

Summary

Administrative restriction of freedoms of jihadists

The use in practice of the 'Temporary Law on Counterterrorism Administrative Measures' during the first period after its entry into force

On 1 March 2017 the *'Temporary Law on Counterterrorism Administrative Measures'* (*Wet bestuurlijke maatregelen terrorismebestrijding*; hereafter: the Temporary Counterterrorism Act) came into effect, the provisions of which aim to prevent terrorist attacks primarily by reducing threats posed by the jihadist movement. The Act provides for the following:

- *Restriction of freedoms (Section 2):* a requirement to report to the police, a ban on being in the vicinity of specific premises or in specific parts of the Netherlands (*area ban*) or in the vicinity of specific individuals (*ban on contact*).
- *Ban on leaving the country (Section 3):* prohibits travel outside the Schengen Area.
- *Rejection or revocation of subsidies etc. (Section 6):* enables administrative bodies to reject or revoke subsidies, licences, dispensations and recognitions.

Application of the provision restricting freedom is subject to two statutory conditions. First, the individual in question must 'exhibit personal conduct that can be linked to terrorist activities or support for such activities'. 'Conduct' in this context is defined as a set of behaviours that constitute a threat to national security. Second, this restriction of freedom must be imperative with a view to protect national security. Application of the ban on leaving the country is subject to the condition that there is a 'legitimate concern' that the individual will travel outside the Schengen Area with the intent to join the ISIS, Al-Qaida and/or Hay'at Tahrir al-Sham terrorist organisations. This ban must likewise be imperative with a view to protect national security.

The Minister of Justice and Security, as the competent authority for imposition of the measures, has mandated decision-making authority to the National Coordinator for Security and Counterterrorism (NCTV). The measures are initiated and applied at the local level, this being the level at which interventions targeting radicalised individuals are deployed. The measures may be applied to support interventions carried out by a local case discussions. These new statutory provisions under these measures are expressly intended to be part of a comprehensive person-specific approach incorporating both repressive and preventive measures to eliminate terrorist threats.

The Act is temporary and lapses five years after its entry into force. Within no more than three years after its implementation the Minister must submit an evaluation report to both houses of Parliament. During the Parliamentary debate on the legislative proposal the Minister expressed the desire 'to structure a process to monitor the operation of the legislation on an ongoing basis'. The Research and Documentation Centre (WODC) is conducting this monitoring process at the request of the National Coordinator for Counterterrorism (NCTV). The present report concerns the

use in practice of the Act during the first 17 months after its entry into force, spanning the period from 1 March 2017 to 31 August 2018.

Questions

This report investigates the use in actual practice of the Act based on the following questions.

- How frequently are the measures under the temporary Counterterrorism Act applied in practice?
- In how many cases have they been applied? What form of terrorist threat was identified in these cases?
- What were the reasons for applying the measures; what were the considerations involved?
- How is the application of the measures proceeding in practice?

In parallel to the questions above, we also examined non-application of the Act:

- Are there cases in which the Act was considered but not applied?
- Why was the decision taken not to apply the Act in these cases? What were the considerations involved?
- Were other statutory instruments applied or did the authorities take other action in these cases? If so, in what form?

Method of investigation

The investigation was carried out on the basis of interviews with key informants and document content analysis. Information was gathered at both the local and national level. At the local level, we conducted semi-structured interviews with officials at municipal offices, the police force and the Public Prosecution Service. In fifteen municipalities, fifty-two local municipal officials were interviewed in all (see Appendix 1). At the national level, meetings were held with NCTV employees. We furthermore examined files compiled for application of the Temporary Counterterrorism Act; these are maintained centrally at the NCTV. Other documents such as court rulings and Parliamentary papers were also examined. Each 'case' for which a local actor requested application of a measure under the Temporary Counterterrorism Act was examined by means of a document analysis (insofar as documents were available) and interviews. The compiled empirical material was then summarised on the basis of a standard item list. The transcribed interviews were coded and analysed using the MAXQDA software program.

Use in practice of the Act

During the first period (March 2017 – August 2018) of the Temporary Counterterrorism Act's entry into force, application of the measures under the Act was not treated as a standard option in local case consultations seeking interventions to reduce potential terrorist threats. Aside from criminal prosecution, the preferred interventions were forms of professional care and assistance. During the period under investigation, we were able to identify forty instances in which local committees did consider application of the Temporary Act. In a few instances this option was mentioned but not taken by the local case committee or other local consultation body. The possibility of imposing the Temporary Counterterrorism Act

was routinely also discussed with the local NCTV adviser. In most instances, the adviser's recommendation was negative due to the lack of relevant current intelligence as required for application of the Temporary Act, thus ending the discussion.

