



European Civil Liberties Network

Essays for civil liberties and democracy in Europe

“Speech crime” and deportation

Liz Fekete

In early 2005, the Institute of Race Relations' European Race Audit (ERA) conducted research into the ways in which the definition of terrorism was being extended in a number of European countries to include 'speech crimes' and how that then impacted on Muslims and foreign nationals in the EU. The findings of that research were released shortly after the London bombings of 7 July 2005. Since then, the debate over 'speech crimes' has intensified, with several European countries, including France, Germany and Italy, citing the London bombings to justify further counter-terror measures and amendments to immigration laws. The UK government, for its part, has introduced a new anti-terrorist bill which, if passed, would criminalise any speech that glorifies terrorism.

While the UK legislation is deeply disturbing, most attempts to outlaw speech have come not from primary legislation of this sort, but through little-known and less keenly observed administrative measures and reforms to immigration law.

Even prior to 7 July, immigration reforms had been introduced which built in to citizenship and residence rights measures which constrain freedom of speech. If those constraining measures are breached, the punishment could be deportation. There can be no reasonable objection to the deportation of a foreign national who incites violence and hatred, if a court rules that deportation is a proportionate response to that crime and if the deportation is in line with international law (in particular, the provision that no-one should be sent back to countries that practise torture, the death penalty or other degrading treatment or punishment). What is of concern, however, is the lack of transparency in the deportation procedure which evades due process.

By July 2005, the ERA had analysed nineteen instances (see table of cases, below) in which

attempts have been made in France, Germany, Italy, Poland and the Netherlands to fast-track national security deportations utilising immigration laws. All the cases involve Muslims, none of whom has been formally accused of involvement in any terrorist offence. Thirteen of the cases involve Muslim clerics or religious leaders who have been deported, or threatened with deportation, because they have made statements that are alleged to be anti-western, unpatriotic and against democratic rights. Most of those deported are long-term European residents, who could have been charged under existing public order laws.

Between July and October 2005, there have been further deportations of long-term European residents, principally in France where interior minister Sarkozy, in the light of the London bombings, launched a major operation to track down 'radicalising elements', pledged 'zero tolerance' for Muslim leaders who encourage attacks and announced plans to expel more than ten radical Islamists 'identified for promoting radical Islamist talk'.¹ As in France, so too in Bavaria, Germany where the authorities claim to have deported fourteen Muslim imams between November 2004 and July 2005.² (The Table of Cases details four post-July 7 deportations of Muslim clerics from France and Germany.)

Reforms to immigration law

When anti-terrorist laws are grafted onto immigration law, the normal checks and balances are not available. There is no duty of disclosure, no legal aid available to the accused and none of the safeguards provided under criminal law.

In Summer 2004, France, Germany and Spain brought in significant changes to immigration and aliens' legislation so as to make it easier to deport foreigners even if the authorities had not accused them of any terrorist offence. The London bombings

brought a further review of these procedures not only in France (see above) but in Italy where a new anti-terrorist law passed in August 2005 grants executive authorities (ie local police chiefs as opposed to judges) the power to expel legal residents from Italy on prima facie evidence that the persons posed a security threat. In the UK, the home secretary, in outlining new guidelines for deportation, has specified a list of unacceptable behaviour which will in future define the basis of immigration law deportations on the ground that the person's presence in the UK is 'not conducive to the public good'. Already, following the killing of Theo van Gogh in November 2004, the Dutch government had announced that it would introduce new measures to deal with Muslim clerics who preached hate. In addition, both Germany and the UK had altered their immigration laws enabling them to revoke citizenship from naturalised citizens deemed a public order threat. In the UK, prior to 7 July, this only applied to naturalised citizens with dual nationality, but new proposals now extend this to any naturalised citizen engaged in extremism. In France, the interior ministry has stated that it would have, in the light of the London bombings, 'no problem' deporting Muslims who inflame anti-western feeling even if they were French citizens'.³ 'I am going to launch proceedings to deprive French imams who preach violence and fundamentalism of their French nationality; systematically expel those who do not respect our values and are not French; and step up monitoring of places of worship where extremist activities have taken root', announced interior minister Sarkozy.⁴

While the spur to such 'reforms' was different in each country (as outlined below), the legislation is remarkably similar in that it is not aimed at those accused of any specific terrorist offence or ordinary crime, but at those who have expressed opinions which can be interpreted as pro-violence, anti-western, illiberal or even simply offensive. In this way, then, the definition of terrorism is being extended to include 'speech crimes'. Such a radical departure is backed by the May 2005 Council of Europe convention on the prevention of terrorism. This requires inter alia state parties to criminalise direct and indirect public provocation of terrorism, recruitment and training for terrorism, and to either try or extradite persons accused of such crimes. The convention was agreed despite concerns from the Parliamentary Assembly and the Commissioner for Human Rights of the Council of Europe that the formulation could lead to an erosion of the rights to freedom of expression and freedom of association.

