

**Third party intervention by the Council of Europe Commissioner for Human Rights before the
European Court of Human Rights**

under Article 36, paragraph 3 of the European Convention on Human Rights

Applications Nos. 24384/19 and 44234/20

H.F. and M.F. v. France and J.D. and A.D. v. France

Introduction

1. On 18 May 2021, The Council of Europe Commissioner for Human Rights (hereafter: the Commissioner) notified the European Court of Human Rights (hereafter: the Court) of her decision to intervene before the Court as a third party under Article 36.3 of the European Convention on Human Rights (hereafter: the Convention) and to submit written observations in the cases of *H.F. and M.F. v. France* and *J.D. and A.D. v. France* (applications Nos. 24384/19 and 44234/20). These cases concern a refusal by the French authorities to repatriate the applicants' daughters and grandchildren from the Al-Hol camp in North-East Syria, which is under the military authority of the Syrian Democratic Forces (hereafter: SDF) and the administrative supervision of the Autonomous Administration of North and East Syria (hereafter: AANES). Relying on Article 3 (prohibition of inhuman or degrading treatment), the applicants allege that the decision not to repatriate their daughters with their children exposes them to inhuman and degrading treatment. They also argue that the refusal to repatriate them is contrary to Article 3.2 of Protocol No. 4 to the Convention ("No one shall be deprived of the right to enter the territory of the state of which he is a national"). Relying on Article 3.2 of Protocol No. 4 in conjunction with Article 13 (right to an effective remedy), they submit that there was no effective remedy to appeal against the French authorities' decision not to repatriate their family members.
2. In accordance with her terms of reference, the Commissioner fosters the effective observance of human rights and assists member states in implementing Council of Europe human rights standards; promotes education in and awareness of human rights in Council of Europe member states; identifies possible shortcomings in human rights law and practice; facilitates the activities of national ombudspersons' offices and other human rights structures; and provides advice and information concerning the protection of human rights throughout the region.¹
3. The protection of human rights in the context of the fight against terrorism is of particular importance to the Commissioner. This intervention is based on the Commissioner's thematic work in this field and draws on the work of the Council of Europe and other international organisations in this area.
4. The first section sets out the Commissioner's general observations with regard to European citizens detained in camps in North-East Syria; the second section presents repatriation of their nationals by States Parties to the Convention as the only possible way to protect human rights; the third section deals with the responsibilities of States Parties to the Convention in protecting the rights of victims and preventing terrorism.

I. The Commissioner's general observations with regard to European citizens detained in camps in North-East Syria

5. The Commissioner notes that, although estimates² may vary, several tens of thousands of women and children are detained in the camps in North-East Syria under the authority of the AANES. The Save the Children NGO estimates that more than half of the detainees in these camps are children, 90% of whom are under the age of 12.³
6. Living conditions in these camps have been widely documented. In July 2019, the regional director of operations of the International Committee of the Red Cross (hereafter: ICRC) described the situation in Al-Hol camp as "apocalyptic".⁴ The women and children detained in these camps suffer daily from overcrowding, drastically limited access to drinking water, sanitary facilities and health care, no access to education, violence, indoctrination and intimidation, sometimes over a period of several years.⁵ The Commissioner is extremely concerned about these disgraceful conditions, which endanger the lives and physical and mental health of those detained there, especially

¹ [Resolution 99\(50\)](#) on the Commissioner for Human Rights, adopted by the Committee of Ministers of the Council of Europe on 7 May 1999 at its 104th session.

² See Thomas Renard and Rik Coolsaet, "[From bad to worse: The fate of European foreign fighters and families detained in Syria, one year after the Turkish offensive](#)", Security Policy Brief No. 130, Egmont Institute, October 2020.

³ Save the Children, "[Repatriation of foreign children in Syria slow ed by Covid-19, as new footage emerges of life in camps](#)", 1 February 2021.

⁴ ICRC, "[Syria: a camp is filled with children](#)", 26 July 2019.