During the period under investigation, local actors in fourteen instances compiled an administrative report (or draft report). This was done usually by police officials and in a few instances by officials at the Public Prosecution Service. These reports drew on information from criminal investigations (ongoing and closed), police files, intelligence services and occasionally also civil society organisations.

During the period in question, six of the fourteen administrative reports led to decisions to impose a legal measure restricting freedom under the Temporary Counterterrorism Act. In assessing the intelligence 'imperatives' to impose an administrative measure in these cases, we can distinguish among the following situations. Three cases concerned detainees who were released with no conditions for probation supervision imposed under criminal law. In each of these cases, release without probation supervision was deemed to pose a possible threat to national security. In two other cases where the measures under the Temporary Counterterrorism Act were applied, the imperative chiefly consisted in a suspicion that individuals wished to leave the country, paired with intelligence about an intent to take part in the armed conflict and willingness to use violence. In the latter of these two cases, the intelligence concerned activities that could incite others to take part in terrorist activities and leave the country. All of the administrative reports furthermore contained details about support for the violent jihadist ideology espoused by international terrorist organisations and about contacts with IS sympathisers and with jihadists, some of whom had already left for Syria. Five of the six administrative reports contained concrete intelligence indicating that individuals had travelled to Syria, or had attempted to do so. Criminal proceedings were also instituted in all of these cases.

Of the six cases in which the Temporary Act was applied, two involved a ban on leaving the country combined with a reporting obligation. Two others involved an area ban, one as a stand-alone measure and the other paired with a reporting obligation and electronic surveillance (ankle monitor). In another case, a ban on contact was imposed together with a reporting obligation. In one case, finally, only a reporting obligation was imposed. Thus, in five of the six cases a reporting obligation was imposed on the individuals in question. In all, ten measures were imposed on six individuals (five reporting obligations, two bans on leaving the country, two area bans, one ban on contact). In the period under investigation, the option to reject or revoke subsidies, licences, dispensations or recognitions was not used. In three instances, application of the measures was extended after six months; in two followed by another extension (during the period under investigation). In two instances within the period under investigation the individual in question submitted an appeal to the administrative court; one also appealed the ensuing judgement. In all of these cases the court ruled that the minister was justified in imposing the measures. The table below summarises particulars of the measures imposed.

Table S1 Overview table: particulars of measures imposed under the Temporary Counterterrorism Act during the period under investigation (March 2017 through September 2018)

Date	Measures	Term	Measures extended?
Case Spring 2017	<i>Reporting obligation</i> (twice a week)	6 months	Not extended
Case Spring 2017	<i>Area ban</i> (+ electronic monitoring)	2 days	Extended twice (Area ban extended once after 1 year for 2 days)
	<i>Reporting obligation</i> (twice a week)	6 months	
Case Summer 2017	<i>Area ban</i>	6 months	Extended twice
Case Autumn 2017	<i>Ban on leaving the country</i> <i>Reporting obligation</i> (three times a week)	6 months 6 months	Not extended
Case Autumn 2017	<i>Ban on leaving the country</i> <i>Reporting obligation</i> (twice a week)	6 months 6 months	Extended once
Case Summer 2018	<i>Ban on contact</i> <i>Reporting obligation</i> (twice a week)	6 months 6 months	N/A

Rationale and considerations

Based on the interviews and administrative reports, the main rationale for applying the measures under the Temporary Counterterrorism Act is to keep track of individuals who pose a terrorist threat. These constitute situations where there is no possibility of criminal-law probation supervision, or such possibilities have been exhausted, and other government organizations have also been unable to make contact with the individual. The guiding premise is that individuals should first be placed under supervisory orders by a criminal court before resorting to the Temporary Counterterrorism Act. A further consideration is whether local government agencies may still have options for maintaining contact with the individual in question, for instance through housing, benefit schemes or counselling. According to local officials, decisions to apply the Temporary Counterterrorism Act are taken in part due to local authorities' inability to maintain contact with an individual. Several of the officials interviewed referred to 'a hook' that can be used to gain contact. If there are no more 'hooks' available and a person is deemed to pose a national security threat, the Temporary Counterterrorism Act offers another option. This issue of contact is closely tied to the perceived imperative for supervision.

