



**Agustín Motilla**

(Full Professor of Law and Religion at the University Carlos III of Madrid,  
School of Law)

## **Security and Religious Radicalization. Securitization of Islam in Europe \***

**SUMMARY:** 1. Introduction - 2. General measures of the anti-terrorist laws; social surveillance and immigration control - 3. Antiterrorist laws and Islam: the securitization of Muslims in western countries - 4. The enforcement of measures affecting Muslim population not directly related to security: the vague criminalization of Islam - 5. Effects of the measures direct or indirectly justified on security reasons in religious freedom; specially related to Muslim population - 6. Closing remarks; positive statements in the construction of the European Union framework.

### **1 - Introduction**

Violence as a mean to achieve political aims has always been present in the History of humankind. It is a long-standing social scourge. After the French Revolution has also risen to a political category; only through physical force social changes can be reached - or, as Lenin pointed out: "Revolutions are meaningless without shooting squads" -. Violence is also present in nationalism and colonialism processes, or in secular ideologies as anarchism or communism. The radicalization of their doctrines brought with them a massacre to contemporary ages and, in an action-reaction process, carried out the First and the Second World Wars.

XXI century opens with a kind of violence that would seem to be completely eradicated after the XVI and XVII centuries: the religious one<sup>1</sup>. One of its causes is radicalization in this sphere: the process by which these individuals or groups host violent practices against society as a way to reach, through force, the changes that they follow<sup>2</sup>. The process of religious radicalization is present in all religions - Christians, Buddhists, Hinduisms, Sikhs ...<sup>3</sup> -. But Islamic extremism and radicalization has attained a special

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<sup>1</sup> Nevertheless, the conflicts in North Ireland and the former Yugoslavia had their roots in straggles between different religious communities, looking forward the independence and the built of their own State.

<sup>2</sup> **BRAMADAT-DAWSON:** 2014, 3 ff.

<sup>3</sup> **KEEBLE:** 2014, 259.



notoriety because of the frequency and cruelty of their actions. Since 9/11 we can certainly claim that religious terrorism and *ihadism* have become equal terms<sup>4</sup>.

As it has been stated<sup>5</sup>, we must underline the religious essence of this terrorism. *Al Qaeda* and other terrorist group aims are to make war against Zionism or Christianity and, general speaking, against western values. They consider these values damage Muslim's ones<sup>6</sup> and, therefore, they must be replaced by the Islamic principles. Their speech is certainly religious, but it comes with a remarkable political effect - both aspects are unified in Islam, where there has not been a secularization process as in the Christian countries -. It is true that other elements, as Muslim's economic or social discrimination, may have contributed to create the atmosphere where future *ihadists* are born and grown. However this does not hide the real and fundamental motivation, the religious one: imposing Islam to all people and countries as the true Religion.

Against the terrorism threat, several security measures have been adopted. These measures can be classified in two different orders: internal or against terrorist groups acting inside the countries; and external or, the war against those countries that are suspected to protect or nourish terrorism - Afghanistan or Iraq in the past, by instance -. Due to the main object of this paper, we have focused on the first kind of measures, the internal ones.

Security against terrorism as a real threat to western society has justified that those countries, which have suffered their terrible actions, have adopted extraordinary measures - in the sense of measures beyond the normal paths of the political action - to eradicate them. Generally speaking they focus on increasing government powers of surveillance of individuals or groups operating inside the country: the communications, the financial of associative activities, the bank data, the immigration ... Consequently several fundamental rights are affected: the right to free speech, the inviolability of the residence, the privacy - specially in the communications -, the freedom of assembly ... and, due to the nature of the goals followed

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<sup>4</sup> It also has to be pointed out that in the '80 and the '90 some religious cults provoked terrorist attacks, as the one performed in Tokyo's subway by the so called "The Supreme Truth".

<sup>5</sup> **BRAMADAT-LAWSON**: 2014, 14 ss.; **CESARY**: 2006, 4; **DURHAM-LIGGETT**: 2006, 50; **READER**: 2014, 57-58.

<sup>6</sup> Actually, the name of the main terrorist group in Nigeria is *Boko Haram*. It literally means "western education is sin". They also attack Islamic countries, because, in their opinion, theirs governments have committed treason to the *Sharia* principles (**MAZZOLA**: 2006, 21-22).



by these groups under suspicion - *ihadists* -, the right of religious freedom. This paper is going to study these measures.

In addition of direct security measures against terrorism, some countries have adopted other ones - it can be called "diffuse" or "unspecific" - only remotely - if it is so- related with security. We are talking about those which consider Islam, as a whole, a threat for western values. The social presence and the ideology of Islam - a fanatic, violent and anti-liberal Religion - must be restricted if not eradicated. This "bipolar" argument confronts - as *Al Qaeda* does- Christianity with Islam. It is present in "the clash of civilizations" theory<sup>7</sup>, the thesis supported by Europe extreme right parties, and the statements of some individuals in charge of high offices in the government: for example the President of the United States who described the war against terrorism as a new "crusade" on September 16<sup>th</sup>., 2001, and thus, the President, in the same direction of American evangelical's fundamentalists, expressed his conviction that 9/11 confronts America, blessed by God, with the external threat of Islam, reviving the old History episode of the Middle Ages<sup>8</sup>.