⁵ On living conditions in the camps see Section II, below, and Fionnuala Ní Aoláin, [Position of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the human rights of adolescents/juveniles being detained in North-East Syria](#), May 2021, and Human Rights Watch, [Thousands of Foreigners Unlawfully Held in NE Syria](#), 23 March 2021.

children. The death in August 2020 of eight children under the age of five in less than a week in the Al-Hol camp alone is a tragic illustration of this situation.⁶

7. The Commissioner notes that a recent letter from a group of UN Special Rapporteurs calling on states to repatriate their nationals detained in camps in North-East Syria, clearly shows that 57 states are concerned.⁷ Furthermore, since 2019, at least 28 states are believed to have repatriated or helped repatriate their nationals.⁸
8. The Commissioner notes that 23 States Parties to the Convention have nationals detained in the camps in North-East Syria⁹ and that they have very different approaches to repatriation.¹⁰ Some refuse to repatriate at all, while others repatriate “on a case-by-case basis”. This is what happens in France, which has so far repatriated only 35 orphaned or separated children and refuses to repatriate children over 10 years of age and adults.¹¹ In some States Parties to the Convention, on the other hand, the authorities have carried out major repatriation operations, as in Bosnia-Herzegovina and North Macedonia,¹² or have been forced to do so by court orders.¹³
9. The Commissioner notes that this wide variety of approaches adopted by Council of Europe member states leads to significant disparities in the effective protection of the rights of nationals of these states under the European Convention on Human Rights.

II. Repatriation of their nationals by States Parties to the Convention as the only possible way to protect human rights

Scope of the jurisdiction of States Parties with regard to their nationals located outside their territory

10. The Commissioner notes that, while the Court has on many occasions held that the jurisdiction of States Parties to the Convention is “primarily territorial”, it has also accepted that an act undertaken outside its territory may, in exceptional circumstances, fall within the jurisdiction of a State Party.¹⁴
11. One of the exceptions established in the Court’s case-law concerns the situation where a State Party exercises “effective control” over a territory and individuals located beyond its borders, which, according to the Court, is “a question of fact”.¹⁵ The Commissioner observes that the States Parties to the Convention whose nationals are in the camps in North-East Syria do not themselves detain their nationals, who are therefore not subject to their direct authority but to that of the AANES. She notes that there is evidence to suggest that some States Parties are able to exercise a form of influence over decisions taken by the AANES in respect of their nationals¹⁶ which, while it may not be sufficient to define it as “effective control” over these structures and the persons detained in them within the meaning of the Court’s case-law, should nonetheless be taken into account in order to establish the extent of the responsibility of the states in question.

⁶ See UNICEF, “Eight children die in Al-Hol camp, north-eastern Syria in less than a week”, [statement](#) by Henrietta Fore, Executive Director, 14 August 2020.

⁷ See “[Syria: UN experts urge 57 States to repatriate women and children from squalid camps](#)”, 8 February 2021.

⁸ L. Tayler, A. Huygue, “[Foreign ISIS Suspects, Families: Why a Single “R” Word Matters at the UN](#)”, Just Security, 17 June 2021.

⁹ See “[Syria: UN experts urge 57 States to repatriate women and children from squalid camps](#)”, cited above.

¹⁰ See Thomas Renard and Rik Coolsaet, “[From bad to worse: The fate of European foreign fighters and families detained in Syria, one year after the Turkish offensive](#)”, Security Policy Brief No. 130, Egmont Institute, October 2020. See also the [op-ed article](#) published in Le Monde on 18 June 2021 citing the diversity of practices in this area.

¹¹ France Info, [interview](#) of Jean-Yves Le Drian, Minister for Europe and Foreign Affairs, 26 March 2021.

¹² See Eric Rosand, Heidi Ellis and Stevan Weine, “[Repatriating ISIS Family Members: A North Macedonia Model?](#)”, Just Security, 14 September 2020. [Denmark](#) recently announced its readiness to repatriate all its minors and several mothers detained in the camps in North-East Syria. The [Finnish authorities](#) have also opted for repatriation of children and take the view that “because the rights of the children are paramount, their mothers can come with them”.

¹³ In March 2021, [Belgium](#) announced that in order to fulfil a December 2019 court order, it would repatriate Belgian children detained in North-East Syria and would consider, on a case-by-case basis, the possibility of repatriating their mothers.

¹⁴ ECtHR, *Banković and others v. Belgium and others* (Decision) [GC], 12 December 2001, Application No. [52207/99](#).

¹⁵ ECtHR, *Al-Skeini and others v. United Kingdom* [GC], 7 July 2011, Application No. [55721/07](#), paragraph 139.

