noting that fighting violent extremism and terrorism is **not just a matter of criminal prosecution**, as this (often) occurs 'too late'. It is also not just a matter of intelligence services detecting the threat early on and law enforcement averting it; various measures need to be taken at an early stage. Prevention in the social environment is very important. Preventing radicalisation is a task for society as a whole, not just for the security agencies. This means that efforts need to be made mainly by civilian institutions (schools, training centres, CAPA, parental counselling services, etc.) and private individuals (e.g. parents, sports clubs).¹⁸

- **Early prevention in the social environment** tackles the root causes of the problem. Radicalisation tendencies are first noticed where a person is engaged in everyday life, e.g. at school, at work or in a sports club. Perceptions by street-level social workers, victim support centres, CAPA, social and migration authorities or the police are also important, e.g. when they are called to intervene after family disputes or in the case of domestic violence. **Once the first signs of radicalisation are recognised**, it is important to contact the **official communal and cantonal authorities**.¹⁹
- The **FIS** is responsible for the **early detection** of violent extremism and terrorism and proper assessment of the situation for policymakers. The FIS also helps the cantons to safeguard internal security, manages the national intelligence network of federal and cantonal security agencies and liaises with partner services abroad. The FIS bases its activities on the IntelSA and associated ordinances (IntelSO; ISSO-FIS). To this end, it works with the cantonal intelligence services, **CIS**, which are generally part of the respective police force.²⁰ CIS gather information either on behalf of the FIS or for their own purposes pursuant to the IntelSA or the corresponding cantonal legislation. They also carry out preventive dialogue.
- The **cantonal and municipal police forces** are mainly responsible for **averting danger**. Their actions are dictated by specific cantonal legislation.²¹ The **federal government is also responsible for preventing crime**. In the event of a terrorist threat to internal or external security, **fedpol** can order various measures (entry bans, expulsions, ordering police counter-terrorism measures, etc.). fedpol can also confiscate propaganda material of a violent nature. **The Federal Office for Customs and Border Security (FOCBS)** controls the cross-border movement of goods and persons and is involved in the fight against violent extremism, terrorism and cross-border crime. In police matters, it is responsible for detection and generally refers incidents to the competent authority unless the canton has reached a specific agreement authorising the FOCBS to act independently. The FOCBS may temporarily seize propaganda material of a violent nature and report this to the FIS. After consulting the FIS, fedpol decides whether to seize, confiscate or release the material.²²
- **Criminal proceedings** refer to the investigation, trial, sentencing and subsequent punishment of criminal offences by the competent state bodies.²³ Prosecution also helps to dissuade potential perpetrators of a terrorist offence from following through with their criminal intentions and improves the general public's understanding of the law.

¹⁸ See info box on p. 13, covering both threat management and the NAP.

¹⁹ See info box on p. 13, covering both threat management and the NAP.

²⁰ Federal Council Dispatch on the PCTA, BBl [2019 4751](#) p. 4757

²¹ See info box on p. 15

²² See explanations on p. 16

²³ MARTIN H. W. MÖLLERS, 'Wörterbuch der Polizei' ('Police Dictionary'), 3rd edition, Munich 2018, Term 'Strafverfolgung' ('prosecution'); see BGE 140 I 353 E. 5.1: 'All criminal proceedings are based on the presumption that a criminal offence has been committed. Criminal procedural law therefore sets out the precautions to be taken and the procedural steps that must be taken in order to verify the veracity of this presumption and, if necessary, to assess the offence. If, however, the aim is to specify the means of preventing criminal offences or ascertaining whether they have indeed been committed, this is a matter for police law, which the cantons are generally responsible for enacting.'

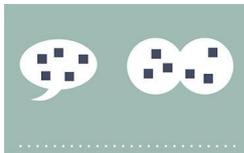
- The work done during **judicial enforcement** is intended to prevent recidivism and new criminal offences and thus protect society.²⁴ **Therapeutic measures, confronting one's offence and social rehabilitation/reintegration**²⁵ help offenders to develop social, professional and educational skills while in prison. The aim is to improve their chances of living a crime-free life after serving their sentence.

In the case of terrorism, the (usually gradual) radicalisation process can be divided into different **stages**. Depending on the stage, **different agencies are responsible** and **different tools are available**.²⁶



Stage 1 – Prevention prior to radicalisation

- Cantonal and communal authorities (particularly educational institutions, cantonal and communal police services, violence prevention services, child and adult protection services, social welfare services, migration offices, victim support services, prison staff)
- FIS (together with CIS)
- Civil society actors (advisory services, street-level social workers, etc.)
- fedpol (funding and awareness-raising measures)
- SSN (coordination of implementation of NAP against radicalisation)



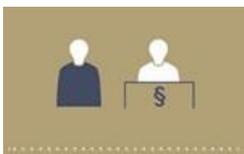
Stage 2 – Threat detection and response

- FIS (together with CIS)
- State Secretariat for Migration (SEM) with cantonal migration offices
- Cantonal and communal police services, members of cantonal threat management teams
- fedpol
- FOCBS



Stage 3a – Criminal proceedings and charges

- Office of the Attorney General of Switzerland and cantonal prosecution offices with investigations being conducted by fedpol as well as by cantonal and communal police²⁷ in coordination and cooperation with the FIS
- Cantonal juvenile prosecution services
- Compulsory measures courts
- Federal Office of Justice (international mutual legal assistance)



Stage 3b – Conviction

- Federal Criminal Court and cantonal criminal courts
- Federal Supreme Court
- Cantonal juvenile courts

²⁴ [Grundlagen für den strafrechtlichen Sanktionenvollzug in der Schweiz](#) ('Guidelines on incarceration in Switzerland') (CCJPD, 13 November 2014), p. 3

²⁵ See document entitled '*Disengagement im Justizvollzug*' ('Disengagement during incarceration') p. 4f., more information can be found on the website of the Swiss Centre of Expertise in Prison and Probation (SCEPP), Section '[Unsere Themen / Prävention von Radikalisierung](#)': 'Interventions to deal with radicalised and violent extremist offenders are often discussed in the literature under the term **disengagement**. This term refers to a social and psychological process that reduces a person's willingness to engage in violent extremism and their involvement in it to such an extent that **they are no longer at risk of committing or participating in violent acts**. Disengagement is therefore intended to **bring about change at the behavioural level**. In contrast, the term **deradicalisation** implies **efforts to make a person's views less extreme**. However, disengagement is a simpler way of achieving the prison objective of helping people to lead a crime-free life. Research shows that interventions aimed at changing behaviour are more likely to succeed than those aimed at achieving deradicalisation. Moreover, there are legal limits on the use of deradicalisation for re-education purposes.'

See also SSN, [References dated 25 November 2020](#) with measures to encourage disengagement and reintegration.

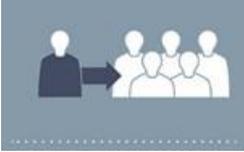
²⁶ See the general presentation of the stages of radicalisation (responsible bodies, instruments and means) in the pamphlet on the prevention of terrorism in Switzerland: <https://www.fedpol.admin.ch/fedpol/en/home/terrorismus/terrorismus-aktuelle-lage/Phasen.html>

²⁷ Federal jurisdiction applies to felonies associated with a criminal or terrorist organisation if the offences were committed to a substantial extent abroad or in two or more cantons with no single canton being the clear focus of the criminal activity (Art. 24 para. 1 CrimPC). For more detailed information on OAG jurisdiction, see info box on p. 23.



Stage 4 – Judicial enforcement (prison)

- Judicial enforcement authorities (referring authority; case management)
- Correctional facilities
- Probation office



Stage 5 – After judicial enforcement

- Judicial enforcement authorities (managing transition back into society)
- Migration authorities and social welfare services
- Cantonal and municipal police
- Child and adult protection services (CAPA)
- FIS (together with CIS)
- SEM
- fedpol

The tools used to fight violent extremism and/or terrorism have been **expanded** in recent years. For example, on 1 September 2017 the **InteISA** came into force. Other key instruments include the following:

- The first **National Action Plan to Prevent and Counter Radicalisation and Violent Extremism (NAP)** for 2017-2022 was a significant step forward in federal, cantonal and municipal preventive action.²⁸ The specific measures contained in the NAP, which may vary depending on the local context, have raised awareness of the issue of radicalisation in all cantons. The focus of the second NAP 2023-2027 remains closer interdisciplinary cooperation.²⁹ Special attention is given to prevention among adolescents and young adults, as they are particularly vulnerable and susceptible to radical ideologies. Implementation of the NAP is overseen by a strategic support group³⁰ subject to policy oversight.³¹ The SSN chairs the strategic monitoring group and supports policy oversight. Cantons, communes, towns and civil society wishing to run NAP-related projects and programmes aimed at preventing and combating all forms of radicalisation and violent extremism may qualify for federal subsidies.³² In particular, these projects and programmes raise awareness, provide information, impart knowledge and advice and offer further training.
- **Partial revision of the Swiss Criminal Code (SCC):** Since 1 July 2021 several **amendments to the SCC** have come into force. Among other things, the existing provision against criminal organisations, which was introduced in the 1990s mainly to combat mafia organisations, has been tightened and explicitly tailored to include criminal prosecution of activities involving terrorist organisations (Art. 260^{ter} SCC). The provision now provides for a custodial sentence of up to 10 years. For persons who exert a decisive influence in a terrorist organisation, the custodial sentence is now set at a minimum of three and a maximum of twenty years. In addition, a new criminal provision makes recruitment, training and travel for terrorist purposes as well as financing such travel punishable (Art. 260^{sexies} SCC), without the need for ties to a specific terrorist organisation. In such cases, the court can impose a maximum custodial sentence of five years.

²⁸ www.svs.admin.ch: [National Actions Plan to Prevent and Counter Radicalisation and Violent Extremism \(2017-2022\)](#)

²⁹ www.svs.admin.ch: [National Action Plan to Prevent and Counter Radicalisation and Violent Extremism \(2023-2027\)](#)

³⁰ The strategic support group for the NAP is comprised of representatives of the federal, cantonal and municipal authorities.

³¹ Policy oversight of the NAP is handled by the heads of the FDJP and the DDPS as well as by the presidents of the CCJPD, the Intergovernmental Conference on Issues relating to Military, Civil Protection and Fire Services (RK MZF), the Conference of Cantonal Ministers of Education (EDK), the Conference of Cantonal Ministers of Social Affairs (CDSS), the Conference of Municipal Security Directors and the Association of Swiss Communes (ASC). It is chaired by the FDJP.

³² Federal funding is governed by the Ordinance on Measures to Prevent and Combat Radicalisation and Violent Extremism (SR 311.039.5). Funding applications can be submitted to the SSN office. fedpol then decides whether to grant funding based on the SSN office's assessment.

- **Federal Act on Police Counterterrorism Measures (PCTA):** The PCTA resulted in the amendment of several existing federal acts, in particular the ISA. The new legal provisions have been fully in force since 1 June 2022.³³ PCTA measures allow the police (at the request of the FIS, a canton or possibly a commune) to intervene at an early stage if there are concrete and current indications that a person will carry out a terrorist act. The ISA provides for various measures: Obligation to report and take part in preventive dialogue, contact bans, inclusion and exclusion, ban on leaving the country, confinement to a specific premises, electronic surveillance and cell phone location tracking.³⁴
- The **Precursors Act**³⁵, which came into force on 1 January 2023, regulates the acquisition, possession, transfer, import and transit by private individuals of substances that can be used to produce explosives (such as hydrogen peroxide in disinfectants). This act also covers the manufacture of explosive substances and the supply of precursors on the market. In certain concentrations, these substances can be used to produce homemade explosives for terrorist attacks. On the Swiss market, around 100 products containing such substances are impacted by this act. These are mainly sold in specialised shops such as pharmacies or drugstores. Depending on the substance and concentration, these products can only be purchased with a licence issued by fedpol. Private individuals and staff in the affected sectors can report suspicious transactions or activities to fedpol at any time.³⁶

³³ AS [2022 300](#). Some provisions already came into force on 1 October 2021 (AS [2021 565](#)).