By taking this approach, Islam plurality is denied. For it all Muslims, far beyond their nationality, ethnicity or believes, are as a whole a potential threat to western standards. It justifies restrictive policies against the "visualization" of the Islam - as the prohibition of some Islamic garments or mosque minarets -, or Muslim immigration of Islamic true believers - as show the tests adopted in some countries-.

## 2 - General measures of the anti-terrorist laws; social surveillance and immigration control

UN Security Council Resolution 1373, adopted days after 9/11<sup>9</sup>, allows the States to adopt some kind of measures for fighting terrorism, such as denying asylum or residence to those suspected of terrorist acts; to freeze funds of organizations suspected to support, direct or indirectly, terrorist groups; to surveillance economic movements between them, etc. The Resolution called for an active exchange of information between the States, knowing that the terrorist attacks are mainly perpetrated by foreign countries individuals or groups.

Immediately, anti-terrorist laws were enacted in the western countries; changing the old ones or promulgating new texts. To the first

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<sup>7</sup> HUNTINGTON: 1996.

<sup>8</sup> NORTON-UPAL: 2014; 293 ff.

<sup>9</sup> On September 29<sup>th</sup>., 2001.



laws adopted in 2001 in the United States - the *Patriot Act* (PA)<sup>10</sup> -, Great Britain - *Terrorist Act*<sup>11</sup> -, and Canada - *Antiterrorist Act* - followed other ones in France, Italy, Germany or Spain.

As we said, the general aim of these laws is to increase governmental powers - weaken the judge powers of control<sup>12</sup> -, in order to prevent terrorism acts: giving the police or the security forces especial faculties of surveillance of individuals or groups without submitting their actions to judge authorizations. The governmental powers are enlarged by the discretionary determination of the main objective of investigation: all "terrorist person or action", that is, every individual who could be a threat to society or a danger to national security - in an active or a passive way -, with the goal to reach political, religious or ideological aims<sup>13</sup>.

Actions allowed in western security laws can be classified in two different categories.

As surveillance and control over individual or group measures, public powers have extraordinary faculties in the investigation and detention of the suspected persons of terrorist acts.

Far beyond in these measures has gone the States PA, adopted barely some months after 9/11<sup>14</sup>. We must refer to the PA because it has served as a model for other western laws. On the surveillance issue, the American Act gives the Government the power to control unrestrictedly personal communication - especially through Internet -, bank accounts and transactions between them, and, also, to search the books asked for in libraries without the lector knowledge. Far more transcendent are the range of measures affecting free circulation and inviolability of the residence rights. Security forces can register houses, take objects and empty personal

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<sup>10</sup> USA *Patriot Act* is the short name of *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism*. In 2002 the Law was completed by the *Homeland Security Act*.

<sup>11</sup> These Laws have been amended several times. In 2015 the PA was substituted by the *Freedom Act*, basically the same. The British antiterrorist Law has been modified in the years 2003, 2006, 2008 and 2013. Today is enforced the *Counter-Terrorism and Security Act*, of February 12<sup>th</sup>, 2015.

<sup>12</sup> As Mazzola points out referring to British laws, the substantial feature of the legislation is "a preference for the Government to act *de facto* to defend public security in the execution of its duty to avoid the destruction of the State" (MAZZOLA: 2006, 13, n. 6).

<sup>13</sup> Section 1° of the British Act. Or, as the PA defines it in Section 802, terrorist acts are "acts dangerous to human life that are a violation of the criminal laws of the U.S. or any State" that "appear to be intended to influence the policy of the government by intimidation or coercion". Every protest with some kind of violence -e.g. blocking the traffic- could give rise to liability under the PA (DURHAM-LIGGETT: 2006; 53).

<sup>14</sup> See, among others, CESARI: 2006; 40 ff.; MONSHIPOURI: 2010, 57; SMITH: 2010; 32-33.



computers without judicial authorization or even the resident knowledge. They can also arrest citizens for an unlimited period on the generic ground of being suspected of terrorist acts. The detained person could not know the police evidences against him if these are considered secrets or affect national security. As Stern pointed out, "The Patriot Act ... [is] a loaded gun lying on the table, aimed at the heart of American democracy, ready for the hand of anyone ... who would fire it"<sup>15</sup>.

European antiterrorist laws follow the same way but not so far as the States' PA. We shall take three examples<sup>16</sup>.

A new chapter was added in 2005 to the **French** Security Act, of 2001. Police actions against terrorism include an unlimited access to financial, electronic or postal data of individuals or groups in France. Random track and storage of data are allowed without the knowledge of the involved person. The Law also gives the police the faculty to search residence not being occupied in that particular moment and to take objects related to the investigation, without judicial license. The 29<sup>th</sup>, July Act increases the Governmental powers in the terrorist fight: localizing and following individuals suspected of radicalization is allowed; and extremist associations and groups can be dissolved by Decree of the President of the Republic.