¹⁶ In a 2 March 2021 [press release](#), four members of the European Parliament lamented the fact that they had been denied access by AANES to the camps in North-East Syria, adding that this was the result of “direct pressure from the French authorities”. The Commissioner also received credible reports that French nationals who had gone to the Al-Hol camp to visit their daughters and grandchildren had also been refused access to the camp on the same grounds, even though nationals of other states had been allowed access to the camp and had been able to meet their family members there.

12. In point of fact, the Court has also accepted that, in exceptional circumstances, acts undertaken by States Parties which produce effects outside their territory may be construed as an exercise of their jurisdiction within the meaning of Article 1 of the Convention. As the Court pointed out in *M.N. and others v. Belgium*,¹⁷ a distinction must be drawn between the exercise of a State Party's jurisdiction - which "is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions imputable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention"¹⁸ - and the state's actual responsibility for the acts or omissions giving rise to the applicants' complaints under the Convention.
13. It is clear from that same decision that jurisdiction presupposes the existence of a link – the nature of which must be determined – with the respondent state and the exercise by that state of authority or control over persons located outside its territory and for whom it is responsible. The Commissioner notes that the European nationals detained in North-East Syria have a very close relationship with the States Parties to the Convention to which they are applying for repatriation. While in the case of *M.N. and others v. Belgium*, the applicants alleged that the fact of having applied for a visa from the consular services of a State Party could constitute an exceptional circumstance that would unilaterally trigger an extraterritorial jurisdictional link between them and that State Party, the nationality link between the European nationals detained in North-East Syria and the States Parties to which they are applying for repatriation is of a different nature: not only does it constitute an undisputed objective fact and not the result exclusively of the wishes of these nationals, but it also forms the basis for the personal jurisdiction of these states in relation to these individuals. The Commissioner observes, moreover, that, with the exception of children born in the Iraqi-Syrian zone, these nationals had been resident in the national territory of these States Parties, where they could claim a pre-existing family or private life. The fact that their parents and grandparents have initiated proceedings before the courts of the States Parties where they reside in order to obtain their repatriation is also indicative of their wish to pursue this family life.
14. In addition, the Commissioner is of the opinion that the continued presence of these European nationals in the camps in North-East Syria, despite the wishes of the persons concerned to be repatriated, the publicly expressed wish of the AANES that such repatriations should take place¹⁹ and the proven ability of a number of States Parties to organise such operations in conjunction with the local authorities,²⁰ suggests that the main factor determining their fate is the refusal by the state of which they are nationals to repatriate them. In refusing repatriation, those states have a decisive influence on the situation of their nationals which, while not constituting "effective control" within the meaning of the *Banković* case-law, falls, in the Commissioner's view, within the "authority or control" referred to by the Court in its decision in *M.N. and others v. Belgium*.²¹
15. The Commissioner believes that it follows from all of the above that the European nationals detained in North-East Syria fall within the jurisdiction of the States Parties of which they are nationals.

Obligations under the European Convention on Human Rights

16. The Commissioner is of the opinion that the situation faced by the nationals of Council of Europe member states being detained in the camps in North-East Syria raises serious questions about compliance with several provisions of the European Convention on Human Rights, in particular Article 3 prohibiting torture and inhuman or degrading treatment or punishment. It is beyond dispute that there is a proven risk of serious harm to the physical and psychological integrity of persons detained in the camps in North-East Syria. This situation led the Commissioner back in May 2018 to urge Council of Europe member states to repatriate their under-age nationals held in these camps and to consider repatriating their mothers.²² Since then, numerous reports from international

¹⁷ ECtHR, *M.N. and others v. Belgium* [GC] (decision.), 5 May 2020, Application No. [3599/18](#).

¹⁸ ECtHR, *Al-Skeini and others v. United Kingdom*, cited above, paragraph 130.

¹⁹ See the [press release](#) of the Executive Council of the AANES, of 18 March 2021; and the ASF France (Lawyers without Borders) and Paris Bar Association's [press release](#) of 6 April 2021.

²⁰ For example, France repatriated 25 French children, in co-operation with the Syrian Democratic Forces (See the [communiqué](#) of the Ministry for Europe and Foreign Affairs, of 15 March 2019).

²¹ *Op. cit.*, paragraph 113.

²² Council of Europe Commissioner for Human Rights, "Council of Europe member states should urgently repatriate their under-age nationals stranded in Northern Syria", [statement](#) of 28 May 2018. The Commissioner reiterated this [appeal](#) at the urgent debate on International obligations concerning the repatriation of children from war and conflict zones, held by the Parliamentary Assembly of the Council of Europe (PACE) on 30 January 2021.

organisations and non-governmental organisations have testified to this risk, for both the children and their mothers.