³⁴ Art. 23k – Art. 23q ISA; see info box on p. 12

³⁵ Federal Act on Precursors for Explosive Substances (PESA; SR [941.42](#))

³⁶ [Press release](#) dated 30 December 2022: 'Das neue Gesetz über Vorläuferstoffe für Explosivstoffe tritt in Kraft' ('New Federal Act on Precursors for Explosive Substances comes into effect'); [Press release](#) dated 25 May 2022: 'Federal Council adopts the Ordinance on Precursors for Explosive Substances and decides to bring it into effect on 1 January 2023'

2 Three case studies to illustrate the role, powers and responsibilities of federal, cantonal and communal authorities and civil society in recognising and countering violent extremism and terrorism

The case studies in this chapter relate to individuals whose motives relate to **jihadism**. These examples are the best illustration of how the authorities proceed, their various tasks, responsibilities and resources, as well as the applicable legal basis. The federal, cantonal and communal authorities generally treat cases of radicalisation and violent extremist or terrorist activities in the same way regardless of whether the motives are **ethno-nationalist, right-wing, left-wing or monothematic extremist** in nature.

2.1 Case study 1 (early stages of radicalisation)

2.1.1 X becomes progressively radical

X is a 16-year-old living in Switzerland. He holds both Swiss citizenship and that of another country. He shows marked changes in his behaviour and appearance. He changes his circle of friends. His classmates notice that he increasingly refers to his religion in conversations as the only true and correct one. He also begins to criticise others because of their faith. He shows his classmates videos of radical sermons in which homosexuality is described as a disease and Sharia law is advocated. He begins to systematically refuse to shake hands with female teachers. The teacher decides to talk with the parents. This reveals that X is increasingly meeting with like-minded people and regularly attends a mosque that is known to have a very radical interpretation of the Koran.³⁷

His behaviour is indicative of radicalisation. The key question is: where does the boundary lie between a radical ideology – everyone is free to think what they want – and behaviour that poses a danger to third parties or is even punishable by law? **Which authorities** are involved when such radicalisation tendencies become apparent?

The fact that certain statements and views are considered extremist, disturbing or shocking **does not in itself constitute grounds for action to be taken by the intelligence services or for preventive or repressive intervention** by the police and prosecution authorities.

IntelSA measures do not come into play if a person holds radical or extremist views. The person needs to be involved in violent extremist or even terrorist activities. The FIS can only take action in the case of radical, hate-spreading statements if the content and/or context of the hate speech calls for violence within the meaning of the IntelSA (i.e. the commission, advocacy or abetting of acts of violence).³⁸

If a person has radical or extremist views, this **does not in itself mean that there is a (specific) threat to police assets**. For example, fedpol can only take action based on the new police counter-terrorism measures introduced in the ISA if there is a specific and actual danger of terrorist activities posing a threat to Switzerland's internal security and if other measures, particularly those taken by the cantons, are not sufficient.³⁹ An extremist ideology and mindset alone cannot be the trigger for

³⁷ For a typical example of the radicalisation process, see the feature film '*Al-Shafaq – Wenn der Himmel sich spaltet*' (Al-Shafaq - When the Sky Splits) (2019) by ESEN IŞIK

³⁸ [Federal Council Report](#) in fulfilment of Postulate [17.3831](#) Glanzmann-Hunkeler '*Griffige Instrumentarien gegen Gewaltextremismus*' ('Effective tools to counter violent extremism'), p. 4

³⁹ Art. 23f para. 1 ISA.

preventive police measures. However, if the radicalisation of a person leads to terrorist activities, then the use of police counter-terrorism measures is possible.⁴⁰

Having radical or extremist views does not in itself constitute a criminal offence. However, the more the individual publicises their radical or extremist views and acts in accordance with them, the more likely it is that a criminal offence will be committed. For example, racial discrimination may be punished under Art. 261^{bis} para. 4 SCC.⁴¹ Anyone who recruits individuals for terrorist purposes is – depending on the specific circumstances – liable to criminal prosecution under Art. 260^{ter}, Art. 260^{sexies} SCC and/or Art. 74 para. 4 IntelSA.

Nevertheless, there is a risk that X will become further radicalised and possibly violent. Radicalisation processes generally begin gradually. They start with an inner conviction and lead to the defence of an ideology and then ultimately to endorsing violence. In extreme cases, they can lead to violent acts and terrorist activities. Spreading hatred against those who think differently can also have negative effects, even if it does not itself incite violence or is punishable for other reasons: it can pave the way for acts of violence.⁴² It is vitally important to recognise early signs of radicalisation and prevent the person from spiralling into negativity and violence. The focus at this stage is mainly on **social counselling and support**. Social and educational institutions in particular play an important role in preventing any subsequent criminal offences. In any case, radicalisation can never be tackled by intelligence services, law enforcement or criminal legislation alone.

People close to individuals who are becoming radicalised are often the first to notice changes, even if they may not be able to correctly identify them. Family members, friends, professionals from schools, social and youth workers, caregivers, club coaches and teachers are the ones who can identify radicalisation tendencies at an early stage. In the case of X, it is the parents and teachers who identified these tendencies. With the parents' consent, X's teacher contacts a **counselling centre specialised in addressing issues relating to extremism**.

In order to avoid dangerous developments, radicalisation tendencies and threats must be identified, assessed and defused as early as possible.⁴³ This requires information sharing between authorities and institutions. The first step is to ensure that the right people are notified of serious indications of radicalisation. The second step is for the authorities and institutions to take an interdisciplinary approach and initiate targeted measures in a well-coordinated manner.⁴⁴ Depending on the task/assignment, specialist centres for extremism and/or the **cantonal threat management (CTM) team** play a key role.

Municipal and cantonal contact points for radicalisation and violent extremism (**often referred to as 'specialist centres for extremism'**) have the necessary know-how and experience in psychosocial counselling and dialogue. They have specific expertise in the area of radicalisation, understand radicalisation processes and know how to defuse them. In accordance with federal structures, they are part of different government agencies, responsible for integration, security, social welfare or child and adult protection. The specific organisational form is ultimately of secondary importance. The decisive

⁴⁰ Federal Council Dispatch on the PCTA, BBl 2019 4751 p. 4756

⁴¹ For example, when Jews are publicly labelled as 'Saujuden' (Jewish pigs), see BGE 140 IV 67 E. 2.2.2. p. 69

⁴² The spread of hate can mark the beginning of a development towards violent extremist or even terrorist behaviour. On 17 November 2021, OFCOM published a [report](#) entitled 'Intermediaries and communication platforms', which states the following (p. 24): 'Although hate speech is not exclusively illegal content, it is often on the borderline of legal and can be problematic. If offered a permanent public forum with potentially wide distribution, initially subtle forms of discrimination can over time turn into open hate speech and subsequently sometimes into violence, especially if other factors are added (e.g. private problems, feelings of powerlessness, economic hardship). Research shows a clear link between online violence in the form of hate speech on social media platforms and acts of violence against persons from corresponding population groups.'

⁴³ See [Federal Council Report](#) in fulfilment of Postulate 13.3441 Feri 'threat management, particularly in cases of domestic violence', p. 6f.; *Radikalisierung in der Schweiz – ein Handbuch der Anlauf- und Fachstellen aus Basel, Bern, Genf und Winterthur* ('Radicalisation in Switzerland - a handbook from support and counselling centres in Basel, Bern, Geneva and Winterthur'), May 2022, p. 76; available here: <https://www.svs.ad-min.ch/de/themen-praevention-radikalisierung/aktualitaeten.html>

⁴⁴ Policy paper on quality standards for cantonal threat management (CTM), July 2022, Fn. 10, available here: <https://www.skppsc.ch/de/projekte/kantonales-bedrohungsmanagement/>

factor is that there is now an extensive network of such centres throughout Switzerland.⁴⁵ This corresponds to **Measure No 10 of the NAP for 2017-2022**.⁴⁶

Threat management is mainly a police matter and therefore falls under the responsibility of the cantons.⁴⁷ **CTM** is designed to recognise and assess dangerous developments in people at an early stage. If there is an increased risk of an act of violence, this should be prevented. The aim of threat management is to find a long-term solution that does not lead to violence.⁴⁸ One of the main features of CTM is systematic and multi-institutional cooperation between all the authorities and agencies involved, as well as the allocation of responsibilities across all stages of the process. This cooperation is institutionalised. Typically, the person at risk is involved in the process.⁴⁹ CTM focuses in particular on domestic violence, stalking, threats against authorities as well as on violent extremism and radicalisation.⁵⁰ Measure No 5.1 of **NAP 2023-2027** provides for the introduction, consolidation and further development of interdisciplinary threat management.⁵¹

Cooperation between specialist centres and CTM is important and close. Specialist centres often contact people who display a tendency toward radicalisation before the case is escalated to threat management level. If the suspicion of radicalisation is confirmed, the specialist centre contacts the relevant CTM authorities. In some cases, however, the opposite occurs: CTM refers people to a specialist centre so that they can seek counselling on a voluntary basis. Depending on the cantonal structures and the circumstances of each case, other agencies may also be involved, such as child and adult protection authorities, psychiatric services, social welfare and migration authorities, public prosecutors and juvenile prosecution offices.

Each specialist centre for extremism assesses X's risk potential, evaluates the extent to which X is radicalised and what measures can be taken to reverse the process. It provides advice to the parents and the school so that they can analyse the causes of the radicalisation and defuse the situation. It assesses the extent to which psychosocial problems are affecting X and how his resources can be strengthened. At the same time, teachers are made aware of the processes and causes of radicalisation and a common approach is agreed upon.⁵² Breaking off contact could accelerate radicalisation. The authorities involved have therefore come to the conclusion that existing good contacts should be intensified, especially those with teachers. In addition, a contact and support network is established around the pupil.⁵³ This is done on the one hand via the family and sports clubs, which seeks to deepen contact with him. In addition, the school psychologist and social workers involved in providing care and support to X are also brought in.

As a result, X behaves more calmly towards his classmates at school. He also attends another mosque that does not propagate extremist/jihadist ideas. A radicalisation process can often be stopped by involving specialist centres and/or a cantonal threat management and social support team. Unfortunately, however, there are also cases where this does not work and the radicalisation process continues.