**Great Britain's** antiterrorist Act permits the surveillance of all kind of means of communication, the freezing or seizing of funds suspected to be used for terrorist purposes and entry, register and seize objects of private residences. The police can arrest an individual considered violent He can be retained without accusation until fourteen days<sup>17</sup>; then he must be put under judge disposition. The process before the courts has serious limitations of the personal freedom: information about the reason of the arrest and the grounds of the charges are not facilitated to the defense attorney if he or she is not of the confidence of the Government<sup>18</sup>. A new Law in 2005, of *Prevention of Terrorism*, introduced the new administrative category of the "control orders"<sup>19</sup>, from which an individual suspected of radicalization can be subject of a certain kind of obligations - localization, travel limitations, restrictions of some zones, works and studies ... - without

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<sup>15</sup> **STERN**: 2005; 103 (cit., in **MONSHIPOURI**: 2010, 57).

<sup>16</sup> See **BROWER**: 2003, 402 ff.; **CESARY**: 2010, 20 ff.

<sup>17</sup> Following the 2006 amendment of the Law, after the seventh day of the police detention the judge has to approve another seven days more. Police can deny the defence attorney intervention in the 48 first hours if his presence could affect the evidences recollection or alert other individuals suspected of have collaborated in the terrorist acts.

<sup>18</sup> **MAZZOLA**: 2006, 33.

<sup>19</sup> Part IV, already developed by other antiterrorist Laws.



being arrested. The control orders are issued by the Home Department and can be appealed before the courts. The Law also obliges some institutions, including schools and universities, to report the public officers all cases of radicalization - because of the extremist or fanatic conducts - observed. In **Italy** the Law enforced against the mafia, of 1965, is applied, properly amended in the same way of former laws, that is, increasing police powers, to fight terrorism. It allows to arrest people suspected of participating in violent acts, the intervention in private residences searching for evidences, the surveillance of bank accounts and the freeze of funds presumably financing terrorism ...

Security measures have also affected **immigration policies**. Under the European and the United States point of view, the entry of foreigners in the countries could affect internal security. It might be related, direct or indirectly, with terrorist acts. So the restriction in the immigration fluxes challenges the survival of western values.

American legislation has been again a model to other western laws. Nevertheless, it represents an extreme of these, due to the incidence - if not clear violation - of fundamental rights of liberal-democracies. In the PA, amended by 2013 Act<sup>20</sup>, individuals suspected of some kind of intervention in terrorist actions can be deported. It is only required the decision of a special court after a process where the defense counsel may not see evidences considered secrets because they affect internal security. Moreover, immigrants must register themselves in public offices of their residence place and must declare any variation in this residence. They could also be arrested or deported if they do not accomplish with this legal duty. The measure that with no doubt has the most and deepest incidence in fundamental rights is the possible arrest and unlimited put in prison of foreign people reasonably suspected of being a threat to national security<sup>21</sup>.

Europe's restrictions<sup>22</sup> were born in the European Union Law. European Union competences in borders control, asylum and immigration are shared with the member States' ones. The European Union allows deportation of those foreigners that State's law considered hazardous for national security. In the asylum issue, the European organization has made harder for the applicants to obtain it, tightening the Geneva Convention requirements: only individuals who suffer a direct persecution in his or her

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<sup>20</sup> See, **CESARY**: 2006, 41 ff.; **KEEBLE**: 2005, 368 ff.; **MONSHIPOURI**: 2010, 41 ff.

<sup>21</sup> Government faculty that, as we will see further on, American's courts of justice have declared unconstitutional. The European Council has also criticized the United State's detentions of foreigners in Guantanamo Bay.

<sup>22</sup> See, among others, **BROWER**: 2003, 300 ff.; **CESARY**: 2006, 43 ff.; **PORRAS RAMÍREZ**: 2017, 207 ff.



country could reach the refugee status in Europe. Without doubt, the most polemic EU measure has been the collective expelling of immigrants: the Agreement with Turkey, of March 18<sup>th</sup>, 2016, allows the expulsion of immigrants without testing either the identity or the risk to national security of these individuals.

States' legislation have received the Union laws and implemented it in a restrictive way, giving extraordinary powers to the government: foreigners can be deported if their behaviors disturbs public order<sup>23</sup>; internal laws have increased the requirements to enter into the country - those suspected of terrorist actions can be immediately expelled -, or to obtain the residence - also by family reunification - and higher the legal time of temporary detention of the individual - in Italy up to sixty days -. Furthermore, some countries have adopted measures close to those of the American law: in Germany there is a system of compulsory register of immigrants in public files; and in Great Britain the prohibition to entry into the country and the unlimited detention of foreigners suspected of terrorist acts - because they were in terrorist war zones - is allowed only if the State Secretary certifies the arrest. The first effect of European immigration policy is the notorious and quick diminish of enter, asylum and residence applications<sup>24</sup>. A quick consideration of these dispositions carried out the conclusion that European's immigration policy, influenced by the terrorism issue, casts doubt on important values as the solidarity, raises concerns about its compatibility with international Law and infringes human rights as the right to a fair process, the right of privacy and the right of free movement.