The French government has amended the 1945 foreigners law (which allowed for the expulsion 'in

absolute emergency' of any foreigner deemed a threat to the security of the state or public safety) to include any foreigner who commits 'acts of explicit and deliberate provocation or discrimination, hatred or violence against a particular person or a group of people'.⁵ The wording of the law was greeted with concern by Socialists and Communists who opposed it on the grounds that it was so vague that it could be used as a pretext to expel foreigners for a range of offences unrelated to the original intention of the Bill. The new German immigration law, which took effect on 1 January 2005, simplifies the procedure for the expulsion of foreigners who can now be expelled not just for any proven wrong-doing, but if there is an 'evidence-based threat prognosis'.⁶ Proof that someone committed a crime is not needed. Again, civil libertarians criticised the vagueness of the law, pointing out that it provided no clear definition of a 'suspect' and that an expulsion order might be based on little more than 'speculation' or 'premonition'. Additional measures to revoke citizenship from naturalised citizens linked to 'unconstitutional organisations' have also been introduced. The Spanish reform enables the state to deport foreigners, including long-term residents, on the basis of suspicion that an outrage may be committed in the future against the security of the state. (There are no judicial controls over who is deported, and the state is under no obligation to furnish evidence against the accused). As previously mentioned, in the UK the post-7 July guidelines for the deportation of foreign nationals who pose a national security threat creates a list of unacceptable behaviour which targets any foreign born national: writing, producing, publishing or distributing material, public speaking including preaching, running a website; or using a position of responsibility such as teacher, community or youth leader to express views which foment, justify or glorify terrorist violence in furtherance of particular beliefs; seek to provoke others to terrorist acts; foment other serious criminal activity or seek to provoke others to serious criminal acts; or foster hatred which might lead to inter-community violence in the UK. The civil liberties organisations Justice and Human Rights Watch believe this ill-defined and overbroad list of unacceptable behaviour amounts to a serious interference with the free expression rights of both foreign and UK nationals. By casting an 'unacceptably broad net' it will choke expression and, ironically, undermine the government's professed commitment to an open, pluralist and tolerant society.⁷

The 'preachers of hate'

Across Europe, immigration law amendments came after intense media speculation about the so-called

‘preachers of hate’. Seventeen of the nineteen examples in our Table of Cases involve Muslim clerics or religious scholars. The UK reform of its citizenship law came in the wake of the Abu Hamza case. New measures introduced in the Netherlands following the killing of Theo van Gogh came after the Dutch security services (AIVD) described the Al Forqaan mosque in Eindhoven as one of six mosques where anti-western values were preached.⁸ The French law was introduced as a response to the case of Abdelkader Bouziane, an imam who appealed against deportation to Algeria. While Norway and Switzerland have not yet amended immigration laws, xenophobic and centre-Right parties there are pressing for ‘reform’. In Switzerland, Jean-René Fournier (PDC-Christian Democrat), president of the Valais cantonal government, stated that he was in favour of expelling Muslims who ‘do not respect our values’ which, he said, should be set out in a charter. He also wants Swiss citizenship withdrawn from ‘fundamentalist Muslims’.⁹ Responding to a Norwegian government White Paper on security, Progress Party leader Carl Hagen has demanded stronger measures against groups that publicly express views ‘that frighten the Norwegian people’.¹⁰

But the country most utilising deportations via immigration reform is Germany. There, the government had been thwarted by the judiciary in its attempts to deport Metin Kaplan, the leader of the fundamentalist Caliphate State, who has already served a prison sentence in Germany for incitement to murder. The court had ruled that Kaplan’s extradition to Turkey was unsafe, because evidence against him had possibly been obtained by the torture of his supporters by the Turkish police, and because he faced the threat of torture and degrading treatment if handed over to the Turkish authorities. (The German authorities finally succeeded in deporting Kaplan to Turkey in October 2004 after a higher court ruled that a written agreement obtained from the Turkish authorities would prevent him from being subjected to torture.)