2.1.2 X resorts to violence for the first time

A few weeks later, the cantonal police receive a call in the late evening hours that several people are loitering at a Jewish cemetery. The cantonal police dispatch a patrol car and apprehend a group of youths who are smashing gravestones and smearing racist slogans on graves in the cemetery. X is

⁴⁵ The Swiss Security Network provides a regularly updated list of these specialist centres on its website: [https://www.svs.admin.ch/de/themen-
praevention-radikalisierung.html](https://www.svs.admin.ch/de/themen-praevention-radikalisierung.html)

⁴⁶ NAP 2017-2022, p. 16, available here: www.svs.admin.ch: National Action Plan to Prevent and Counter Radicalisation and Violent Extremism

⁴⁷ [Federal Council Report](#) in fulfilment of Postulate [13.3441](#) Feri 'Threat management, particularly in cases of domestic violence', p. 4

⁴⁸ [Federal Council Report](#) in fulfilment of Postulate [13.3441](#) Feri 'Threat management, particularly in cases of domestic violence', p. 5

⁴⁹ [Federal Council Report](#) in fulfilment of Postulate [13.3441](#) Feri 'Threat management, particularly in cases of domestic violence', p. 6

⁵⁰ [Federal Council Report](#) in fulfilment of Postulate [13.3441](#) Feri 'Threat management, particularly in cases of domestic violence', p. 6

⁵¹ NAP 2023-2027, p. 20 no. 5.3, available here: www.svs.admin.ch: [NAP gegen Radikalisierung und Extremismus 2023-2027](#)

⁵² 'Radikalisierung in der Schweiz – ein Handbuch der Anlauf- und Fachstellen aus Basel, Bern, Genf und Winterthur' ('Radicalisation in Switzerland - a handbook from support and counselling centres in Basel, Bern, Geneva and Winterthur'), May 2022, p. 71f.; available here: <https://www.svs-rns.ch/en/prevention-of-radicalisation-and-violent-extremism>

⁵³ 'Radikalisierung in der Schweiz – ein Handbuch der Anlauf- und Fachstellen aus Basel, Bern, Genf und Winterthur' ('Radicalisation in Switzerland - a handbook from support and counselling centres in Basel, Bern, Geneva and Winterthur'), May 2022, p. 54 und 71f.; available here: <https://www.svs-rns.ch/en/prevention-of-radicalisation-and-violent-extremism>

among them. He claims to have done this out of hatred for Jews in order to 'make a statement' and talks about a global conspiracy. The cantonal police take his personal details and carry out a preliminary investigation into the matter. In line with cantonal police law, the police officers order X and his friends to leave the area and notify them that they are prohibited from entering the Jewish cemetery for the next 24 hours. As a result of their intervention, the police **have averted the risk of further offences being committed** (disturbing the peace of the dead, damage to property, racial discrimination). As there is also a suspicion of **criminal conduct**, the police open an investigation pursuant to Article 306 f. of the Criminal Procedure Code (CrimPC). Because X is a minor, the Juvenile Criminal Procedure Code (JCrimPC) is applied. The police also notify the cantonal intelligence service of their findings.

In general, the cantons are responsible for policing. The Confederation only has individual and limited powers.⁵⁴ Under **cantonal police legislation**, the cantonal police are tasked with preventing criminal offences, averting threats to public safety and order and eliminating disturbances. If a person poses a specific threat – including a violent, extremist or terrorist threat – the cantons can initiate preventive measures to avert danger (e.g. surveillance, preliminary enquiries, preventive dialogue with the person at risk of radicalisation) or use coercive police measures as permitted by police legislation applicable in their canton. They can also order the removal of a person who endangers public safety.⁵⁵

By engaging in racially or anti-Semitic violence, aggressively smashing Jewish gravestones, X **has crossed the threshold to violent extremism**. Violent extremism can constitute a number of different offences. Depending on the offence, **either the cantons or the Confederation** are responsible for prosecution.⁵⁶ In the case of **minors**, the cantons always have jurisdiction (Art. 2 and Art. 3 para. 2 let. b. JCrimPC). This is for educational reasons: The social integration of young people is paramount in juvenile criminal law. The young person should be judged by a 'local' court in the area where he or she lives.⁵⁷

No terrorist act has been committed. The act in itself lacks the necessary intensity and seriousness and there has been no attempt to spread fear and terror.⁵⁸ X's behaviour is also not punishable under Art. 260^{ter}, Art. 260^{sexies} SCC or Art. 74 para. 4 IntelSA.⁵⁹

⁵⁴ See Federal Council Report in fulfilment of Postulate Malama 10.3045 dated March 2010. Clarification of responsibility over internal security matters, BBI [2012 4459](#) p. 4486:

According to **Art. 57 para. 2 Cst.**, the Confederation and the cantons coordinate their efforts in the area of internal security. This provision **confers powers to the federal government in a narrowly defined sense**. The federal government has legislative authority if

- these are security issues that **fall at least partly under federal jurisdiction** and which, **in the view of the Confederation, require coordination that includes or is led by the Confederation**, and
- federal jurisdiction in such cases is **not merely marginally important**.

See the **inherent constitutional authority of the Confederation to safeguard Switzerland's internal and external security**: Federal Council Dispatch on the PCTA BBI [2019 4751](#), p. 4845 f.:

'In the area of internal and external security, the question of whether the Federal Constitution assigns legislative powers to the Confederation is not solely determined by the text of the Constitution. Rather, powers arising from the very existence of the Confederation as a state fall under federal jurisdiction even if they are not expressly mentioned in the Federal Constitution. According to recent practice, Article 173 para. 2 Cst. is cited when powers are not explicitly assigned to the Confederation by the Constitution. It is an inherent federal power to take the necessary internal and external measures required to protect itself, its institutions and bodies. The Confederation must safeguard the existence of the Swiss state and defend it against existential threats.'

⁵⁵ See [Police Act from the Canton of Aargau](#) (Classified Compilation 531.200), in particular §28a Preliminary police investigations, §35a and §35b Preventive surveillance, §35c Preventive undercover search, §35d Preventive undercover investigation, §46c Warning of a potential danger, §34 Removal and entry ban.

⁵⁶ [Federal Council Report](#) in fulfilment of Postulate [17.3831](#) Glanzmann-Hunkeler 'Griffige Instrumentarien gegen Gewaltextremismus' ('Effective tools to counter violent extremism'), p. 14f. The following list is not exhaustive:

Prosecution powers of the cantons: Art. 122 SCC (Serious assault), Art. 123 SCC (Common assault), Art. 125 SCC (Assault through negligence), Art. 126 SCC (Acts of aggression), Art. 133 SCC (Brawling), Art. 134 SCC (Attack), Art. 135 SCC (Representations of acts of violence), Art. 144 SCC (Criminal damage), Art. 180 SCC (Threatening behaviour), Art. 186 SCC (Unlawful entry), Art. 221 SCC (Arson), Art. 222 SCC (Negligent arson), Art. 223 SCC (Causing an explosion), Art. 259 SCC (Public incitement to commit a felony or act of violence), Art. 260 SCC (Rioting), Art. 261^{bis} SCC (Discrimination and incitement to hatred), Art. 262 (Disturbing the peace of the dead).

Prosecution powers of the Confederation: Art. 224 SCC (Misuse of explosives and toxic gases with criminal intent), Art. 226 SCC (Manufacture, concealment and transport of explosives and toxic gases).

Prosecution powers shared by the cantons and the Confederation (see Art. 23 para. 1 let. h CrimPC): Art. 285 SCC (Violence and threats against public authorities and public officials).

⁵⁷ Federal Council Dispatch on Harmonisation of Criminal Procedure Law, BBI [2006 1085](#) p. 1353

⁵⁸ See [Federal Council Report](#) in fulfilment of Postulate [17.3831](#) Glanzmann-Hunkeler 'Griffige Instrumentarien gegen Gewaltextremismus' ('Effective tools to counter violent extremism'), p. 6: 'Whether an individual case is a violent extremist or terrorist activity depends on the aims, intensity and severity of the act and its context. Violent extremism can develop into terrorism [...]: If, for example, violent extremist groups or individuals seeking to change the state order threaten or commit *serious criminal offences*, such as the indiscriminate killing of people, or *spread fear and terror* in order to achieve their aims, the threshold for terrorism has been crossed. Terrorism can therefore be regarded as the ultimate consequence of violent extremism. Conversely, however, it is not a synonym for all forms of politically motivated violence.'

⁵⁹ The term 'terrorism' is defined in IntelSA/ISA and SCC see Introduction on p. 6 and info box on p. 20.

The cantonal juvenile court finds X guilty under Art. 262 SCC (Disturbing the peace of the dead)⁶⁰, Art. 144 SCC (Criminal damage)⁶¹ and Art. 261^{bis} SCC (Discrimination and incitement to hatred, i.e. racial discrimination)⁶². The sentencing is based on JCLA⁶³, which applies to persons between the ages of 10 and 18. This legislation is mainly intended to ensure the protection and proper upbringing of young people.⁶⁴ Since X is found to have acted with criminal intent, the court imposes a **penalty**.⁶⁵ As a **protective measure**⁶⁶ it also orders that a social worker be assigned to supervise X.⁶⁷ With this measure, parents retain their parental rights but are required to provide the social worker with background information and updates. If necessary, the Office of the Juvenile Prosecutor can also issue instructions to the parents.

2.1.3 X becomes more radical

Shortly afterwards, FOCBS employees find out that writings and music that incite hatred against Jews are to be imported into Switzerland. The addressee is X. The FOCBS seizes the material and forwards it to the FIS, which analyses and forwards it to fedpol for examination. fedpol concludes that it is violent propaganda material under Art. 13e ISA. fedpol orders the violent propaganda material to be seized and confiscated from X. The material is to be destroyed after the appeal deadline has expired.

Art. 13e ISA and Art. 3 of the Ordinance on Administrative Policing Measures of the Federal Office of Police and on the Information System HOGAN (SR 120.52) form the basis for the seizure, confiscation and forfeiture of material that may serve propaganda purposes and whose content specifically and seriously incites violence against people or property (violent propaganda material). Sustainable and effective prevention requires that material whose content specifically and seriously incites violence against people or property be seized, confiscated and forfeited, even if it is 'only' intended for personal use. Art. 13e ISA supplements Art. 259 SCC, which makes public incitement to violence a criminal offence.

The material is seized by the police and customs authorities and forwarded to fedpol via the FIS. fedpol decides on the seizure and forfeiture of violent propaganda material after consulting the FIS. The FIS cannot order these measures itself (see the next box on the separation of tasks between the FIS and fedpol). If a criminal offence is suspected, the seizing authority forwards the material to the competent prosecution authority.

Article 13e ISA covers writings, audio or visual recordings, images and other objects or representations that specifically and seriously incite violence against people or property. 'Ideological' symbols (e.g. swastika) alone do not in principle constitute a direct incitement to violence.⁶⁸ However, they can be used by individuals and groups to stir up (racist, violent extremist or terrorist-motivated) hatred, fear and/or calls for violence and thus promote their causes, posing a threat to the state and the public.⁶⁹

⁶⁰ See BGE 109 IV 129 E. 1 (Herv. d. Verf.): 'The offence covers acts of aggression, such as destruction and damage, and possibly also the defilement of graves, gravestones and urns. (...) Punishment should be (...) the significant and brutal **attack on the sense of piety**.'

⁶¹ **These criminal offences are cumulative.**

See PATRICK UHRMEISTER in: DAMIAN K. GRAF Hrsg., annotated commentary on SCC, Bern 2020, Rz. 10 p. 1393 (Herv. d. Verf.): '**Because of the difference in legal interests**, there is real competition between Art. 262 no 1 para. 1 and Art. 144.'

⁶² **These criminal offences are cumulative.**

See MARCEL ALEXANDER NIGGLI, racial discrimination – commentary on Art. 261^{bis} SCC and Art. 171c MCC, 2nd edition, Zurich 2007, Rz. 1791 p. 558 (Herv. d. Verf.): 'It is easy to imagine racial discrimination coinciding with other offences. If the legal interests of the individual (life, limb, health, property, honour, etc.) are at stake, then - with (...) exception - genuine competition must always be assumed (...). The legal interest protected by **Art. 261^{bis} SCC (human dignity) is not protected by any other criminal provision**' and margin no. 1796 p. 560: 'In the case of attacks universal legal interests, genuine competition is generally to be assumed if an offence under Art. 261^{bis} SCC is also committed (...). This applies in particular with regard to (...) disturbance of the peace of the dead (Art. 262 SCC).'