### **3 - Antiterrorist laws and Islam: the securitization of Muslims in western countries**

Up to a certain point it is logical that the main subjects of the internal security laws adopted by western countries have been because of Muslims. The nature and aims of the terrorist attacks in last years, are linked to *jihadism*, explain this fact. In some way the relationship between western States and Islam has passed to be something related to the foreign affaires

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<sup>23</sup> Mazzola wonders about the usefulness of expelling foreigners and the process to do so not only under human rights perspective but also under the point of view of the utility: deportation merely shift the problem from one country to another without solving it (MAZZOLA: 2006, 31).

<sup>24</sup> For example, in the Netherlands the number of application has reduced to a quarter of those before the State put in force the restrictive measures.



of the States - the relationships with Muslim countries - to an internal matter: after the bloody acts of New York in 2001, Madrid in 2004, London in 2005, Paris in 2015, Niza in 2016 or Barcelona in 2017 ... - just examples of many others -, the awareness of an internal Islam that must be controlled has grown up as a necessary step in the preservation of western values and life standards<sup>25</sup>. Problem will be not easily resolved due to the exponential increase in the Muslims because of immigration of Islamic countries and the high birth rate in Muslim population<sup>26</sup>.

In the United States<sup>27</sup> after 2001 PA Operation *Green Quest* was carried on by security public forces. According to General Attorney's and the Justice Department's reports, during 2002 five thousand people of Muslim religion were arrested, and three thousand more in 2003. About two thousand immigrants, most of them from Arab countries were imprisoned for months without legal advice or even knowing the grounds of the accusation. Only twenty of them were formally accused of terrorist acts. Some of these detentions were extended to an unlimited time<sup>28</sup>. Dactyl prints were taken to all immigrant males of Islamic countries. And Muslim charity associations were submitted to surveillance: more than ten million dollars of theirs funds were frozen due to an alleged destination to finance terrorism. Related to immigration policy thousand of people from Islamic countries were deported; others inside the States were detained because they did not properly register in the government files<sup>29</sup>. Certainly, this kind of measures has grown up with President Trump's Decree banning entrance in the States to all citizens from countries suspected of supporting terrorism - as, among others, Iraq, Iran, Libya, Syria, Sudan or Yemen -.

Antiterrorist measures in Europe have followed a similar path: the control of Muslim population<sup>30</sup>. The surveillance of mosque activities has been especially intense in countries as Great Britain, Germany and France.

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<sup>25</sup> See **AMIRAUX**: 2006, 29.

<sup>26</sup> There is about seven million Muslim residents in the United States; four and a half millions in France; three and a half millions in Germany; and two and a half millions in Great Britain.

<sup>27</sup> **CESARY**: 2010, 41 ff.; **DAVIS**: 2002, 67 ff.; **DURHAM-LIGGETT**:2006, 55 ss.; **FOX-AKBABA**: 2015, 179 ff.; **MONSHIPOURI**: 2010, 57 ff.; **SMITH**: 2010, 31 ff.

<sup>28</sup> In *Padilla v. Bush* case the President of the U.S. ordered the arrest of a presumed *jihadist* warrior. He spent three and a half years in a military prison. Then he passed to a civil court, where he was condemned of terrorism and conspiracy crimes. The Supreme Court in this and in other cases stated that the President Decree arresting people for an unlimited time violates the constitutional right to be judge in a fair trail (**MONSHIPOURI**: 2010, 58-59).

<sup>29</sup> Two hundred Muslim immigrants were retained in California in 2002 because of this reason (**CESARY**: 2006, 42).

<sup>30</sup> **CESARY**: 2006, 43 ff.; **FOX-AKBABA**: 2015, 179 ff.





Control of mosque goes<sup>31</sup> and the funds they received. Police surveillance has increased after the last terrorist attacks. More than three thousand searches of Muslim houses, business and places of worship took place in France after November 2015 and the President's Decree declaring a situation of exception, prolonged until nowadays. Only five of the investigations, all in Paris area, were directly related to terrorist actions or groups<sup>32</sup>.

#### **4 - The enforcement of measures affecting Muslim population not directly related to security: the vague criminalization of Islam**

The picture already exposed would not be completed if other measures related to Islam were not explained: those adopted not to fight *jihadi* groups and their final aim to subvert social order and impose the Islamic law or *Sharia* - in their singular conception - over the western values; but against Islam as a whole and its presence in western society. In the point of view of this position, Islam reflects a religion and an ideology incompatible with values and social standards of western civilization. The thesis is overwhelmingly defended by extreme right parties in America and in Europe, but it has some kind of reflection in acts and proposals of European governments. Shortly speaking, they identify Islam with the fundamentalists groups supporting violence as a mean to reach their goals - *Al Qaeda* or *Daesh* -. So, they ignore the pluralism inside a religion with over one thousand six hundred millions of believers<sup>33</sup>. This "bipolar" thesis<sup>34</sup> in which view all Muslims are fanatic entrenched in past, enemies of other civilizations<sup>35</sup>, has very important consequences. Let point out some of them.