Another rationale for considering or applying the Temporary Counterterrorism Act that was mentioned by several of those interviewed was to protect a geographic area. In these instances, the local authorities deemed the individual to pose a threat to a neighbourhood, district, building or facility. Where imposing an area ban under the Temporary Counterterrorism Act was not possible due to a lack of sufficient intelligence indicating a threat to national security, local actors occasionally resorted instead to an area ban under the Municipalities Act (*Gemeentewet*, Section 172a). This falls under the mayor's authority to keep the peace and offers an alternative to

the area ban provided for under the Temporary Counterterrorism Act. In several instances where there was deemed to be a geographic threat, those interviewed also cited 'community concerns' caused by the presence or arrival of radicalised individuals, referring to the threat posed by persons who spread radical jihadist ideology and incite violence. In one instance the area ban provided for under the Temporary Counterterrorism Act was indeed imposed for this specific reason; in the other instances application was considered, but there was deemed to be insufficient relevant intelligence to follow through.

Another rationale for considering or applying the Act was to prevent individuals from leaving the country for jihadist conflict zones. Although the changed conditions in Syria have rendered this travel ban less pertinent according to many of those interviewed, it has been imposed twice and considered numerous times in the period under investigation. Often, the option to apply a ban on leaving the country was weighed against that of passport seizure. Among local officials, the ban is perceived to be more severe and is assessed as such. An additional consideration is that passport seizure has become a familiar, routine procedure for many local actors, and one that moreover can be imposed for a maximum of two years, compared to the travel ban's maximum of six months. When seeking to prevent individuals from leaving the country, therefore, passport seizure is usually the preferred route.

Interviews with local officials distilled two further considerations that were mentioned repeatedly and which present competing incentives. One is the impetus to avoid risk, and therefore to apply the Act to prevent the authorities from coming under fire after the fact. The other is the impetus to not apply the Act as restricting an individual's freedom could cause contact with that person to deteriorate further. According to this line of thinking, imposing the Act could have an adverse effect on the person-specific approach. In practice, therefore, the Act is applied as a last resort when there are no other options to remain in contact with that individual.

Execution

This investigation has revealed that execution of the temporary Counterterrorism Act is labour-intensive. To begin with, the administrative reporting required in order to apply the Act is no simple task, because the content of the report has to satisfy specific statutory requirements. In interviews, local police and judicial officials emphasised the complexity of compiling such reports and the time investment entailed, necessitating close consultation with a wide range of parties in order to meet all the material requirements. The National Coordinator for Security and Counterterrorism is involved from the drafting stage, reviewing the report to assess the feasibility of imposing the measure in question and whether further details are needed. Administrative reporting also calls for close coordination with investigative teams to ensure that ongoing investigations are not jeopardised by the report, which draws much of its intelligence from investigation files. Often, the time available to compile administrative reports is short. Considering that application of measures is deemed imperative for national security, there ought to be no delay in their imposition. Coordination therefore requires good organisation and planning. The NCTV plays an instrumental role, not only assessing and providing feedback on administrative reports, but also preparing proposals and drafting decisions. This means administrative reports have to be finished in time to allow for assessment by ministry lawyers. Coordination with national services is also crucial. Because any proposal and/or decision to be issued must be ready as soon as a measure is deemed

imperative in the interests of national security, the NCTV in charge of the measures under the Temporary Counterterrorism Act is also under tight time constraints.

Time is even more of an issue in the case of extensions. Since a measure terminates automatically after six months, an extension has to be in force as soon as the initial term ends. Furthermore, because the initial report does not suffice to extend an existing measure, a new administrative report containing new, current intelligence has to be compiled demonstrating that there is an ongoing threat to national security. Multiple officials operating at both the local and national level pointed in interviews to the disparity between the time investment needed to apply the Temporary Counterterrorism Act and the relatively short timespan for which the measures are imposed. In practice, it is difficult to decide after just six months that someone no longer poses a threat to national security. This creates a dilemma. On the one hand, imposing a measure is a time-consuming procedure that has to be repeated every six months. On the other, few are willing to shoulder the risk of declaring after six months that a person is no longer a national security threat.

The long chain of organisations and actors involved in the preparation and execution of the measures under the Temporary Counterterrorism Act conspire to make this a materially and organisationally complex process. This is affirmed both at the local level and by the NCTV. The picture that emerges from our interviews and analysis of the documents is that at both the local and national level the process entails more work for all parties involved than was initially foreseen. It is possible that this stems in part from 'teething troubles' and the initial difficulties routinely encountered in the first period after new legislation takes effect. Continued monitoring of the Temporary Act will be needed to see in how far these issues will iron themselves out in time.