See ANDREAS DONATSCH, MARC THOMMEN, WOLFGANG WOHLERS, *Criminal Code IV*, Zürich 2017, Racial discrimination (Art. 261^{bis}), p. 244: 'True competition is to be assumed if discrimination is accompanied by the punishable impairment of further individual or general legal interests, such as damage to property accompanied by the display of corresponding slogans.'

⁶³ Juvenile Criminal Law Act (JCLA; SR 311.1)

⁶⁴ Art. 2 para. 1 JCLA

⁶⁵ Art. 11 para. 1 JCLA

⁶⁶ Art. 10 para. 1 JCLA

⁶⁷ Art. 12 JCLA

⁶⁸ Federal Council Dispatch on the amendment of the ISA, BBI [2005 5613](#) p. 5627 in conjunction with 5640.

⁶⁹ See Federal Council Report on Postulate [21.3450](#) from the Security Policy Committee of the Council of States: 'Hate speech. Are there any gaps in legislation?', p. 16.

Several parliamentary procedural requests have been made to **prohibit the public use of National Socialist (or other extremist) symbols**.⁷⁰ In its report dated 15 December 2022, the Federal Office of Justice (FOJ) analysed the legal situation regarding a ban on National Socialist, racially discriminatory, violence-inciting and extremist symbols.⁷¹

Shortly afterwards, the FIS receives information from a foreign partner service that X is attempting to establish contact with Islamist groups abroad, is networking there and has apparently had online and physical contact with religious cleric A.B., known for his fundamentalist views and support for a religious system that justifies corporal punishment of women as a disciplinary measure. He also sympathises with young men fighting for their faith in the Middle East and using violence against 'infidels'. He advocates a fundamental restructuring of the state and society: 'God-ordained' norms should replace secular law across the globe. A.B.'s posts on social media have between 50,000 and 250,000 views. He voices his beliefs to hundreds of people at public events. He is considered one of the most influential Islamist clerics in the region. A.B. now also wants to appear at an event in Switzerland and spread his fundamentalist ideology in a 'lecture' (although it is not possible to conclusively assess whether and to what extent X had any influence on preacher A.B. travelling to Switzerland). The FIS notifies fedpol and proposes that an **entry ban** be considered.

The preventive surveillance measures of the **FIS** are designed to **detect and prevent** a threat from a person or group of persons. Although the FIS can monitor individuals and preventively contact them (or have them contacted), the FIS cannot order measures to be taken against an individual in order to avert the threat. The police authorities are responsible for this.

In order to differentiate between counter-terrorism tasks, the intelligence service (purpose: early detection) uses the term **person at risk of radicalisation**, whereas the police (purpose: threat prevention) use the term **potential perpetrator of a terrorist offence**. The FIS considers an individual to be a 'person at risk of radicalisation' if he or she is likely to become a threat to the internal or external security of Switzerland. At the very least, there is concrete evidence that the individual wishes to carry out a terrorist attack.⁷² A 'person at risk of radicalisation' then becomes a 'potential perpetrator of a terrorist offence' within the meaning of Art. 23e para. 1 ISA, if there are concrete and current indications that he or she intends to commit a terrorist offence.⁷³ The term 'person at risk of radicalisation' is broader and the criteria are less specific than the term 'potential perpetrator of a terrorist offence' under Art. 23e ISA.

The separation intended by lawmakers between the gathering of information about a person by the FIS and the ordering of measures against a person by the police is reflected in the **organisational separation of the FIS and fedpol**. It is therefore not the FIS that orders entry bans or expulsion orders to safeguard the internal or external security of Switzerland, but rather fedpol, following consultation with the FIS (Art. 67 para. 4 and Art. 68 para. 1 FNIA).⁷⁴ The new counter-terrorism measures introduced in the ISA by the PCTA are also based on this notion: although the FIS (like the cantons) can request the measures, it cannot order them itself.

As with the separation between intelligence gathering activities and preventive police measures, lawmakers have also established an **organisational separation between the FIS and prosecution authorities**. The purpose of intelligence investigations is to clarify whether there is a security-related threat to Switzerland. In contrast, criminal investigations are intended to ascertain whether a criminal offence has been committed and/or to identify the guilty party. Police investigations focus on the facts

⁷⁰ See Motion [23.4318](#) from the Legal Affairs Committee of the Council of States, Parliamentary initiative [23.400](#) from the Legal Affairs Committee of the National Council, Motion Binder-Keller [21.4354](#), Parliamentary initiative Barrile [21.524](#), Parliamentary initiative Suter [21.525](#) incl. [Committee report](#).

⁷¹ Report from the Federal Office of Justice on the prohibition of national socialist and racist symbols: [Press release](#) and [Report](#) dated 15 December 2022.

⁷² See <https://www.vbs.admin.ch/de/terrorismus>: 'Person at risk of radicalisation' refers to individuals who currently pose a heightened risk and a primary threat to Switzerland's internal and external security. (...) Persons at risk of radicalisation include both jihadists and persons who support and encourage other forms of terrorism.'

⁷³ Art. 23e para. 1 ISA: 'A person is considered a potential terrorist if there are concrete and current indications that he or she intends to engage in terrorist activity.'

⁷⁴ Federal Council Dispatch on the PCTA, BBl [2019 4751](#) p. 4764f.

in the case and evidence and are less concerned about security policy aspects.⁷⁵ The organisational separation is expressed, for example, in Art. 60 IntelSA (Disclosure of personal data to domestic authorities).

Based on Art. 67 para. 4 FNIA, fedpol examines whether an entry ban against cleric A.B. is legally permissible. This measure requires that there be a threat to internal or external security. The term ‘threat to Switzerland’s internal or external security’ refers in particular to threats to the primacy of state authority in the military and political sphere, such as threats posed by terrorism and violent extremism.⁷⁶ In this case, fedpol affirms a terrorist-motivated threat. There is a high level of public interest in preventing A.B. from entering Switzerland. The proceedings are governed by the Administrative Procedure Act (APA; SR 172.021). A.B. is granted the right to be heard. Afterwards, fedpol issues the entry ban and enters it in the RIPOL and SIS databases. This entry in the SIS is designed to ensure that A.B. will be stopped, checked and turned back by the competent border control authority if he tries to travel to a Schengen country. Entry bans issued by fedpol are an effective means of averting a threat to Switzerland’s internal or external security.

In addition to fedpol, the **State Secretariat for Migration (SEM)** is also authorised to issue **entry bans**. SEM is responsible, among other things, for protecting public security and order (Art. 67 para. 1 let. c FNIA). fedpol is responsible protecting internal or external security – i.e. the security of the state.

fedpol and the FIS bring the case of X to **TETRA** (TErrorist TRAcking). In TETRA, the situation is continuously assessed, specific incidents are discussed and coordinated, existing measures are evaluated and new measures are proposed. In X’s case, the authorities involved conclude that the FIS should take over the case, as there are no solid indications of criminal behaviour and insufficient grounds to open a police investigation.

TETRA is an operational cooperation platform with the overarching objective of protecting Switzerland from terrorist activities and preventing its territory from being misused for the financing, logistical support or planning of terrorist activities in Switzerland or abroad. It was created in 2014 and is managed by fedpol. It brings together all the main federal authorities involved in counter-terrorism as well as the cantonal security authorities: the Federal Intelligence Service (FIS), the Office of the Attorney General of Switzerland (OAG), the Crisis Management Centre of the Federal Department of Foreign Affairs (FDFA), the Federal Office for Customs and Border Security (FOCBS), the State Secretariat for Migration (SEM), the Federal Office of Justice (FOJ) as well as the Conference of Cantonal Police Commanders of Switzerland (CCPCS) and the Police Command Staff (FST P). If necessary, TETRA involves other authorities, such as judicial enforcement authorities, in Swiss counter-terrorism efforts. TETRA and its objectives are based on the Swiss counter-terrorism strategy approved by the Federal Council in 2015.⁷⁷

Any of the authorities involved can submit a case to TETRA, depending on where and how the individual becomes a person of interest.

For a few months, X no longer draws negative attention. Then X suddenly pops up on the FIS’s **‘jihadism monitoring’** radar. The FIS notices that X has now become active in a number of jihadist forums. These forums contain numerous Islamist comments, but also statements that violence must be used if necessary to ‘convince’ the infidels. For the first time, X expresses a certain amount of sympathy for acts of violence, but does not actually spread propaganda himself.

⁷⁵ Federal Council Dispatch on the Intelligence Service Act, BBI [2014 2105](#), p. 2230.

⁷⁶ The following also constitute a threat to internal or external security within the meaning of Art. 67 or 68 FNIA: espionage, organised crime and acts and efforts that seriously jeopardise Switzerland’s current relations with other states or are aimed at changing the state order by force. More information can be found in the Federal Council Dispatch on the Foreign Nationals Act, BBI [2002 3709](#) p. 3813f.; see also Article 77b of the Ordinance on Admission, Period of Stay and Employment (ASEO, SR [142.201](#)).

⁷⁷ Counterterrorism strategy for Switzerland, dated 18 September 2015, BBI [2015 7487](#).

The FIS has various instruments at its disposal to detect threats and 'persons at risk of radicalisation'. One of these is '**jihadism monitoring**'. The FIS monitors relevant public websites, social media and forums used by jihadists.

The FIS also has other means of obtaining information at its disposal. Here a distinction is drawn between *information gathering measures that do not require authorisation*⁷⁸ and *information gathering measures that require authorisation*.⁷⁹ The hurdles for the use of information gathering measures requiring authorisation (IGMRA) are high.⁸⁰ It should be noted that **IGMRA cannot currently be used in response to violent extremist activities**.⁸¹ In its consultation draft on the revision of the IntelSA, the Federal Council proposes extending the scope of IGMRA to include violent extremism.⁸²

The CIS (which is part of the cantonal police force) decides to initiate **preventive dialogue** with X on behalf of the FIS. Art. 24 para. 1 IntelSA serves as the legal basis for the FIS request. The cantonal police contact X and inform him in a voluntary, direct conversation of the criminal consequences if he crosses the threshold of spreading terrorist propaganda. The aim of this preventative approach is to deter X from committing a criminal offence. It also signals to X that the security authorities are aware of his activities. As X is already being supervised at the CTM level, the approach is made in consultation with cantonal threat management officers.

Preventive dialogue has proven successful in the past (e.g. people have been dissuaded from travelling for jihadist purposes or from spreading violent propaganda). However, X is not very impressed and the cantonal threat management does not have the desired effect. The FIS learns from the CIS that X is deliberately bullying fellow pupils at school and making threats. Homosexual and queer people are particularly affected. He has also committed assaults against them. In addition, he makes derogatory comments towards women. The teachers, the social worker in charge and the police experts no longer get through to him. He increasingly isolates himself from 'people of other faiths'. X has been identified as being one of perpetrators of criminal damage at a synagogue. The FIS informs TETRA that, based on information from a partner intelligence service in a European country, X has attended a martial arts camp (where apparently shooting exercises also took place) – together with like-minded, highly radicalised individuals. The authorities regard X as an increasing threat. X's behaviour is becoming such that it must be assumed he will engage in terrorist activity (spreading terrorist propaganda or committing jihadist-motivated acts of violence against people).