17. In August 2020, the spokesperson for the United Nations Office for the Co-ordination of Humanitarian Affairs raised the alarm, following the death of eight children under the age of five, concerning the unacceptable and dangerous conditions in which children are forced to live at the Al-Hol camp, citing a lack of access to basic services, including drinking water and emergency medical care, made worse by the COVID-19 pandemic.²³ On 29 March 2021, the President of the International Committee of the Red Cross, Peter Maurer, said he was shocked by the squalid conditions in which thousands of women and children are living at the Al-Hol camp, referring among other things to children suffering from malnutrition and the death of some children from treatable diseases.²⁴ Less than a week earlier, Human Rights Watch published a report corroborating the claims of the above-mentioned UN Office for the Co-ordination of Humanitarian Affairs and Red Cross officials and highlighting the violence suffered by those detained in the North-East Syrian camps.²⁵ These are just a few of the more recent examples, adding to the long list of reports that have extensively documented the health and security situation in the North-East Syrian camps, which the Commissioner finds clearly incompatible with Article 3 of the Convention.
18. The Commissioner notes that the Court's well-established case-law places a positive obligation on States Parties to the Convention to take measures to prevent persons under their jurisdiction from being subjected to treatment contrary to Article 3 of the Convention.²⁶ The Commissioner further notes that States Parties cannot be unaware of the nature and severity of the risks to which their nationals are exposed in the camps in North-East Syria and that several of them, including France, have demonstrated that they are able to organise the repatriation of their nationals in co-operation with the SDF. In the light of these factors and in view of the absolute nature of the prohibition laid down in Article 3 of the Convention, she feels that the only way of fulfilling this obligation with regard to European nationals detained in the camps in North-East Syria is for the States Parties to repatriate them.
19. Furthermore, the Commissioner finds that the refusal of some States Parties to repatriate their nationals detained in the camps in North-East Syria is such as to impede the effective exercise of these persons' right to respect for private and family life. While some of the latter severed the links they had with their parents and relatives before leaving for the Iraqi-Syrian zone, others maintained or renewed these links, which are however severely limited as they are unable to return to their home country. This limitation is especially damaging for the children detained in these camps, who did not choose to leave their country or to be born in a war zone, and for whom maintaining close links with their family can be a means of rebuilding their lives.

Obligations under the UN Convention on the Rights of the Child and its protocols

20. The Commissioner's activities in the field of children's rights are systematically based on the UN Convention on the Rights of the Child (CRC) and its Optional Protocols.²⁷ For the Commissioner, the CRC is the international reference standard and the starting point for all matters relating to the protection of children's rights. The Commissioner notes that the Court itself has recognised the importance of the CRC, emphasising that "[t]he human rights of children and the standards to which all states must aspire in realising these rights for all children" are set out in this Convention.²⁸ The Court has furthermore expressly stated that this treaty is an integral part of the relevant legal framework in such matters.²⁹

²³ See L. Schein, "[8 Children in Syria's Al-Hol Camp Die From Preventable Illnesses](#)", VOA, 16 August 2020. Regarding the effects of the pandemic on the children held in Al-Hol, see also Save the Children, "[A children's crisis](#)", update on Al-Hol camp and COVID-19 concerns", 6 May 2020.

²⁴ P. Maurer, [tweet](#) of 29 March 2021. The treatable diseases which had led to the death of children in the Al-Hol camp include malnutrition, dehydration following diarrhoea and hypoglycaemia; see L. Schein, "[8 Children in Syria's Al-Hol Camp Die From Preventable Illnesses](#)", cited above.

²⁵ HRW, "[Thousands of Foreigners Unlawfully Held in NE Syria](#)", 23 March 2021. Regarding violence, see also below, paragraphs 27 and 35.

²⁶ ECtHR, *El Masri v. the Former Yugoslav republic of Macedonia [GC]*, 13 December 2012, Application No. [39630/09](#).

²⁷ See the [UN Convention on the Rights of the Child](#), adopted by General Assembly Resolution 44/25 on 20 November 1989.

²⁸ See *Sahin v. Germany*, 8 July 2003, Application No. [30943/96](#), paragraph 39 and *Vavřička and others v. Czech Republic [GC]*, 8 April 2021, Application No. [47621/13](#).