Metin Kaplan’s case allowed the centre-Right parties and the media to portray the Social Democrat-led-coalition government as soft on terrorism. Günther Beckstein, the Christian Social Union Bavarian interior minister, described the failure to deport Kaplan as ‘one of the biggest disgraces for the secret services in years’.¹¹ There has also been a rash of media reports on the formation of Muslim enclaves and anti-German preaching conducted in some mosques, with calls for greater integration.¹² Beckstein, who is campaigning against Turkey’s entry into the EU and has criticised Bavarian Turks for living in ‘parallel societies’, has stated that

Germany’s ‘law on aliens takes too little account of our country’s security situation’.¹³

The new German immigration law introduced the possibility of deporting ‘intellectual incendiaries’ or leaders publicly inciting hate, violence and terrorist acts. State premiers and officials do not have to seek the approval of the federal state before issuing deportation orders. This gives state premiers (such as Beckstein in Bavaria) a licence to deport aliens with virtually no judicial checks on their decisions. The state of Hessen reports that it deported ten imams in the first two weeks of February for ‘preaching religious hatred’. North-Rhine Westphalia plans to deport 50 individuals, while a further twenty are under close surveillance.¹⁴ Bavaria’s Beckstein has confirmed a report in *Der Spiegel* (24.1.05) that he proposes to expel 100 Islamic extremists under operation ‘Action Sweep Out’ (‘Aktion Kehraus’).¹⁵

The German authorities have also been at the forefront of the campaign to introduce religious profiling across Europe in order to build up ‘risk profiles’ of Muslim communities and Islamic clerics in particular. Germany is not alone. A 2004 Dutch intelligence services report described Salafist mosques openly preaching anti-Western ideas as one of eight sources of threat to the Netherlands posed by ‘radical Islam’.¹⁶

Immigration laws have always contained clauses that allowed for the deportation of foreign nationals on national security grounds. The French 1945 Foreigners Law has already been referred to. In the UK, the 1971 Immigration Act allowed for the deportation of foreign nationals if they were suspected of endangering national security or committing a serious criminal offence. Both laws avoided the normal checks and balances on the power of the state in the form of due process. What seems to be happening today, however, is an expansion of the definition of what constitutes a threat to national security. Today, espousing anti-western sentiments, questioning integration, voicing illiberal sentiments, advocating discrimination against specific groups in society all come under the definition of a ‘national security’ threat, warranting deportation.

Expanding national security crimes

France has stated explicitly that reform of immigration law was necessary to deal with those who, through speech, espouse anti-western and anti-Enlightenment values, with the (then) interior minister Dominique de Villepin declaring that ‘Today, one can no longer separate terrorist acts from the words that feed them’.¹⁷ Clerics have been

expelled because they are Salafists ‘proselytising in favour of a radical form of Islam’. Abdelkader Yahia Cherif, an imam in Brittany was expelled to Algeria in April 2004, because he was alleged to have, amongst other things, rejoiced over the Madrid bombings. Orhan Arslan, a preacher at the An-Nour mosque in Mulhouse (Haut-Rhin) was expelled in January 2004 for ‘making anti-Semitic and anti-western comments’. Similarly, Midhat Güler, director of a Paris mosque, was accused of inciting hatred of western societies and Israel in sermons and allowing Islamic newspapers that glorified jihad to be circulated in a prayer room. The deportation of Abdelkader Bouziane, the imam at the Al-Forquan mosque in the largely immigrant suburb of Vénissieux, in April 2004, came after the newspaper Lyon Mag published an interview with Bouziane which quoted him as saying that the Koran authorised men to beat their wives and that the stoning of women was permissible. The expulsion was justified on the grounds of ‘defending crime’ and ‘direct provocation against the integrity of a person without leading to any effect’. Since July 7, deportation orders seem to have got even vaguer, with little attempt to to define what actual crime was committed to merit deportation. Hence, in July 2005 the crime of Reda Ameuroud, expelled to Algeria, was classified simply as one of providing an ‘ideological reference point’ by his ‘violent and hate-filled’ speeches at a radical mosque in Paris’s 11th arrondissement. The deportation order against Abdallah Cam, an imam from Villeurbanne, merely stated that the imam’s expulsion was ‘an imperative necessary for the security of the state and the public’.¹⁸