The competent cantonal authorities then submit a request to fedpol to take **PCTA measures**. Specifically, the canton (Art. 23i ISA) asks for the following: the individual must report to the authorities and take part in discussions (Art. 23k ISA); the individual must cease all contact with like-minded, radicalised persons (Art. 23l ISA) and is prohibited from leaving the country (Art. 23n ISA). fedpol, together with the FIS and CTM, reviews the documents submitted to determine whether there are concrete and current

⁷⁸ This includes the following measures pursuant to IntelSA:

- viewing publicly accessible media, including the internet and social media (Art. 13);
- observation in public or generally accessible locations (Art. 14);
- recruitment and use of human sources (Art. 15);
- Alerts on persons and property, in particular in the Computerised Police Search System (RIPOL) and in the Schengen Information System (SIS) (Art. 16).

⁷⁹ Art. 26 IntelSA provides for the following measures:

- surveillance of post and telecommunications in accordance with the Federal Act on the Surveillance of Post and Telecommunications (SPTA, SR 780.1) or the use of special technical devices;
- use of localisation devices to establish the location and the movements of persons or objects;
- use of monitoring devices in order to listen to and record words spoken in non-public places or to observe and record events at non-public or not generally accessible locations;
- intrusion into computer systems and computer networks;
- search of premises, vehicles or storage facilities in order to procure objects or information there or information transmitted from there.

⁸⁰ Art. 27 IntelSA authorises the FIS to order an information gathering measure requiring authorisation if:

- a. there is a specific threat arising from: terrorist activities; espionage; NBC proliferation or the illegal trade in radioactive substances, war material and other weapons; an attack on critical infrastructure; or threat to other important national interests;
- b. the seriousness of the threat justifies the measure; and
- c. intelligence investigations so far have been unsuccessful or would otherwise be without prospect of success or unreasonably difficult.

Where the FIS intends to order an information gathering measure requiring authorisation, it must submit an application to the Federal Administrative Court (Art. 29 IntelSA) and clear the measure with the head of the DDPS (Art. 30 IntelSA). Before deciding on the measure, the head of the DDPS will consult the head of the FDFA and the head of the FDJP.

⁸¹ Art. 27 para. 1 let. a IntelSA *e contrario* in conjunction with Art. 19 para. 2 IntelSA

⁸² See [2022 consultation on amending the IntelSA, Explanatory Report](#) p. 10f.; s.a. [Federal Council Report](#) in fulfilment of Postulate [17.3831](#) Glanzmann-Hunkeler '*Griffige Instrumentarien gegen Gewaltextremismus*' ('Effective tools to counter violent extremism'), p. 11f.

indications of terrorist activity and whether existing cantonal measures have already been exhausted. This review shows that the social and preventive measures already in place have not been sufficient and that no further measures based on cantonal police law are available to counter the threat posed by X. After hearing X (right to be heard) and the canton, fedpol orders the three measures (Art. 23j ISA) for a period of six months (Art. 23g ISA). The canton is responsible for enforcement (Art. 23r ISA). Where possible, PCTA measures should not overshadow the low-threshold measures taken by the canton, but rather should accompany and supplement them. Criminal proceedings are then initiated for the criminal damage to the synagogue.

The term **terrorist activity** is described in Art. 23e para. 2 ISA and in Art. 19 para. 2 let. a IntelSA. The consistent definition of terrorist activity in the IntelSA and the ISA is appropriate, as both the FIS and fedpol are involved in prevention and work closely together.

Terrorist activities as defined in the IntelSA and ISA do not necessarily have to involve the direct use of violence. This is reflected in the tasks the FIS, which focus on the early detection and prevention of terrorist activities, and the preventive police measures of fedpol, which serve to avert threats.⁸³ Although the Swiss Criminal Code (SCC) describes terrorism as 'committing violent felonies aimed at intimidating the population or coercing a State or an international organisation to act or refrain from acting'⁸⁴, criminal behaviour may also be present without the use of (one's own) force. The corresponding elements of the criminal offence (participation/support for terrorist organisations⁸⁵; financing of terrorism⁸⁶; recruitment, training and travelling abroad with the intention of committing a terrorist offence⁸⁷) are already satisfied by actions taken *prior to* the use of force. In addition, the act of supporting [a criminal or terrorist organisation] is sufficient to establish these elements of the offence; it is not necessary for the person to use violence personally.

Preventive police measures can be taken before a criminal investigation is launched, after completion of a sentence or, under certain circumstances, during criminal proceedings if no other criminal procedure measure has been ordered that would have the same effect as a PCTA measure.⁸⁸

After that, things quieten down around X. He complies with the obligation imposed on him to attend preventive dialogue sessions and report on his activities. He also complies with the contact ban and does not leave Switzerland. The cantonal police have no new evidence of any further negative behaviour by X. Prohibiting X's contacts with his radicalised environment has proven to be an effective measure. The same applies to the obligation to engage in dialogue and take part in the other – parallel – social measures. The trained specialist staff succeed in counteracting the risk of escalation through dialogue. The risky thought and behaviour patterns are actively addressed through the discussions. His problematic circumstances have improved with the help of social work. X gives up the violent part of the ideology of his own accord and, thanks to support provided by his teachers, the school psychology office and his family, X finds his way back to a life which is not characterised and shaped by radical ideas. No request is made for an extension of the PCTA measures. This is the desired outcome. However, there are also cases where radicalisation cannot be stopped, as in **Case study 2**.

⁸³ See [Report of the Security Policy Committee of the National Council \(SPC-N\)](#) dated 11 October 2021 in response to Parliamentary Initiative [21.455](#): 'In terms of content, the majority of the committee members are of the opinion that an explicit mention of violent terrorist activities would run counter to the purpose of the PCTA, as the Act is precisely intended to also enable the prosecution of non-violent terrorist activities (such as recruitment and propaganda for terrorism or terrorist funding). Limiting the scope of application of this legislation, as demanded by the initiators, is therefore out of the question.'

⁸⁴ Art. 260^{ter} para. 1 let. a no. 2 SCC (participation in a terrorist organisation), Art. 260^{quinquies} SCC (Financing terrorism), Art. 260^{sexies} para. 1 SCC (Recruiting, training and travelling with a view to committing a terrorist offence).

⁸⁵ Art. 260^{ter} para. 1

⁸⁶ Art. 260^{quinquies} SCC

⁸⁷ Art. 260^{sexies} para. 1 SCC

⁸⁸ Art. 23f para. 1 let. c ISA; Federal Council Dispatch on the PCTA, BBI [2019_4751](#) p. 4752 und 4760 und 4766 und 4786

2.2 Case study 2 (Terrorist activities and their consequences)

2.2.1 Y becomes liable to prosecution for spreading terrorist propaganda and recruiting with a view to committing a terrorist offence: criminal proceedings and conviction

There are cases where the desired effect cannot be achieved through social, integrative and therapeutic measures or through police action. Our second fictitious case study is about **18-year-old Y**, who holds both Swiss and foreign citizenship (dual citizenship). Y has already drawn attention for his radical views in the past and finds himself in a **difficult phase of his life**: his girlfriend leaves him and shortly afterwards his mother dies. Y is overwhelmed by the situation and withdraws from his social circle. His grades at vocational school and his performance during workplace training also drop dramatically, resulting in him losing his apprenticeship. He increasingly turns to radical ideologies and the corresponding environment for support and self-confidence. He begins to share violent videos and IS terrorist propaganda. He also tries to recruit people online for terrorist purposes. The FIS brings the information that it has gathered to TETRA and then sends an official report to the OAG that can be used in court. The dissemination of terrorist propaganda material and the recruitment of individuals for terrorist purposes give rise to an **initial suspicion of criminal behaviour**.

The prosecution authorities act on the basis of the CrimPC and SCC when violent extremist or terrorist activities exceed the threshold of criminal liability. Terrorist activities can involve very different offences, including specific terrorism offences.⁸⁹ Certain **preparatory acts** are also punishable.⁹⁰ In order to better understand the distinction from preventive police measures, it should be noted that **preventive police action does not become superfluous** just because an attempt to carry out a terrorist act or certain preparatory acts are punishable. Waiting for an attempted criminal or preparatory act to occur poses the risk that the actual offence cannot be prevented in time. Therefore, the police *do not have to wait* for a potential perpetrator of a terrorist offence to make an attempt or to commit a punishable preparatory act. In such a threat scenario, preventive police measures are taken *in anticipation of criminal behaviour*.

According to Art. 74 para. 1 IntelSA, the Federal Council may **ban an organisation or group** that directly or indirectly disseminates, supports or otherwise promotes terrorist or violent extremist activities and thus poses a specific threat to internal or external security. The prerequisite is that the United Nations has adopted a corresponding ban or sanctions resolution (Art. 74 para. 2 IntelSA). Anyone who on Swiss territory participates in an organisation or group banned by the Federal Council, supports it by providing human or other resources, organises propaganda campaigns for its aims, recruits members for it or in any other way promotes its activities is **liable to prosecution** (Art. 74 para. 4 IntelSA). Anyone who commits the offence abroad is also liable to prosecution if they are arrested in Switzerland and not extradited (Art. 74 para. 5 IntelSA). On 19 October 2022, the Federal Council issued a general decree banning the groups 'Al-Qaeda' and 'Islamic State' as well as related organisations.⁹¹

⁸⁹ Art. 260^{ter} para. 1 let. a no 2 SCC (Participating in a terrorist organisation), Art. 260^{quinquies} SCC (Financing terrorism), Art. 260^{sexies} para. 1 SCC (Recruiting, training and travelling with a view to committing a terrorist offence). Other offences are listed in footnote 56.

⁹⁰ Art. 260^{bis} SCC. 'An act preparatory to the commission of an offence' implies that the person has a **plan in place to carry out specific technical or organisational measures** to commit the offence in question. In other words, 'there must be several deliberately executed technical or organisational acts that have a specific preparatory purpose in relation to the offence to be committed. In addition, **they must be of such a nature and scope** that it can reasonably be assumed that **the perpetrator will readily follow through with the intention to commit the offence** [...]. The criterion of intentional behaviour is met if there are several interrelated acts that are systematically carried out over a certain period of time and which, taken together, are no longer 'harmless' but instead are indicative of a criminal plan [...]' (Federal Supreme Court ruling [6B_1159/2018](#) dated 18 September 2019 E. 3.3.2, not published in: BGE 145 IV 424; Herv. d. Verf.).

⁹¹ The ban applies from 1 December 2022 and is limited to five years. See [Press release](#) dated 19 October 2022 and the [General ruling](#) dated 19 October 2022, reprinted in BBl [2022 2548](#).

In addition to the options set forth in Art. 74 IntelSA, the Federal Council submitted a separate bill banning Hamas and related organisations for consultation on 21 February 2024. This was done in response to call from the National Council⁹² and Council of States⁹³ for a ban on Hamas.