²⁹ See the [statement of facts](#) (French only) in the *H.F. and M.F. v. France* case, Application No. 24384/19 published on 10 February 2020.

21. The CRC entered into force on 2 September 1990 and has been ratified by 196 states, including France. It sets out the fundamental rights of all children in the world – without distinction and irrespective of their situation or that of their parents. Several of its provisions are of particular relevance to the Commissioner regarding the children of persons suspected of involvement in the activities of Islamic State (hereafter: IS) held in camps in North-East Syria, including the right to survival (Article 6), the right to develop to the fullest extent possible (Article 5), and the right to be protected from harmful influences, violence and exploitation (Article 19). In addition, Contracting States must facilitate the physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation or abuse, or of armed conflict (Article 39).
22. Pursuant to one of the fundamental principles of international protection of children’s rights, Contracting States to the Convention are also obliged to draw up and implement all measures and policies taking into account the best interests of the child (Article 3). Furthermore, they must ensure that the child is effectively protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents (Article 2.2), and is not separated from the parents against their will, unless such separation is necessary in the best interests of the child (Article 9).
23. With regard to children in conflict zones, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict also sets out the priority obligations of Contracting States to ensure the continuous improvement of the situation of children without distinction, as well as their development and education in conditions of peace and security.³⁰ The Optional Protocol has also been widely ratified, by 170 states, including France.
24. The Commissioner notes that, in a decision of 2 November 2020, the Committee on the Rights of the Child held that France, as the state of nationality of the children held in the camps in North-East Syria, had the capability and the power to protect the rights of these children under the CRC by taking action to repatriate them or provide other consular responses.³¹
25. These rights are indisputably under serious threat. The Commissioner notes that the situation in the camps in North-East Syria, which has always been woefully inadequate for children, continues to deteriorate. Numerous international reports attest to this and show that these conditions have reached the level of torture and inhuman and degrading treatment under international law, and that no child should have to endure them.³² As a result of the COVID-19 crisis and the deteriorating security situation, access for humanitarian agencies has recently been reduced.³³ These children have been weakened by years of undernourishment, isolation, inhumane hygiene conditions and lack of access to basic services, and their vulnerability is becoming more and more urgent every day. The death of an 11-year-old child suffering from malnutrition in Roj camp in June 2021 has once again highlighted this urgency.³⁴
26. Moreover, the CRC lists the core obligations of Contracting States regarding children’s social, economic and cultural rights, including the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development (Article 27), the right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness (Article 24), the right to education (Article 28), and the right to rest and leisure, and to engage in play and recreational activities appropriate to the age of the child (Article 31). The Commissioner observes that, from this point of view too, the living conditions of children in the camps in North-East Syria are seriously inappropriate.
27. In addition, the Commissioner is concerned about the level of insecurity prevailing in the camps. UNICEF reports that 40 adults and two children were killed in the Al-Hol camp in the first quarter

³⁰ See the preamble of the [Optional Protocol](#) to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted by General Assembly Resolution 54/263 of 25 May 2000.

³¹ See the Committee on the Rights of the Child, decision of 2 November 2020 concerning communications No. 79/2019 and No. 109/2019, [UN CRC/C/85/D/79/2019 - CRC/C/85 /D/109/2019](#).

³² See, among others, the Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, [A/HRC/46/55](#), submitted to the Human Rights Council at its 46th session, 22 February-19 March 2021.

³³ On 3 March 2021, the NGO [Médecins sans frontières](#) announced the temporary suspension of its activities in the Al-Hol camp following the murder of one of its members of staff.

³⁴ See “Australian girl collapses in Syrian camp, sparking renewed calls to repatriate women and children”, [The Guardian](#), 14 June 2021.

of 2021 alone.³⁵ The Commissioner notes that AANES officials attribute responsibility for some of these killings to “IS cells in the camp”. The influence of IS in the camps, corroborated by numerous sources, also puts children, especially boys, at risk of premature separation from their mothers, human trafficking, or recruitment as child soldiers.³⁶