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<sup>31</sup> More than six hundred Muslims were arrested in Mannheim and Freiburg -Germany- in 2003 (CESARY: 2006, 45).

<sup>32</sup> SAEED: 2016, 176.

<sup>33</sup> Four forms of Islam can be distinguish from the point of view of the behaviour and the organization: moderate-liberal, - moderate-traditionalist, *salafist-shaykist* and *salafist-jihadist*. Only the last one can be related to terrorist acts (MAZZOLA: 2006, 15-16).

<sup>34</sup> MISHRA: 2017, 15.

<sup>35</sup> Supporting this position is the well-known thesis of Huntington's "the clash of civilizations", firstly published as a paper in *Foreign Affairs Review* of 1993 and, after that, in the book *The Clash of Civilization and the Remaking of World Order*, edited in 1996. In the author's view last year wars have not been because national, ideology or economic factors, but for differences between the civilizations. In the context of the clash between them, he qualifies Islam as the most violent one. Under the title "the blood borders of Islam" he defends that most of the conflicts are born in the separation line between Muslims and non-



Firstly, some Islamic acts or practices of religious nature also become with political internationality; they are stereotypical expressions of an ideology pretend to undermine western values. So is the women headscarf a gender discrimination symbol; or mosque minarets try to change the European landscape, the skyline of our cities where the church towers are clear in the horizon ... Headscarf and minarets are the visualization of a rampant Islam, of the “Muslim tide” pretending to change democracy, pluralism, human rights or the secularization of the State ... with the aim to impose the medieval rules of the *Sharia*.

Secondly, western public powers have to stop the “Islamic tide” restricting acts or practices of religious nature. Following this policy the supporters of this thesis do not avoid confusion and mix international problems - as the *jihadist* terrorism - with internal or local ones. One example<sup>36</sup>. In the Swiss Referendum of November 2009 a propaganda poster of the People Party in favor of the minarets ban showed four minarets with a missile shape over a Swiss flag; in the foreground there is a woman dressing in a black *burqa*. With capital letters can be read: “Stop. Say yes to the prohibition”.

The example shows us a third consequence. The anti-Islam tendencies try to use those extreme and minority practices inside this Religion trying to condemn every Muslim. Even if those were scarcely or not present inside the country. That is the case of the *burqa*. In Switzerland, despite the drawing of the poster, the *burqa* is a very rare garment: most of the Muslim population is from Bosnian or Turkish origin and for them *burqa* is as odd garment as it is for us! However laws banning that practices are enacted even there is not social necessity for them ... reaching to grotesque or paranoid situations: the Prime Minister of Island proposed the ban of the *burqa* in 2012; but there was not a single case reported of woman dressing that cloth!<sup>37</sup>.

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Muslims in Euro-Asia and Africa. Along in a global perspective of international policy the main clash is between western world and the others, in a local sphere is between Islam and the others ... This is, he concludes, because Islam is more likely to make violent conflicts (HUNTINGTON: 1996, 255 ff.). After 9/11 Huntington thinks his arguments have been confirmed by the facts. He states: “... contemporary policy can be defined as the era of Islamic Wars ... This wars include terrorism, guerrilla wars, civil wars and interstate conflicts. These expressions of Islamic violence could be converted in a clash between Islam and the west, or between Islam and the rest of civilizations” (HUNTINGTON: 2001). It is a false simplification of reality, as we said, to consider Islam as a homogeneous whole. Moreover, it can be said, as Mamdani pointed out, that the wars are more likely inside the civilization than outside them (MAMDANI: 2004, 22).

<sup>36</sup> Mention in AMIRAUX-ARAYA MORENO: 2014, 97.

<sup>37</sup> AMIRAUX-ARAYA MORENO: 2014, 98 ff.



We have already referred these two issues where legal actions have been taken to limit religious motivated Islamic practices: religious garments and places of worship. They both are in the same direction of anti-Islamic pretensions.

In the first issue, some women religious garments are viewed as a link to radicalization or fundamentalism, if not they are imposed by force of the male. It used to be presumed that Muslim women wear religious garments because of men's direct coercion or, indirectly, by the upbringing in a male and patriarchal society. Therefore Islamic headscarf is ban in French public schools because it is a "communitarian element" that it is against republican values of equality and non discrimination. The same reasons are behind banning the *burqa* in countries as Austria, France, Belgium, the Netherlands or Germany<sup>38</sup>.

The restrictions in places of worship project their shadow in three different matters. Firstly, in the construction. Motives for banning them are far beyond planned reasons. Most of the times the real reason is the opposition of neighborhood population and politicians fear to ignore it<sup>39</sup>. Secondly, in financial issues. European countries have tried to avoid Persian Gulf countries' economical help. They fear the drift to fundamentalist positions due to the imposition of the *wahabi* vision of Islam. And lastly, even in the esthetic or the architect planning of the mosques, obstructing their "visualization" by banning minarets construction<sup>40</sup>.