Following the official report by the FIS, the OAG initiates criminal proceedings under Art. 260^{ter} SCC and Art. 74 para. 4 IntelSA (Support for a terrorist organisation). It issues a warrant for Y's **arrest** and orders a **house search**. The Federal Criminal Police (FCP) – the federal body responsible for judicial matters – is assigned to carry out the investigation and search the premises. The FCP works closely with the relevant cantonal police to intervene in Y's case. Subsequent to Y's arrest, the FCP conducts the search and seizes various data media (including laptops, USB sticks, cell phones and external hard drives). During analysis, the FCP finds videos of torture and executions. The analysis also reveals that Y is in contact with a number of radicalised individuals via messenger services and has attempted to recruit them to form a group that would presumably carry out terrorist attacks in Europe in the name of Islamic State. Y has also been sharing videos of executions and torture via such channels. The OAG subsequently expands the criminal investigation against Y to include Art. 135 SCC (representations of acts of violence). At the same time, the OAG instructs the proceedings against Y to be combined and dealt with by the federal authorities by virtue of Art. 26 para. 2 CrimPC.⁹⁴

The **criminal prosecution** of complex intercantonal or international cases involving terrorism or its financing (Art. 260^{ter}, 260^{quinquies} and 260^{sexies} SCC) falls under the jurisdiction of the Confederation (Art. 24 para. 1 CrimPC). In addition, the federal prosecution authorities have sole jurisdiction over the criminal offences listed in Art. 74 para. 4 and 5 IntelSA. Investigative activities are governed by the CrimPC. If both federal jurisdiction and cantonal jurisdiction apply in given a criminal case, the OAG may order that the proceedings be combined and dealt with either by the federal authorities or the cantonal authorities (Art. 26 para. 2 CrimPC). If the federal authorities have sole jurisdiction, the FCP acts as the judicial police (Art. 4 let. a CJAA).

After his arrest, Y is brought before the OAG. The OAG questions him about the offence and then asks the compulsory measures court to have the suspect placed in pre-trial detention due to the risk of absconding and collusion. The compulsory measures court orders pre-trial detention for a period of three months. In its decision, the compulsory measures court concludes that given the early stage of the investigation and Y's personal circumstances, alternative measures in the place of detention are out of the question.

During an ongoing criminal investigation, the compulsory measures court⁹⁵ may decide on **alternative measures** in place of pre-trial or preventive detention. Although there must be an overriding suspicion and a special reason for detention, alternative measures are milder compared to pre-trial and preventive detention and are intended to avoid long periods of detention.⁹⁶ Possible measures include a (night-time) curfew, a restriction order (e.g. requiring the person not to leave the canton of residence), the surrendering of identity papers and official documents, a requirement to report regularly to an official body, a ban on maintaining contacts with certain persons or a ban on the possession of weapons.⁹⁷ The compulsory measures court may also order electronic surveillance to monitor compliance with alternative measures.⁹⁸ Alternative measures are generally imposed for a period of three months and can be extended for a subsequent period of three months upon request. As they can also be used to achieve preventative goals, depending on how they are applied, they can make PCTA measures superfluous.

⁹² Motion [23.4312](#) of the Security Policy Committee of the National Council (SPC-N), adopted by the National Council on 19 December 2023.

⁹³ Motion [23.4329](#) Security Policy Committee of the Council of States (SPC-S), adopted by the Council of States on 12 December 2023.

⁹⁴ See the real case in the ruling of the Higher Appeals Chamber of the Federal Criminal Court [CA.2021.28](#) dated 22 March 2022.

⁹⁵ In federal criminal proceedings, the compulsory measures court at the headquarters of the OAG or its branch offices has jurisdiction (Art. 65 CJAA).

⁹⁶ See Art. 212 para. 2 let. c CrimPC and Art. 226 para.4 let. c CrimPC.

⁹⁷ For examples, see list in Art. 237 para. 2 CrimPC.

⁹⁸ Art. 237 para. 3 CrimPC.

Y's pre-trial detention is extended several times. During the investigation, the initial suspicion is substantiated. At the end of the criminal investigation, the OAG brings charges against Y and – based on Art. 221 CrimPC – requests **preventive detention**, which is granted by the compulsory measures court. The Federal Criminal Court (FCC) finds Y guilty of supporting a terrorist organisation (Art. 260ter SCC) and representations of acts of violence (Art. 135 SCC) and is given an unsuspended five-year custodial sentence. Y lodges an appeal against the ruling within the prescribed deadline. The Higher Appeals Chamber of the FCC is responsible for hearing the appeal. As the second instance in federal criminal cases, it is responsible for deciding on appeals against rulings of the Criminal Chamber that fully or partially conclude criminal proceedings (Art. 21 CrimPC, Art. 398 ff. CrimPC, Art. 38a CJAA). Y remains in preventive detention pending the decision of the Higher Appeals Chamber. The Higher Appeals Chamber upholds the ruling. Y decides not to appeal his case to the Federal Supreme Court (Art. 80 para. 1 FSCA). The ruling thus becomes final and legally enforceable.

2.2.2 Y is incarcerated⁹⁹

Execution of a sentence begins after a definitive conviction. Y is sent to prison. According to Art. 123 SCC, the cantons are responsible for judicial enforcement. The SCC regulates, among other things, the individual sentences (Art. 34-46) and measures (Art. 56-73) and execution (Art. 74-92a).

Judicial enforcement is intended to protect society by punishing the individual while at the same time encouraging him or her to reintegrate back into society. It is intended to prevent new criminal offences from being committed or at least to reduce the risk of recidivism (Art. 75 para. 1 SCC). Prisoners should be encouraged to develop their social skills. At the same time, their personality and behaviour should be shaped to enable socially acceptable behaviour in society in the future.¹⁰⁰ This also applies to persons involved in violent extremism and terrorism.¹⁰¹

While in prison, Y tries to radicalise fellow inmates but not to a level of intensity that would qualify as 'recruiting with a view to committing a terrorist offence' within the meaning of Art. 260^{sexies} SCC. The relatively small size of correctional facilities in Switzerland compared to other countries enables good social control within these facilities. This ensures that staff recognise conspicuous prisoner behaviour at an early stage.¹⁰² Nevertheless, cases of radicalisation while in prison cannot be ruled out. The prison staff, who have already received radicalisation awareness training from the FIS,¹⁰³ notice Y's radicalising behaviour and respond immediately. Information is shared between supervision staff, prison management, the enforcement authorities, therapists and in particular also the cantonal threat management (CTM) team and cantonal intelligence service (CIS).¹⁰⁴ The prison management draws Y's attention to his behaviour and points out that **solitary confinement** could be ordered if he persists in his radicalisation attempts. Solitary confinement means that Y would be separated from the other inmates for an uninterrupted period of time. In other words, he would have to spend his work time, free time and rest time in an individual cell. The only exceptions to this are daily walks and contacts outside the cell with visitors, lawyers or internal staff. As solitary confinement tends to have a detrimental and harmful effect

⁹⁹ The term 'judicial enforcement' refers to the following:

- Execution of sentences and measures in correctional facilities (incarceration) and within the community (suspended sentence, electronic monitoring, community service);
- Detention relating to criminal proceedings (pre-trial and preventive detention);
- Probation; and
- Other forms of detention.

More detailed information can be found on the website of the Swiss Centre of Expertise in Prison and Probation (SCEPP), Section '[Was ist Justizvollzug?](#)' ('What is incarceration?')

¹⁰⁰ [Grundlagen für den strafrechtlichen Sanktionenvollzug in der Schweiz](#) ('Basic principles of the enforcement of criminal sentencing in Switzerland') (CCJPD, 13. November 2014), p. 1

¹⁰¹ See [Grundlagenpapier für den Umgang mit Radikalisierung und gewalttätigem Extremismus im Justizvollzug in der Schweiz](#) (Policy paper on how to handle radicalisation and violent extremism in Swiss prisons) (CCJPD, 12. April 2018), p. 6

¹⁰² [Grundlagenpapier für den Umgang mit Radikalisierung und gewalttätigem Extremismus im Justizvollzug in der Schweiz](#) (Policy paper on how to handle radicalisation and violent extremism in Swiss prisons) (CCJPD, 12. April 2018), p. 5

¹⁰³ The FIS organises awareness training for prison staff as needed. The CIS are informed of the awareness training provided by the FIS and can thus approach prison wardens, or vice versa. The FIS will organise the corresponding training.

¹⁰⁴ Inter-institutional cooperation between the prison system and cantonal security authorities has intensified in recent years. The CIS contact the competent authority or institution if they require information about individuals; conversely, the prison and probation services as well as prison wardens contact the CIS as soon as signs of radicalisation are detected.

on a prisoner's health, this form of detention may only be ordered in the cases provided for by law.¹⁰⁵ It must be used with restraint and only as a last resort.¹⁰⁶ As Y subsequently refrains from expressing his views, solitary confinement is not ordered (for the time being).

The main provision for solitary confinement is Art. 78 let. d SCC, which was introduced with the PCTA. The aim of this measure is to prevent a person from recruiting fellow inmates and from being drawn into a dangerous ideology in their search for connections and new prospects. Attempts at radicalisation can also occur during the execution of measures, which is why an equivalent provision also exists (Art. 90 para. 1 let. d SCC) for isolating a person subject to measures from other detainees. A solitary confinement order may only be issued by the executing authority.¹⁰⁷

While Y is still serving his sentence, the State Secretariat for Migration (SEM) initiates the process of revoking his Swiss citizenship. Under the Federal Act on Swiss Citizenship,¹⁰⁸ it is possible to legally **revoke Swiss citizenship from a convicted felon**¹⁰⁹ if the person holds dual citizenship. This means that SEM may, with the consent of the authority in the canton of origin, revoke the Swiss, cantonal and communal citizenship of a person holding **dual citizenship** if his or her conduct is seriously detrimental to the interests or the reputation of Switzerland. (Art. 42 SCA). Revocation of Swiss citizenship is only possible in serious cases, for example against persons who have been convicted of war crimes or terrorist offences.¹¹⁰

So far, several individuals have had their Swiss citizenship revoked for terrorism-related offences. In three cases, the revocation became definitive (as of September 2023). Example: The SEM revoked the Swiss passport of a Turkish-Swiss dual citizen for acts of propaganda and support for a jihadist group. This measure was upheld by a Federal Supreme Court ruling.¹¹¹

Later, Y again attempts to radicalise his fellow inmates and only refrains from doing so after the prison warden once again draws his attention to the possible ramifications of his actions, both in terms of sentence execution and additional criminal penalties. After serving two-thirds of his sentence, Y's case comes up for **review**.¹¹² However, his behaviour suggests that, once released, he is likely to continue committing felonies or misdemeanours. Y has not renounced his radical ideas and has repeatedly made attempts to spread them. For this reason, the executing authority decides not to grant parole.

If the prison inmate has served two-thirds of his sentence, provided this amounts to at least three months, he is **released on parole** by the competent authority provided that this measure is justified by his good behaviour while in custody and that he is unlikely to commit further felonies or misdemeanours (Art. 86 para. 1 SCC). In this case, a legal prognosis has been made. If half of the sentence has been served, parole can be granted by way of exception (Art. 86 para. 4 SCC). The competent authority assesses ex officio whether the inmate may be released on parole. It must obtain a report

¹⁰⁵ Art. 78 SCC. Solitary confinement in the form of uninterrupted separation from other prison inmates may only be ordered:

- a. for a maximum of one week at the start of the sentence in order to initiate the execution of the sentence;
- b. for the protection of the prison inmate or of third parties;
- c. as a disciplinary sanction;
- d. to prevent other prison inmates from being influenced by ideas that may encourage them to engage in terrorist activities, provided there is specific evidence of such an influence.

¹⁰⁶ BBI [1999 II 1979](#) p. 2114; ANDREAS DONATSCH Hrsg., SCC/JCLA Commentary, Zurich 2022, STEFAN HEIMGARTNER, Art. 78, Rz. 2; NCPT, [Factsheet on Maximum Security Detention](#), updated in June 2020, p. 1; In practice, the specific individual circumstances must always be considered. It is important to bear in mind that a person can also become radicalised without being influenced by fellow inmates - in such cases, solitary confinement is unnecessary as long as the person does not attempt to radicalise others. Where possible, the prison system seeks to provide an inclusive environment in which the individual concerned can lower his or her propensity for violence.