In Germany, Muslim clerics are also being deported for a variety of speech crimes. In February 2005, in Bremen, a 43-year-old Egyptian imam (name unknown) was identified in the media as a ‘preacher of hate’. Even though the Public Prosecutor’s Office confirmed that it had no evidence upon which to base a prosecution, he was deported, it seems, because he had called on Muslims to defend their religion against the ‘evils of imperialism’.¹⁹ The Berlin constitutional court ordered that Yakup Tasci, imam of the Mevlana mosque in the Kreuzberg district, should be deported on the grounds that he represented a serious danger to public safety. It cited a public speech in which he was said to have glorified Islamic martyrs in Iraq and Jerusalem and, in the form of a poem, suggested suicide attacks in Germany.²⁰ Another case is that of Salem El R., the imam of the Al-Nur mosque in Berlin, who was alleged to have made inflammatory speeches in which he said ‘May God protect the mujaheddin in Chechnya, Palestine and Iraq’ and ‘May God let a tornado sweep away the enemies of Islam, smash

them and destroy them.’²¹

Dutch interior minister Rita Verdonk also wants to use immigration law to facilitate speedy deportations of ‘undesirable aliens’ who pose a threat to public order and national security. Three imams, who security services accuse of ‘contributing to the radicalisation of Muslims in the Netherlands’, ‘recruiting or tolerating the recruiting of Muslims for Jihad’ and ‘using their sermons to urge Muslims to isolate themselves from Dutch society’, have appealed against a decision to rescind their residence rights.²² The Iskender Paso mosque in Rotterdam (not listed by the AIVD as a hotbed of terrorism) has threatened to sue De Telegraaf over a story that its imam had been deported for preaching hate. It seems that the person expelled was not the imam (he led Friday prayers the day after his reported expulsion), but a volunteer at the mosque who had been taken into custody for not having a valid residence permit.²³

Litigation not expulsion

The question is whether there is credible evidence that these Muslim clerics and religious teachers posed a real threat to national security. And, if they did, was it legitimate for the state to deport them? Unfortunately, the systems that are being put into place across Europe to allow for deportations makes it impossible to answer such questions.

Another problem stems from the fact that the authorities are not suggesting that the nature of the threat these individuals posed is direct, in that they were carrying out, or preparing to carry out physical acts of violence. What they were accused of is the more indirect offence of threatening national security through inflammatory speeches and sermons. And it is because their offences related to words rather than deeds that the issue of ‘credible evidence’ is so crucial.

The normal solution to crimes relating to incitement would be for charges to be made under existing public order or criminal laws. But these Muslim clerics are being excluded from the ordinary rule of law and enclosed within a parallel, shadow criminal justice system that has a lower standard of proof and greater punishment for those deemed guilty. This parallel criminal justice system, to date, has only applied to Muslims. Youcef Mammery of the Marseilles Council of Muslims identifies working-class, badly-educated Muslim communities as the real target of these measures, adding that ‘There are very orthodox people in all religions, who live life on the margins of modern society.’²⁴ The French Coalition Against Islamophobia, the Union of French Islamic Organisations and the Human Rights League have all condemned the hot-tempered

rhetoric of badly-educated Muslim clerics, but they also defend their right not to be discriminated against, and to be afforded the same access to justice as preachers from other communities. Mammery adds that 'extreme doesn't necessarily mean dangerous'. Pointing to the case of Bouziane, he said that the imam 'wasn't very clever but it wouldn't be fair to say he was dangerous'. He argues that litigation, not expulsion, is the answer to any alleged public order offences.²⁵

Clerics deemed a threat to European values are denied access to the protection of the European Convention of Human Rights which guarantees the right to a fair trial; to be presumed innocent until proven guilty according to law; to be informed promptly and in detail of the nature and cause of an accusation; to examine or have examined witnesses. In France, the state issues a deportation order and the legality of that order is subsequently decided upon by an administrative tribunal (as opposed to a criminal court). Here, the evidence cited against the accused is provided either by the security services or takes the form of submissions based on, or including, newspaper articles.