28. There is absolutely no doubt that the conditions of detention in the camps constitute an imminent risk of irreparable harm to the lives of children, their physical and mental integrity and their development. The Commissioner therefore believes that the removal of all foreign children from the camps is an absolute and mandatory priority from the perspective of children’s rights. In view of the situation in the camps, the Commissioner does not believe that a case-by-case approach can be justified, as no one can claim that certain children are not at risk. The Commissioner believes that the repatriation of all children who are nationals of States Parties to the Convention at the earliest opportunity is the only measure that can put an end to the ongoing violation of their most fundamental rights and safeguard their best interests.
29. In order to ensure the best interests of the child during repatriations and to avoid renewed trauma caused by separation, the Commissioner is of the opinion that children should be repatriated with their mothers. This would not prevent states from bringing such women to justice where appropriate, in accordance with their legislation and applicable international and European standards. In this connection, the Commissioner notes that the French women detained in North-East Syria are all subject to international arrest warrants issued by French anti-terrorism judges.
30. Under Article 39 of the CRC, the physical and psychological recovery and social reintegration of child victims of any form of neglect, exploitation, torture or any other form of cruel, inhuman or degrading treatment must take place in an environment which fosters the health, self-respect and dignity of the child. For this reason, the Commissioner considers it essential to maintain as much of the family unit as possible and to ensure that children receive all the physical, psychological, educational and social support and care they need upon their return, based on a meticulous case-by-case assessment of their best interests in the specific situation in which they find themselves. In order to facilitate successful repatriation and integration from the child’s point of view, it is also essential to undertake these measures as early as possible and to fully prepare the host families and institutions so that they are ready to take in the children under the best possible conditions.

III. Responsibilities of States Parties to the Convention in protecting the rights of victims and preventing terrorism

31. Since the beginning of her mandate, the Commissioner has discussed the situation of nationals of Council of Europe member states detained in camps in North-East Syria with a wide range of relevant parties: lawyers, children’s rights defenders, national human rights structures, representatives of civil society, international organisations, governments, and intelligence and security services. In September 2019, her Office organised a consultation meeting with experts from these different fields in order to gain a better understanding of this issue in all its complexity.³⁷ These numerous and diverse exchanges have reinforced the Commissioner’s conviction that repatriation of their nationals by States Parties to the Convention is not merely the only possible way to protect the human rights of these persons, but is also necessary to protect the victims of terrorist acts and to prevent future attacks of this nature.

Protection of the rights of victims of terrorism obstructed by the refusal to repatriate European nationals

32. The Commissioner notes that one of the reasons given by States Parties to the Convention justifying their refusal to repatriate their nationals who have travelled to the Iraqi-Syrian zone is the need to ensure that those suspected of having participated in the activities of IS can be tried where

³⁵ UNICEF, “Two children killed in Al-Hol Camp in Syria”, [statement](#) from Bo Viktor Nylund, UNICEF Representative in Syria, 24 March 2021.

³⁶ See the recent [report](#) of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, which highlights the specific protection needs and risks of boys and male adolescents. The report shows that the age at which young boys are exposed to these particular risks is difficult to determine in practice, but it is in any event very low and does not only apply to adolescents. The report also shows that the risk of separation is not only due to the influence of IS, but also to the camp authorities, who may decide to detain young boys separately from their mothers once they reach a certain age.

³⁷ See Commissioner for Human Rights, [3rd Quarterly activity report 2019](#), CommDH(2019)26, 15 November 2019.

the crimes of this organisation were committed,³⁸ in order, amongst other reasons, to enable the victims of these acts to attend the trials which concern them and have their status recognised.

33. The Commissioner wishes to make several observations in this regard. Firstly, it is an established fact that the women detained in the North-East Syrian camps are not being prosecuted by the AANES, which has publicly stated that it has no intention of initiating such proceedings.³⁹ There is therefore no reasonable prospect of these women being tried in the territory controlled by AANES. Furthermore, with regard to the men who have survived the fighting, bringing them before the AANES or Iraqi courts, as it is in these areas where most of them are detained, would provide no guarantees of a fair trial for either the defendants or the victims.⁴⁰ Lastly, a number of European nationals detained in North-East Syria or Iraq are likely to have been involved to varying degrees in the preparation or commission of terrorist attacks on European soil.⁴¹ The failure to repatriate these European nationals not only obstructs the means of establishing the extent to which they can be held accountable in keeping with European fair trial standards, in particular Article 6 of the Convention, but it also means that the victims of acts committed on European soil are prevented from discovering the full range of the acts for which the former can be held responsible and accordingly gain an overall understanding of these acts and what led to them. This situation is also harmful to investigators, judges and society as a whole in any country affected by terrorism.
34. In this context, the Commissioner believes that the failure to repatriate European nationals suspected of involvement in IS activities does not allow for the protection of the rights of victims of IS activities in the Iraqi-Syrian area, nor in Europe. She considers that these rights would be better protected in the context of criminal proceedings conducted in the States Parties, many of which, including France, have demonstrated their ability to bring such proceedings to a successful conclusion.⁴²