¹⁰⁷ See NCPT, [Factsheet on Maximum Security Detention](#), updated in June 2020, p. 1f.

¹⁰⁸ Swiss Citizenship Act, SCA; SR **141.0**.

¹⁰⁹ Revocation of citizenship requires a final conviction (Art. 30 Swiss Citizenship Ordinance, SCO; SR **141.01**). This does not apply to cases in which criminal prosecution would be futile because the state in which the offences were committed is unwilling or unable to bring criminal proceedings to a close or to comply with a foreign request for mutual legal assistance, in particular because the independent judicial system is not functioning in its entirety or to a large extent. In general, it is also possible that a final conviction within the meaning of Art. 30 SCO has already been handed down, but new criminal proceedings have already been initiated against the person concerned. In this sense, citizenship can be revoked during criminal proceedings, albeit on the basis of a (final) conviction that has already been handed down.

¹¹⁰ Art. 30 SCO

¹¹¹ Federal Supreme Court ruling [1C_457/2021](#) dated 25 March 2022

¹¹² In the cantons, the responsibility for conditional release lies either with authority or court responsible for execution of the sentence, see CHRIS-TOPH URWYLER, [Die Praxis der bedingten Entlassung aus dem Strafvollzug](#), ('The practice of conditional release from prison') Berlin/Bern 2020, Fn. 5

from the prison warden. The prison inmate is granted a hearing (Art. 86 para. 2 SCC). If parole is refused, the competent authority must reassess the matter of parole at least once a year (Art. 86 para. 3 SCC). This requires an updated legal prognosis.

With the consent of the authorities of the of the canton where Y was naturalised **SEM revokes Y's Swiss citizenship**. Y appeals this decision before the Federal Administrative Court (FAC), which dismisses the appeal while he is still in prison. The Federal Supreme Court (FSC) also confirms the revocation of his Swiss citizenship. As the revocation of citizenship has become final and Y is no longer a Swiss citizen, fedpol initiates proceedings to expel him from Switzerland (revocation of right of residence and obligation to leave Switzerland). fedpol also examines whether non-refoulement conditions exist. In Y's case, there are none.¹¹³ After granting him the right to be heard and consulting the FIS, fedpol issues an expulsion order.

By virtue of Art. 68 FNIA, fedpol may issue an expulsion order to foreign nationals in order to safeguard Switzerland's internal or external security. The **expulsion order** is combined with a temporary or permanent entry ban. This measure is intended to prevent future threats. The conditions for an expulsion order are the same as for an entry ban under Art. 67 para. 4 FNIA: the foreign national jeopardises the internal or external security of Switzerland, for example, if they pose a violent extremist or terrorist threat. In order for an expulsion order to be issued, there must always be *concrete and current indications* that the presence of the foreign national is likely to jeopardise the internal or external security of Switzerland.

2.2.3 Measures taken after Y leaves prison

If a person continues to pose a threat to others even after serving his or her sentence, social, therapeutic and integrative measures can be considered, as well as PCTA measures. In this case, however, it is not necessary to take PCTA measures, as Y is being expelled from Switzerland. Since execution of an expulsion order cannot take place immediately after a person has served his or her sentence, Y is placed in **administrative detention** in order to ensure enforcement of the expulsion order. This is done because he was convicted of a crime and is a threat to internal security.¹¹⁴ Y is then deported by the **competent cantonal police authorities** acting on fedpol's behalf.¹¹⁵

Administrative detention is regulated under the FNIA. The PCTA introduced 'endangering the internal or external security of Switzerland' as an additional reason for detention, which was then added to the FNIA in the case of **preparatory detention** (Art. 75 para. 1 let. i FNIA; in the case of ongoing administrative or criminal proceedings) and **detention pending deportation** (Art. 76 para. 1 let. b no. 1 FNIA; in the case of a first-instance administrative or criminal judgement). A corresponding amendment was also made with regard to detention in Dublin procedures (Art. 76a para. 2 let. j FNIA).

¹¹³ See basic principles of non-refoulement Fn. 123

¹¹⁴ Art. 76 para. 1 let. b. no. 1. in connection with Art. 75 para. 1 let. h und i FNIA

¹¹⁵ Detailed provisions in the Ordinance on the Enforcement of the Removal and Expulsion of Foreign Nationals (ERADO; SR 142.281).

2.3 Case study 3 (Managing incidents in the event of a terrorist attack)

Although Y no longer lives in Switzerland, his earlier propaganda activities have left their mark and paved the way for violence: his earlier attempts at radicalisation have had a particularly strong effect on Z, who was a minor at the time. Z is now 22 years old and a foreign national. Although Z has behaved inconspicuously for a very long time and has never been prosecuted, he suddenly attacks a number of people at a railway station with a knife, shouting 'Allahu Akbar'. Although the cantonal police intervene immediately at the scene, Z can no longer be found. He is on the run, but his backpack, which contains propaganda material for the Islamic State, is recovered. The incident leaves two people injured and another person dead at the scene.

This is a case of **jihadi-motivated terrorism**. In addition to the criminal offence of murder or multiple counts of attempted murder, the case is being investigated for violation of the provisions of Art. 260^{ter} SCC and of Art. 74 para. 4 IntelSA. Based on Art. 74 para. 6 IntelSA in conjunction with Art. 23 para. 2 CrimPC, the matter falls under the jurisdiction of the federal authorities.

The cantonal police immediately notify the cantonal public prosecutor's office, the federal police responsible for terrorist offences – the FCP – and the OAG. The OAG liaises with the cantonal public prosecutor's office, which has already initiated criminal proceedings. The OAG takes over the criminal proceedings. The FCP immediately launches an investigation and sets up a joint investigative team with the cantonal police, which remains responsible for security duties around the crime scene and in the rest of the canton. As the perpetrator is still at large, a national and international manhunt is immediately started. fedpol also asks its international partner authorities and police agencies whether the perpetrator has any ties abroad.¹¹⁶ fedpol shares the available information on the facts of the case and the persons involved with its partners in Switzerland and abroad. The resulting findings are included in the situational assessment and subsequent development. Given the seriousness and political consequences of this incident and in order to assess the security policy situation, the **National Counter-Terrorism Committee (NATA)** is convened and the **Federal Council Security Committee (FCSC)** and the **Security Core Group (SCG)** are briefed. The NATA coordinates the political aspects of federal and cantonal management and communication (see box below). One week after the incident, Z is arrested in a joint operation involving the OAG, the FCP and several cantonal police forces in Switzerland. He is placed in pre-trial detention. The FCP continues its investigations on behalf of the OAG.

¹¹⁶ See info boxes on the next page on international police cooperation.

The **National Counter-Terrorism Committee (NATA)** is a *policy coordination body* that brings together the relevant *federal and cantonal* decision-makers in the event of a terrorist situation. It consists of the head of the FDJP, the federal chancellor, the president of the CCJPD and the police commanders of the relevant cantons. If the terrorist incident has an international dimension or affects Swiss interests abroad or if consular protection tasks are affected, the head of the FDFA is also consulted. The NATA can be extended to include other federal, cantonal or communal government officials depending on the incident. Through mutual dialogue and a joint assessment of the situation, policy management and communication can be coordinated across the respective areas of responsibility of the authorities.¹¹⁷

The **Federal Council Security Committee (FCSC)** is a *committee of the Federal Council*. It consists of the heads of the DDPS, the FDJP and the FDFA. The FCSC is chaired by the head of the DDPS. Each FCSC member may be accompanied to meetings by up to two people from their department. If necessary, the FCSC may call in additional persons. The FCSC assesses the security situation and coordinates inter-departmental security policy matters. It issues orders to the SCG and may call on it in crisis situations. At operational level, the FCSC may also delegate coordination tasks to the SCG. If necessary, the FCSC prepares security policy briefs to assist the Federal Council in its decisions.¹¹⁸

The **Security Core Group (SCG)** is a *committee of directors of federal offices*. The State Secretary of the FDFA, the Director of the FIS, the Head of Security Policy of the DDPS and the Director of fedpol are the permanent members of the SCG. The Head of Security Policy of the DDPS chairs the meeting. A representative of the Conference of Cantonal Police Commanders of Switzerland (CCPCS) and the delegate of the Swiss Security Network (SSN) are non-permanent members of the SCG. The SCG is responsible for outlining and assessing the situation from a security policy standpoint. It is also responsible for the early detection of security challenges. Lastly, the SCG coordinates activities at security policy and operational level.¹¹⁹ In the past, the SCG has also proven useful as a strategic advisory body to the FCSC in the wake of terrorist attacks in neighbouring countries.

No further attacks are reported over the next few days and weeks. However, the investigations reveal that Z has been in close contact with individuals from neighbouring countries. The objective now is to gain further insights and clarify unanswered questions. This is where **international police cooperation** mechanisms (once again) come into play. The foreign authorities are quickly notified that a terrorism-related incident has occurred. The OAG coordinates the procedure bilaterally with the foreign public prosecutor's offices concerned through EUROJUST (European Union Agency for Judicial Co-operation in Criminal Matters). Additional arrests, questioning and searches are carried out in Switzerland on the instructions of the OAG. Such measures are also carried out abroad thanks to international mutual legal assistance. fedpol handles the international exchange of information at police level. The FIS does the same at intelligence service level. National and international co-operation is particularly important in crisis situations, as a rapid response is required.

¹¹⁷ [Press release](#) 'Nationaler Terrorschuss: Bund und Kantone koordinieren die politische Führung in Terrorlagen' ('National Counter-Terrorism Committee: Confederation and the cantons coordinate political leadership in terror situations') dated 23 November 2022; Ordinance of 23. November 2022 on National Terrorism Committee (SR 172.010.422).

¹¹⁸ [Press release](#) 'Bundesrat passt die Organisation der sicherheitspolitischen Führung an' ('Federal Council adapts security policy management structure') dated 25 January 2023; **Directives** of 25 January 2023 on the Federal Council's security policy management structure (BBl [2023 241](#)); **Mandate and structure** of Federal Council Security Committee, dated 25 January 2023 (available via link in press release).

¹¹⁹ [Press release](#) 'Bundesrat passt die Organisation der sicherheitspolitischen Führung an' ('Federal Council adapts security policy management structure') dated 25 January 2023; **Directives** of 25 January 2023 on the Federal Council's security policy management structure (BBl [2023 241](#)).

Switzerland has relied on international police cooperation for years. It is based on three pillars: **global multilateral cooperation** through INTERPOL, **European multilateral cooperation** through the EU/Europol and finally **bilateral cooperation** with individual countries. The European pillar is being constantly strengthened through the Schengen Association Agreement (SR 0.362.31) and cooperation through the other two pillars is continuously expanding.

In global multilateral cooperation, the **INTERPOL search system** is extremely useful for obtaining data on wanted persons of global significance. In European multilateral cooperation, **Europol and the Schengen Information System (SIS)** play a crucial role. In bilateral cooperation, the **joint centres for police and customs cooperation** in Geneva (with France) and Chiasso (with Italy) as well as **police and customs attachés abroad** are worth mentioning. Stolen goods and persons wanted by the police for extradition, persons subject to an entry ban or missing persons are entered into the SIS. The police, border control and visa authorities in the 26 EU member states as well as Switzerland, Norway and Iceland are connected to the SIS. Terrorist suspects can be entered into the SIS as wanted persons.

fedpol serves as the contact and coordination centre for international police cooperation. fedpol supports communication between cantonal police and prosecution authorities and with those abroad. At fedpol, international cooperation is mainly handled by the Directorate of International Police Cooperation (IPC), the fedpol Operations Centre (fedpol OC) and the Directorate of Federal Criminal Police.