To those issues we can add a third one: the surveillance of imams and their influence on believers. Certainly, this control sometime relays more in avoiding anti-European messages - specially about women discrimination on religious grounds - than in security reasons - the discourses in favor of violence or the *jihād*<sup>41</sup> -. Two types of actions have

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<sup>38</sup> Edmunds points out that deny Islamic garments are wore by women free-will and as the expression of their cultural identity , and the ban of then in public spaces, are reminiscences of the colonial times when we should "free women ... of brutality and misogyny" (EDMUNDS: 2012, 75).

<sup>39</sup> Problems around the construction of Muslim places of worship have been reported in France, Germany, the Netherlands and Spain. Cesary informs that in some cases European population had even sprayed the ground with pigs blood to convert it *haram* and avoid the mosque construction (CESARY: 2010, 16).

<sup>40</sup> The Swiss Referendum for banning the minarets was approved by the 57.5% of the population. Although there was not a real and social need to do it. In Switzerland there are only four minarets of around one hundred and fifty Muslim places of worship, and only two more mosques were planned to be constructed with these elements from the Arab architectonic tradition. Once again we can conclude, with Amiriaux-Araya Moreno, that probably the minaret polemic was another stereotype used by the anti-Islamic positions (AMIRIAUX-ARAYA MORENO: 2014, 97).

<sup>41</sup> After 2016 France has closed many mosques because of the violent speech of theirs



been taken in the policies about imams. Firstly, an extreme one: immediately deportation of the country - as in France or Germany -. Or, secondly, a preventive one: they have to follow and pass special formation courses where they are taught, among other matters, about European values and human rights - with a particular accent in women equality and free speech<sup>42</sup> -.

European immigration policies have also been used as a tool to limit Islamic doctrines presumed to be against western traditions: through compulsory integration courses and the final tests they ought to pass<sup>43</sup>. The courses are designed, not for security reasons, but to test the immigrant degree of acceptance of European values. They try to guarantee the success of assimilation of the individual into European society. Anti-Islam and assimilationist doctrines watch in them a way to achieve social cohesiveness due to the increasing tide of immigrants; that is, they try to avoid that new social ghettos can be created<sup>44</sup>. However, and as we will see, they raise doubts about the respect of minority cultural identity, the freedom of conscience and discrimination as a cause of their religious beliefs -because they only affect to Muslims-.

The Netherlands created compulsory courses for immigrants who wanted to enter into the country by the common standards or by family reunification: in both cases only they were able to get the visa after attending the courses and passing the test exams. They are also required to obtain permanent residence in the country, or Dutch nationality. Anyway, individuals citizens of Islamic countries are obliged to pass these tests - not for citizens of other countries as the United States, Canada, New Zealand or South Korea, for instance<sup>45</sup> -. Their final aim is to control the degree of acceptance of a Muslim believer about the values and the customs of Dutch society, especially in sex and gender matters. The immigrant has to give his or her opinion about certain images: nudism in a beach; kissing of a same-sex couple; or women dress in western fashion. Consequences of failing these tests are important: if they want to enter the country, the visa is

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imams and the risk of radicalization of members. We must not forget that, for example, Barcelona's terrorist attacks were directed by the imam of the mosque of the village of Ripoll (Girona), leader of the terrorist cell where several young people from Morocco origins were radicalized.

<sup>42</sup> So, in the Netherlands. In France a civil diploma is required to work as imam in prison religious chaplaincy.

<sup>43</sup> See **CESARY**: 2010, 9 ff.; **MONSHIPOURI**: 2010, 50-54.

<sup>44</sup> Or as a way to avoid immigration of people with cultural background distant from the Christian European one, as plainly recognized the Hungarian Government in order to close the borders to new immigrants.

<sup>45</sup> **MONSHIPOURI**: 2010, 51.



denied; or if the immigrant is applying for residence or for the nationality, he or she can lose all or part of the social benefits given by the Government<sup>46</sup>.

Other countries, as Austria or France, have followed the same path of the assimilation tests. In France immigration laws have hardened since 2006. The President of the Republic, Nicolas Sarkozy, stated that the final goal of the reforms is that Muslims accept offensive newspapers articles or draws, or Muslim women do not wear the headscarf in the identification card photographs, or allow to be treated by male doctors<sup>47</sup>. The time of residence can be limited if the foreigner does not pass the tests.

Nevertheless, in Germany there was a shift in the control of the ideology elements. Before 2008 the *Länders* naturalization tests asked Muslims questions about their moral or religion beliefs. Consequently they required the acceptance of western standards in this issues<sup>48</sup>. After the Federal Law of 2008, the questions were about German history or policy; those affecting the conscience or the beliefs of the individuals were forbidden.

We may conclude that the compulsory courses only for Muslim people could be considered a discrimination of religious or ethnic grounds. They also spread a clear message: people from some countries and cultures won't be welcome in the country<sup>49</sup>. Certainly the tests are questioning Muslim - pious - beliefs but they are not applied to individuals of other religions and similar believes in moral or sexual matters - as the Roman Catholics who follow the strict conception of Catholic hierarchy in homosexuality or nudism issues -. In our opinion, enforcing these kinds of tests affecting the freedom of conscience of Muslim population, the State adopts an ideological position against one single confession. So, it is breaching a basic rule of liberal-democratic system of government.