Repatriation of European nationals: a necessity for preventing terrorism

35. As the Commissioner pointed out on 30 January 2020 during the Parliamentary Assembly of the Council of Europe's urgent debate on international obligations concerning the repatriation of children from war and conflict zones,⁴³ a growing number of intelligence and counter-terrorism experts highlight the significant security risks posed by the camps in North-East Syria. The continuing influence of IS and its ideology in these camps poses a risk of indoctrination,⁴⁴ recruitment and escape of detainees to join IS or other terrorist groups capable of organising and carrying out terrorist acts, including on European soil. At regional level, the Council of Europe Committee on Counter-Terrorism (CDCT) expressed, at its 4th plenary meeting, its "concern for the humanitarian situation facing women and children in the detention camps in Syria while, at the same time, acknowledged the security risks posed by fanatic adherents of Daesh using these camps as incubators for further radicalisation leading to terrorism, and hence the need for states to mitigate these risks."⁴⁵ At global level, Vladimir Voronkov, Under-Secretary-General of the UN

³⁸ The [communiqué](#) by the Ministry for Europe and Foreign Affairs of 15 March 2019 states the following "Regarding the adult French nationals who were fighters and jihadists who had followed Daesh [so-called ISL] to the Levant, France's position has not changed: they must be tried on the territory where they committed their crimes. It is a matter of both justice and security."

³⁹ AANES, [press release](#) of the Executive Council, published on 18 March 2021.

⁴⁰ See HRW, "[Flawed Justice](#): Accountability for ISIS Crimes in Iraq", 5 December 2017. It should be noted that among the detainees in Iraqi prisons who are suspected of having links with IS are also women who are nationals of one of the States Parties to the Convention and who are subject to the same judicial proceedings that do not comply with the principles of the right to a fair trial.

⁴¹ Among the most prominent examples, Hayat Boumeddiene, the widow of the perpetrator of the Montrouge and Hyper Cacher supermarket attacks in France in January 2015, is reported, according to various [witness statements](#), to have spent time in the Al-Hol camp.

⁴² See T. Mehra, "[Bringing \(Foreign\) Terrorist Fighters to Justice in a Post-ISIS Landscape Part II: Prosecution by Foreign National Courts](#)", ICCT, 12 January 2018.

⁴³ PACE, [debate](#) under urgent procedure on international obligations concerning the repatriation of children from war and conflict zones, 30 January 2020. This debate ended with the adoption by PACE of [Recommendation 2169 \(2020\)](#) and [Resolution 2321 \(2020\)](#), on international obligations concerning the repatriation of children from war and conflict zones, calling on Council of Europe member states to "take all necessary measures to ensure immediate repatriation of all children whose parents, believed to be affiliated to Daesh, are citizens of their State, regardless of their age or degree of involvement in the conflict; repatriate children together with their mothers or primary care givers, unless it is not in the best interest of the child."

⁴⁴ On the specific risk of child indoctrination, see, for example, the article by Hogir Al Abdo and Bassem Mroue "[In Syria Camp, IS Ideology Moulds Forgotten Children](#)", AP, 3 June 2021. As [pointed out](#) by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, this real risk of indoctrination cannot legitimately give rise to any presumption that all male children, including those over the age of 10 in the Syrian conflict zone, are deemed to be violent extremists or terrorists.

⁴⁵ CDCT, [Abridged report](#) of the 4th plenary meeting, Strasbourg, 19-21 November 2019.