Example: a terrorist mass shooting in Vienna on 2 November 2020 left 4 people dead and 23 others injured, some in a critical condition. In such cases, speed is paramount. After the attack in Vienna, links to Switzerland quickly surfaced. Information had to be shared immediately. Less than 24 hours later, two 'accomplices' of the Vienna attacker were arrested in the Zurich area.

Upon completion of the investigation, Z is sentenced to 17 years in prison for murder, attempted murder and participation in a terrorist organisation¹²⁰ and **expulsion** (Art. 66a SCC). Once Z is released from prison, the cantonal authorities will execute the expulsion order.

An expulsion order can only be enforced once the unsuspended sentence or parts thereof and any custodial measures have been executed (Art. 66c para. 2 SCC). The cantonal migration office can order detention under the legislation on foreign nationals (**detention in preparation for departure, detention pending deportation**) in order to ensure that expulsion proceedings or criminal proceedings in which **expulsion** is imminent are carried out and that the person is **subsequently deported**. If a person does not comply with his or her obligation to leave Switzerland within the set timeframe and the definitive expulsion or deportation order cannot be enforced due to the person's refusal to comply (e.g. because the destination state does not accept state deportation and the person can therefore only enter the country willingly), the person can be placed in **coercive detention for contempt of court**. This measure can only be applied if the order for detention pending deportation is not admissible and if a milder alternative measure does not achieve the desired effect. The aim of coercive detention for contempt of court is to change the person's behaviour in cases where enforcement of a removal, expulsion or judicial expulsion order cannot or can no longer be enforced by the established deadline – despite the best efforts of the authorities – without the person's cooperation.¹²¹

¹²⁰ See die **guilty verdict** rendered by the Federal Criminal Court in the case of the knife attack in **Morges** on 12 September 2020 ([Press release](#) Federal Criminal Court, dated 10 January 2023) and in the case of the knife attack in **Lugano** on 24 November 2020 ([Press release](#) Federal Criminal Court, dated 19 September 2022; [Press release](#) Federal Criminal Court, dated 24 August 2023).

¹²¹ SEM, [Handbuch Asyl und Rückkehr](#), ('Handbook on asylum and return'), Document 'G5 - Zwangsmassnahmen im Ausländerrecht' ('Coercive measures falling within the scope of the Foreign Nationals and Integration Act), p. 1f.

Enforcement of deportation can fail for a number of reasons. In certain situations, obligations under international law may prohibit deportation (e.g. **enforcement is not permitted**¹²² under the **non-refoulement principle**¹²³). Enforcement of deportation may also fail due to situations such as war, general violence or a health emergency in the destination country (**enforcement is unreasonable**¹²⁴). There may even be technical or practical reasons preventing deportation (**enforcement of removal is impossible**¹²⁵, e.g. no flight connection or landing rights). Such **enforcement obstacles** must always be examined on the basis of the individual's specific circumstances. If enforcement fails for one of the above-mentioned reasons, the individual is conferred the status of 'temporary admission'¹²⁶ (i.e. is issued an 'F permit'). Persons who are subject to an expulsion or judicial expulsion order are excluded from this measure and are therefore given a worse status (Art. 83 para. 7 und 9 FNIA). If the person posing a risk to Switzerland remains in the country, they may be subject to PCTA measures. In addition, the competent cantonal authority may require the person to remain in a designated area or to refrain from entering a specified area.¹²⁷

3 Summary and conclusions

Postulate 21.4598 Marti Min Li calls for an overview of measures to counter extremism and terrorism. The tasks, powers and responsibilities of the various authorities should be set out. The postulate was motivated by the desire to avoid duplication of efforts and to identify any gaps in legislation.

Based on the analysis presented in this report, we can state the following:

- Radicalisation can be inconspicuous at first. This is why countering violent extremism and counter-terrorism must start early and broadly, in particular through detection/observation and low-threshold intervention (e.g. by communal and cantonal social and educational authorities). Measures against radicalisation therefore require a variety of instruments. As described in the NAP, this is an ongoing **task for society as a whole and an interdisciplinary endeavour**.
- Preventing and combating violent extremism and terrorism can only be successful **through collaborative efforts**. The **division of roles** provided for by law makes sense. The tasks, powers and responsibilities of the authorities differ depending on the stage of radicalisation or activity and the aims of the measures taken. In our federal system, where various parties and levels of government are involved, the Confederation and the cantons share the burden of preventing and combating violent extremism and terrorism. Each of the different authorities performs **different subtasks**.
- The **tasks** performed by the various parties **complement each other**. A given case may require successive, alternating or simultaneous preventive and repressive actions and does not necessarily develop in a linear fashion. The simultaneous involvement of several actors is often necessary because they have different tasks, powers and responsibilities that need to run in parallel. For example, prevention in the social environment remains vital even if police measures have been applied to a person (see Art. 23f para. 2 ISA).

¹²² See Art. 83 para. 3 FNIA

¹²³ Non-refoulement is a (mandatory) principle of international law that prohibits the deportation (but also the extradition under criminal law) of persons to countries where they are at risk of torture or other human rights violations. This principle is based on international law (e.g. Art. 3 ECHR, Art. 33 of the Geneva Refugee Convention) but is also enshrined in the Swiss Federal Constitution (Art. 25 para. 3) and in federal legislation (e.g. Art. 5 in conjunction with Art. 3 para. 1 AsylA, Art. 83 para. 3 FNIA or Art. 2 IMAC). The reasons applicable to the assessment may relate to the individual, the country of destination or other circumstances. The fact that the Federal Council and the Federal Assembly rejected and cancelled [Mo. 16.3982](#) Regazzi 'Expulsion of terrorists to their countries of origin, regardless of whether they are considered safe or not' reaffirms that nationally and internationally guaranteed human rights also apply to persons at risk of radicalisation.

¹²⁴ See Art. 83 para. 4 FNIA

¹²⁵ See Art. 83 para. 2 FNIA

¹²⁶ Art. 83 FNIA

¹²⁷ Restriction and exclusion orders are addressed in Art. 74 FNIA. Failure to comply with a restriction or exclusion order is punishable under Art. 119 FNIA.

- Many actors are involved in recognising and combating violent extremism and terrorism. **Coordination and cooperation** between stakeholders are therefore crucial. This requires both a bilateral approach and joint action through committees. As different cases and forms of violent extremism and terrorism pose a threat to Switzerland's security, different bodies are needed in different compositions and at different levels. The bodies mentioned in this report are political (political oversight of the NAP by the FCSC, NATA and SSN), strategic (strategic oversight of the NAP by the SCG and SSN) and operational (TETRA). There is currently no recognisable need for new coordination platforms.

In conclusion, it can be stated that there is no duplication of efforts. Rather, each actor has its own specific task, role and justification. There is sufficient clarity regarding responsibilities and tasks and corresponding boundaries. However, in some cases, the responsibilities and level of cooperation among the authorities could be improved:

- Successful cooperation requires the extensive **exchange of information between police authorities in Switzerland and abroad**. Information sharing works well in the fight against violent extremism and terrorism. However, radicalisation often progresses insidiously and frequently manifests itself in criminal offences that are not yet directly related to violent extremism or terrorism. The cantons currently have no way of systematically sharing police information or gaining access to data from other cantons. Access is only granted on specific request in individual cases. The Eichenberger motion (18.3592) identifies this gap in the national exchange of information. This led to the creation of the Police Enquiry Platform (POLAP) project, which was launched by the Confederation and the cantons to improve the sharing of police data at both national and international levels. Of course, information exchange between civil authorities (schools, CAPA, parental counselling, etc.) and private individuals (e.g. sports clubs) with the police and the FIS remains an important means of identifying and preventing radicalisation at an early stage.
- In the prosecution of terrorist offences under Art. 260^{ter}, 260^{quinquies} and 260^{sexies} SCC, federal jurisdiction only applies under Art. 24 para. 1 CrimPC if the case is of international or intercantonal import. For terrorist offences under Art. 74 para. 4 and 5 IntelISA, however, federal jurisdiction always applies (Art. 74 para. 6 IntelISA in conjunction with Art. 23 para. 2 CrimPC). The Federal Council is currently examining whether **all terrorism-related offences** should be subject to federal jurisdiction and will propose legislative amendments as needed.¹²⁸
- The cantons are currently under no obligation to notify fedpol or the OAG if they initiate criminal proceedings against a minor for terrorist offences. A **reporting obligation** could help fedpol and the OAG to gain a complete overview of terrorist incidents in Switzerland at all times. This would facilitate coordination between the Confederation and the cantons. While a reporting obligation was discussed in the Jositsch postulate report, the Federal Council did not examine the issue any further.¹²⁹

¹²⁸ See [Federal Council Report](#) in fulfilment of Postulate [19.3570](#) Jositsch 'Review of the structure, organisation, remit and oversight of the Office of the Attorney General of Switzerland', p. 22: 'The working group has not identified any special need for action with regard to the selection of terrorist offences and offences under international criminal law. However, prosecution of all terrorism-related offences should fall under federal jurisdiction under the same conditions as those set out in Article 23 CrimPC. Federal jurisdiction for the prosecution and judgment of offences under Articles 260^{ter}, 260^{quinquies} und 260^{sexies} SCC should therefore no longer be determined in accordance with the requirements of Article 24 paragraph 1 CrimPC, but rather in accordance with Article 23 CrimPC. This implies that federal jurisdiction for terrorism-related offences under the SCC would always exist irrespective of whether the requirements under Article 24 para. 1 let. a or b SCC are met.'; see also the Federal Council Report p. 23: 'The Federal Council feels that it is expedient [...] to consider applying federal jurisdiction under Article 23 CrimPC in all terrorism-related offences referred to in the SCC, for which jurisdiction is currently regulated under Article 24 paragraph 1 CrimPC. The Federal Council will thoroughly examine the issue and, if necessary, submit the necessary legislative amendments.'

¹²⁹ See [Federal Council Report](#) in fulfilment of Postulate [19.3570](#) Jositsch 'Review of the structure, organisation, remit and oversight of the Office of the Attorney General of Switzerland', p. 22: 'The working group noted [...] that terrorist offences committed by minors remain the responsibility of the cantons, as there is no federal public prosecutor's office for minors. This system does not pose any real problems in practice. But it could be useful to oblige the cantons to notify the Office of the Attorney General of Switzerland whenever proceedings are initiated against a minor for a terrorist offence, so that the federal authority will have an overview of such cases in Switzerland at all times. This would also ensure a certain coherence between the prosecution of adults and minors in this area.'; see also Federal Council Report p. 23: 'The Federal Council does not rule out the fact that requiring the cantons to report to the Office of the Attorney General of Switzerland when initiating proceedings for terrorist offences would result in more effective counterterrorism measures. However, it is of the opinion that consideration of a reporting requirement falls outside the scope of the mandate given to the working group and is not directly relevant to the issues raised in the postulate.'

- In Switzerland there is no **central database providing information on persons subject to judicial enforcement measures**. However, such a database would be very useful for counter-terrorism purposes. For example, in the event of a terrorist attack, it would enable immediate clarification of whether radicalised persons from the attacker's immediate environment might (also) pose a threat (or whether these persons are incarcerated). In November 2019, the CCJPD commissioned the IS-JE project (Information System on Judicial Enforcement).¹³⁰ There are also plans to introduce a centralised search function to determine whether a person is currently in prison in Switzerland and, if so, where. However, the processing of such data first requires a legal basis.

¹³⁰ <https://www.his-programm.ch/de/his-services/informationssystem-justizvollzug-is-jv>