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# Jihadi detainees present a dilemma for Switzerland

There are said to be around twenty Swiss nationals detained at present in Iraq and in Syria, including women and children. The fundamental rights of these individuals, whether they have been fighting for the Islamic State or not, are not guaranteed. The Confederation has no plans for repatriation.

STÉPHANE HERZOG

Western countries are not in any hurry to take back their nationals detained in Syria and Iraq. In north-east Syria, Jihadi travellers are kept in open-air prisons and in camps. In Iraq, individuals suspected of terrorist activity for the Islamic State (IS) are held in prisons. In this tense country, several westerners have already been sentenced to death, although they have not been executed. Observers have criticised the flawed criminal procedures.

In Syria, families captured after the fall of the last bastions of the caliphate in 2019 are living in “apocalyptic” conditions, according to the International Committee of the Red Cross (ICRC). This is the case for the al-Hawl camp, where almost 73,000 individuals, including 67,000 women and children, are currently held, according to the ICRC. In this area of Syria, destabilised by the Turkish intervention this autumn, 12,000 people are accused of serving as fighters for IS, explains Mehmet Balci, co-founder of the NGO Fight for Humanity (FFH). Swiss passport holders account for around 20 individuals in this region, according to the Federal Intelligence Service. Three young men of Swiss nationality are imprisoned in Syria, adds Jean-Paul Rouiller, head of the joint analysis group on terrorism at the Geneva Center for Security Policy (GCSP). The Federal Department of Foreign Affairs (FDFA) is not aware of any Swiss nationals accused or detained in Iraq. Amongst the westerners sentenced to death in Iraq, however, is one young man who grew up in Thurgau and who holds a C permit. “Switzerland does not have to intervene in this case,” states Rouiller.

## It is for the states concerned to judge the crimes

So, what would happen if Swiss nationals were sentenced to death? The objective of the authorities is that “prosecutions and execution of sentences are carried out in accordance with international standards in the states in which the crimes were committed”, says the FDFA. Should this not be the case, it will be up to Switzerland “to sentence these nationals as soon as they return to the country, or a state

with which Switzerland has a judicial assistance agreement”, states the FDFA.

Of course, the subject of capital punishment remains a theoretical one. No judicial procedure has yet been undertaken in north-east Syria and there is no death penalty in that part of the country. “The situation would be different if the Kurdish forces running the IS prisoner camps decided to let these people be moved to the regions of Syria controlled by Bashar al-Assad, where the death penalty still exists and there are few guarantees of a fair trial,” warns Balci. A dozen European fighters have already been transferred to Iraq and sentenced to death, notes the GCSP. In such a case, at least from a legal point of view, Switzerland would be obliged to repatriate its nationals, explains Jean-Paul Rouiller.

The future of IS fighters and their families is also linked to political questions. On the one hand, the Kurds would like to hold trials for the fighters responsible for atrocities committed in their region, underlines Balci of FFH. Rouiller states that “in Iraq, western prisoners represent a lever for the government in the context of negotiations aimed at obtaining the means to fight against terrorism”. Regarding the death penalty, “Switzerland should do something in this context to remain consistent with its status as the world leader against the death penalty within the UN Human Rights Council,” reasons Alain Bovard of Amnesty International.

## A policy judged “unsustainable and dangerous”

“Is Switzerland unable to repatriate 20 people and try them if necessary? It would be strange if it did not. The country is already dealing with cases of radicalised individuals on its own territory,” says Balci. The passivity of Switzerland and other Western countries with regards to minors is even more concerning. “Switzerland will examine the possibilities of repatriating minors on a case by case basis if it is in the best interests of the child,” states the FDFA. The foreign ministry considers that the presence of children – allegedly representing fewer than ten of the Swiss nationals – in this crisis region “is the responsibility of the mother”. “Until now,

the repatriation of children has failed above all because the mothers are not ready to let their children leave without them,” explains the FDFA.

The president of Lawyers without Borders, Saskia Ditisheim considers this position to be “unsustainable and dangerous”. She highlights that “for some Swiss nationals now held in Syria, radicalisation and allegiance to Daesh took place on Swiss territory”. For this lawyer, Switzerland would gain from repatriating these people and putting them on trial, “notably because of the essential information they could provide for the authorities”. She advocates the immediate repatriation of non-combatant Swiss women and children.

Jean-Paul Rouiller recognises that “the question of children concerns Switzerland, like other countries, on an ethical level”. However, he is calling for the matter to be considered more closely. The specialist points out that IS has recruited children from six years old and that it has identified thousands of minors in the context of a policy of recruitment. “Minors who have committed crimes will have to be tried, but they remain victims,” summarises Balci. According to the ICRC, children must only be detained as a last resort.

As for Swiss women, the head of the analysis group working in conjunction with the GCSP recalls that they could be

At times, there were more than 70,000 relatives of Islamic state fighters interred in the Syrian camp Al-Hawl; among them, ten thousand women and children.

Photos: Keystone archive image, March 2019



prosecuted in the context of the federal law prohibiting al-Qaeda and the Islamic State. One solution adopted by the Swiss authorities is to strip dual nationals of their Swiss citizenship. Such a procedure is currently underway against a Swiss woman of dual nationality from Geneva, imprisoned in Syria along with a child. In September, Switzerland revoked the Swiss citizenship of another dual national sentenced to imprisonment two years ago for having helped two fighters to reach the warzone in Syria and Iraq.

**Wives of Islamic State fighters wait with their children in the crowded Syrian refugee camp Al-Hawl to be deported to another camp or to be reunited with relatives.**

Photos: Keystone archive image, June 2019