## **5 - Effects of the measures direct or indirectly justified on security reasons in religious freedom; specially related to Muslim population**

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<sup>46</sup> *Ibidem*.

<sup>47</sup> **CESARY**: 2010, 11.

<sup>48</sup> For example, in Baden-Württemberg the applicant must give his opinion about mix swimming classes in the schools, over de Jews, the situation of women in the public sphere, the homosexuality, the women rights or the religious diversity (**MONSHIPOURI**: 2010, 52).

<sup>49</sup> Conclusion of *Human Rights Watch Report* (see in *ibidem*). In fact, enter visas in, for example, the Netherlands have fallen 70% between 2002 and 2004. ¿Is that -may we ask- the main effect desired?



Following the research of Fox-Akbaba<sup>50</sup>, religious discrimination in the world has increased since 1990; after 9/11 Islam is the main subject of this discrimination<sup>51</sup>. The term “Islamophobia” has been appointed in Europe to name those doctrines that consider Islam, as a whole, a Religion essentially against western values that does not exclude violent or terrorist means to reach its aims. There is a coincidence in this position between European’s extreme right parties and the United State’s Christian Evangelicals.

The national security laws, as an answer against terrorism, have created an “Orwellian” climate<sup>52</sup> of generalized suspect. It certainly affects essential values of liberal-democracy: equality, human rights and State neutrality and *laïcité*. It also affects the free exercise of religion to Muslims, principal subjects of surveillance.

Islamic beliefs sometimes are limited by actions direct related with security measures. Some examples. By freezing or seizing Islamic charity association funds the governments are obstructing Muslim obligation to pay the *zakat*, that is, the part of the personal income every believer must give to help poor people of the *umma*<sup>53</sup>. Or some questions of the immigration tests are against freedom of conscience of orthodox Muslims.

Beyond the acts adopted for security reasons there are others justified by limiting Islamic growing, either its visualization in western cities - as the ban to Muslim headscarf, the *burqas* or the minarets -, or their doctrines - so, the surveillance of imam’s speeches -.

In this sphere of Islamic ideological control movements in the West about some policies carried out in Europe, implemented by public promotion and economical subventions - and, actually, far away from security policies -. We are speaking about State’s financial of imam’s formation - so in France or the Netherlands -, or of Muslim associations - in Spain -, the construction of places of worship - in France -, the edition of Islamic Religion books which are studied in public schools - in Spain - ... or even organizing with public funds the elections of Muslim representatives

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<sup>50</sup> Their paper exposes the results of the data of *Religious and State Minorities Round 2 (RASZ)*. This report studies varies taken placed between 1990 and 2008.

<sup>51</sup> **FOX-AKBABA**: 2015.

<sup>52</sup> So called by **SAEED**: 2016, 169.

<sup>53</sup> **CESARY**: 2006, 4. The lack of determination of the collaboration with terrorist groups crime makes heavier the situation of Muslim people. In the United States the PA rules this crime in a wide way: a person can even be accused if he did not know the terrorist nature of the association he has supported: a donation to a charity Islamic association could be considered terrorist collaboration crime if this organization is -before or after the donation- considered terrorist. The knowledge or the intention of the person is not taken into account (**DURHAM-LIGGETT**:2006; 53).



in order to deal with the government - as in France or Belgium -. Obviously they are not merely altruistic measures. These kinds of measures pretend to sift Muslim population: to distinguish between “good Muslims” - those who accept western values and are socially integrated - and “bad Muslims” - they reject western standards and modernity, and presumably may shift to radical or violent positions as means to reach their goals<sup>54</sup> -. Individuals and groups of the first category must be supported by public help; the other ones controlled, or even deported.

Once again, certain doubts about these policies should be underlined. Their compatibility with the right of religious freedom, the autonomy of religious denominations and the neutrality of public powers must be queried. And, we should remember again, those are values of the very core of liberal-democracies.

We should also examine the measures described in former pages under the point of view of their practical effects; that is, under the perspective of their efficiency in fighting against *jihadist* terrorism. As have been pointed out<sup>55</sup>, Muslim’s feeling or being discriminated and the limitations of important aspects of their culture and religion, adding to economical and social inequalities<sup>56</sup>, foster a certain resentment that could enhance radicalization. If European public powers press Islamic orthodox individuals there could be a shift of pious and conservative Muslims to violent and terrorist ones. Moreover, the prohibitions and limitations have the paradoxical effect of reinforcing the communitarian and dignitary elements of Muslim population; that is, those who belong to the religious *umma* over the particular costumes or traditions of ethnics or nationalities that divide Islam<sup>57</sup>. We have seen that in the headscarf affaire.

European security laws and their enforcement also have an important effect in the political system. Countries govern by the principles of multiculturalism and the respect to minorities identities - as Great Britain and the Netherlands - have shifted to positions near the assimilation policies of France<sup>58</sup>. It may be, as in the Netherlands’ case, under the will to reinforce a policy of *laïcité* or secularization of the State. Certainly it has

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<sup>54</sup> This is the title of Mamdami’s book, *Good Muslims, Bad Muslims*. MAMDAMI: 2014.