Counter-Terrorism Office, on 24 August 2020, reiterated before the Security Council the appeal by Secretary General Antonio Guterres to all states to apply international law and repatriate all their nationals – women, men and children, stressing that there was a danger of an increase in the global threat posed by IS if the international community failed to meet this challenge.⁴⁶

36. The Commissioner notes that many similar statements have been made at national level. For example, the co-ordinator of the anti-terrorism unit of the Paris court has publicly stated that France runs a “public security risk by refusing to take judicial responsibility for its jihadists”, adding that “the issue of repatriation is a long-term security and justice issue”.⁴⁷ Very recently in the Netherlands, representatives of the Public Prosecutor’s Office, the intelligence service (AIVD) and the counter-terrorism co-ordinator (NCTV) unanimously stated that not only the law, but also internal security would be better protected if Dutch nationals detained in Syria and Iraq for their alleged links to IS were repatriated.⁴⁸
37. The Commissioner draws attention to the fact that Council of Europe member states have a duty to combat terrorism, which poses a serious threat to human rights and democracy. She notes that there are many reports from national and international counter-terrorism bodies showing that the terrorist and security risk resulting from the retention of foreign nationals in camps and prisons in North-East Syria or Iraq is greater than the risk that might arise from their repatriation.⁴⁹ The Commissioner notes, moreover, that many States Parties to the Convention have for several years been faced with the problem of the return, both voluntary and involuntary, of their nationals suspected of having participated in IS or other terrorist groups’ activities in the Iraqi-Syrian zone, and have put in place arrangements for such returns, in terms of intelligence, criminal prosecution, prison monitoring and psychological and child psychiatric support.⁵⁰ They can therefore draw on this know-how, and on numerous resources developed by international organisations, especially the UN⁵¹ and the OSCE,⁵² which make it easier to deal with these returns, both in terms of security and criminal law, and in terms of child protection.

Conclusion

38. In conclusion, the Commissioner considers that:
- nationals of States Parties to the European Convention on Human Rights detained in the camps in North-East Syria fall under the jurisdiction of those states;
 - the health and security situation in the North-East Syrian camps is clearly incompatible with Article 3 of the Convention;
 - the Court’s well-established case-law places a positive obligation on States Parties to the Convention to take measures to prevent persons under their jurisdiction from being subjected to treatment contrary to Article 3 of the Convention and that the only way to fulfil this obligation in respect of European nationals detained in the camps in North-East Syria is for the States Parties to repatriate them;
 - the refusal of certain States Parties to repatriate their nationals detained in the camps in North-East Syria is such as to interfere with the effective exercise of the right to respect for private and family life of these persons guaranteed by Article 8 of the Convention;
 - the situation prevailing in the camps in North-East Syria poses a serious threat to the rights of the children detained there under the CRC;

⁴⁶ V. Voronkov, [statement](#) delivered at the UN Security Council meeting of 24 August 2020.

⁴⁷ See [France Info](#), “Jihadistes français: ‘Il faut une volonté politique de rapatriement’”, plaide le coordonnateur des juges antiterroristes”, 19 October 2019.

⁴⁸ At a roundtable discussion with MPs, National Co-ordinator for Counter-Terrorism and Security Pieter-Jaap Aalbersberg said that the Netherlands was running a very high risk if it continued to choose not to actively prosecute Dutch nationals suspected of involvement in IS activities and detained in North-East Syria or Iraq, with Public Prosecutor Ferry van Veghel highlighting the danger of a loss of control and absconding, and the impunity that could ensue. See “[OM, AIVD en NCTV: ‘Haal IS-gangers op voor berechting’](#)”, 16 June 2021.

⁴⁹ With regard to children, the Commissioner notes that, according to the Under-Secretary-General of the UN Office of Counter-Terrorism, nearly 1,000 children have been repatriated from camps in North-East Syria, and it is clear from these experiences, which have been documented and supported by the UN, that the fears of a security risk have so far proven to be unfounded. See V. Voronkov, [address](#) at the Open Arrria meeting of the Security Council on 29 January 2021.

⁵⁰ On this subject, see Esprit de justice, “[Le retour des enfants de la zone irako-syrienne](#)”, France Culture, 26 May 2021.

⁵¹ See the [report](#) of the joint OSCE/UN/Switzerland conference entitled *Foreign terrorist fighters: addressing current challenges* (Vienna, 11-12 February 2020), which discusses many of these resources.

⁵² OSCE/ODIHR, [Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework](#), 12 September 2018.

- the removal of all foreign children from the camps is an absolute and mandatory priority from the point of view of children's rights and that in order to safeguard their best interests their mothers must be repatriated with them;
- the repatriation of European nationals detained in the camps in North-East Syria is necessary to protect the rights of victims of terrorist acts committed by IS and other terrorist organisations in the Iraqi-Syrian area and on European soil;
- the repatriation of European nationals detained in the North-East Syrian camps is essential in order to prevent terrorism, which constitutes a serious threat to human rights and democracy that Council of Europe member states have a duty to combat.