<sup>55</sup> See, among others, AMIRAUX: 2006, 29 ff.; CESARY: 2010, 9; EDMUNDS: 2012, 8 ff.; MONSHIPOURI: 2010, 47.

<sup>56</sup> The unemployment and social marginalization of European Muslims is three times higher than the rest of the population.

<sup>57</sup> To those effects one more can be added: the defence against “*islamophobia*” has contributed to organize western Islam, to increase the number of Muslim associations dedicated to fight for their fundamental rights (see, in the United States, SMITH: 2010, 33 ff.).

<sup>58</sup> CESARY: 2010, 14.



become because of the increasing influence of populist extreme right parties - the Netherlands' case is paradigmatic of this -. As a matter of fact, a sort of "culture of the majority", based on secularization and human rights but also in vague traditional elements derived from nationalism or Christianity, is pretended to be accepted by minorities. This "culture homogeneous" policies derived from the assimilationist positions are closer to the birth of modern States in XV and XVI centuries than to the contemporary democratic-pluralistic States. We can clearly see this tendency described in European immigration policies; some European countries pretend that foreigners accept our values and leave their own beliefs at home!

## **6 - Closing remarks; positive statements in the construction of the European Union framework**

At the background of the problem, there is the old and never resolved question of balancing freedom and security as principles right in the core of modern democracies. From the perspective of liberal doctrine, where human rights and social pluralism are main values of the political order, the answer must integrate security in those values; that is, security should be at the service of individual freedom and the exercise of human rights<sup>59</sup>. Following this idea, some statements must be remarked:

1. In human rights declarations security is recognized in the individual sphere: as the right of individuals to not be detained or imprisoned without a justified cause and always under judicial oversight. Security as a guarantee of public authorities against violence or physical or psychological harms is conceived as a limit of the exercise of human rights. So it must be interpreted in a restrictive way and under the superiority of the fundamental values of equality and liberty.

2. General security in this meaning is neither a fundamental right nor a supreme value of the Law. It is a relational concept; that is, it is only applied in a specific circumstance where the State must guarantee the exercise of individual human rights. From the perspective of the security role in liberal-democracies, it must be said that we should suffer a certain degree of insecurity in order to exercise our fundamental rights.

Summarizing these ideas we can conclude that antiterrorist laws may and should limit human rights in some circumstances but not annul or erode them, because they are part of the fundamental framework of liberal-

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<sup>59</sup> LAZARUS: 2012, 86-106. We shall follow the conclusions reached in this paper.





democracy. From this point of view some laws has gone far beyond<sup>60</sup>.

Then, what should be a fair policy of western countries against Islamic violence and radicalization?

In the international sphere, the righteous and necessary fight against terrorism has to implement preventive measures too. We must remain sensitive in terms of social uproot, ignorance and young lack of future employment because they constitute a perfect nourishing substance where terrorist groups get their followers<sup>61</sup>.

In Europe, measures aim to integrate Muslims into the living-together model - based on secularization, human rights and fundamental liberties - should prevail. Of course, it is fair to demand Islamic communities to accept the rules of Law of each country. Nevertheless, quoting Todorov's statement,

“the possibility of practice their own culture without discrimination does not impede the loyalty to the country we are living in ... one common law does not mean one culture ... If we dispossess the human beings of their particular culture, they simple leave to be humans”<sup>62</sup>.

Religion is the distinctive feature of Islamic culture. So the safeguard of the religious practice, in the frame of European values, must be a priority for public powers. Not only as a guarantee of religious freedom but also as a cohesion and civil peace fact. On the contrary, the criminalization of Islam will nourish exclusion and, at last, violence. The reasonable way to peaceful integration of Muslims in European society only can be done through dialogue with Islamic communities in order to ease theirs religious practices, and avoiding Muslims feeling as second class citizens. And, of course, we should not forget prevention and repression of religious motivated crimes<sup>63</sup>.

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<sup>60</sup> MAZZOLA: 2006, 22 ff. Or in a newspaper article days after Barcelona's attacks, VARGAS LLOSA: 2007, 15. These conclusions are, regrettably, against public opinion. As the French report inform, more than 90% of the population agrees to harden the public measures in the struggle against terrorism and radicalization; 71 % accepts telephone and Internet control without judicial supervision; 67 % allows residence searches without the judge authorization; and 61 % are agree with police interrogatories without the present of a lawyer.

<sup>61</sup> This is one of the conclusions of the US Commission Report on 9/11. It recommends public powers to rebuild the scholarship, exchange and library programs that reach out to Muslim young people. “Education that teaches tolerance, the dignity and value of each individual, and respect for different beliefs is a key element in a global strategy to eliminate Islamic terrorism”. THE 9/11 COMMISSION REPORT: 2004, 378.

<sup>62</sup> TODOROV: 2008, 196-197.

<sup>63</sup> See, herewith, the reasoning of European Union discourses about this issue, summarized in MOTILLA: 2011, 14 ff.



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