The role of the media

The evidence presented often seems to be based on little more than newspaper articles which quote inflammatory (or merely offensive) statements made by the clerics or simply regurgitate the views of unnamed security sources. The clerics have no opportunity to defend themselves against any possible misrepresentation of their views. Abdelkader Yahia Cherif was accused by the French intelligence services of rejoicing over the Madrid bombings; they cited comments made during a sermon and in a newspaper interview. His lawyers dispute the allegation that he 'rejoiced' at the Madrid bombings, stating that what he actually said was that there was no 'absolute proof that Islamists were involved in either the September 11 or the March 11 attacks'.²⁶ Abdelkader Bouziane's lawyers challenge whether the content of a published interview (the newspaper quoted Bouziane as saying that the Koran authorised violence against women, including stoning for adultery) actually reflected his views, pointing out that the interview lasted ninety minutes, that the imam speaks poor French and that his comments were seriously distorted.²⁷ (The security services had also provided evidence that Bouziane, following military intervention in Iraq, called during a sermon for a jihad against American interests in France. But it should be pointed out that when sermons are delivered in Arabic, the evidence cited by the intelligence services is not direct speech but a translation.) In respect of Bouziane's views on political violence, his lawyers argued that the Lyon

Mag journalist accurately represented his views, quoting him as saying that he did not want 'to raise his voice, strike or attempt to assassinate anyone in order to convert people to Islam' and that 'it is a great sin to plant a bomb because Allah is angered when innocents are killed'.

In the case of the Berlin cleric Yakup Tasci, it would seem that the media actively sought a deportation order on the grounds that he was a 'preacher of hate'. For despite the earlier accusations against him (see above), the senator for internal affairs only supported Tasci's deportation for 'seriously endangering public safety and order' and placing in danger the 'peaceful coexistence between Germans and non-Germans' after a German television station had sent journalists undercover into the Berlin mosque and filmed the cleric criticising Germans for being useless and unclean. (He had suggested that Germans were dirty as they allowed sweat to gather under their armpits which they did not shave.) Lawyers for Tasci appealed on the grounds that some of the statements ascribed to him by the Aliens Office were either wrongly interpreted or taken out of context, while others were never made at all.²⁸

The same factors seem to be at play in Italy where Muslims have also been deported following newspaper stories. Abdel Qader Fadlallah Mamour, an imam in Turin, was deported to Senegal hours after giving an interview to a newspaper in which he warned that if Italian troops were not pulled out of Iraq, there could be a bomb attack in Rome, and boasted knowing Osama bin Laden.²⁹ In April 2005, Abdul Karim al-Tibsi, a teacher of Arabic and Islam at the Islamic Centre in Rome and a member of the Union of Arab Communities in Italy, was expelled after he led prayers in memory of Sheik Ahmad Yassin, the Hamas spiritual leader assassinated by an Israeli missile attack in Palestine.³⁰

Evidence based on secret intelligence

Nor does untested evidence presented by the security services really constitute 'credible evidence'. In France, administrative tribunals have not been provided with wiretap evidence, witness testimony or other material evidence to justify the deportation of the accused. Instead, evidence takes the form of confidential notes issued by the intelligence services, commonly known as 'notes blanches' (because they are not signed or dated and do not cite sources). In the case of Abdelkader Bouziane, classified documents submitted by the interior minister linking Bouziane to extremist groups were actually thrown out (one piece of evidence was a 'confidential note' from the intelligence services made during a sermon by the imam in November 2003) and the court ordered that

Bouziane (who had already been expelled to Algeria) was free to return to France on his own volition. (He has now been expelled for a second time after the Supreme Administrative Court quashed the earlier verdict.) In the case of Midhat Güler, the only security service evidence was a 'note blanche' which did not even implicate Güler in terrorist acts but accused him of inciting hatred of western societies and Israel in his sermons and of other vague offences. The deportation to Algeria of Yousef Mahlili, an imam from Bilbao who moved to Moux, was based on a security service assessment that his sermons had become increasingly radical and critical of Spain following the Spanish decision to send troops to Iraq. (The Spaniards facilitated his deportation by rescinding his residence permit.)³¹ In Germany, too, it was the evidence of an agent from the Office for the Defence of the Constitution which led to the deportation of the Berlin imam Salem El R., for making inflammatory speeches. But the Berliner Morgenpost (10.5.05) observed that when the imam had testified in a Berlin district court in the course of a trial of alleged terrorists, he gave every impression of moderation and had also attempted to become a German citizen.

No right of appeal

A fair system would also establish a meaningful right of appeal prior to deportation, in accordance with the Universal Declaration of Human Rights and the European Convention on Human Rights which guarantee the right to effective remedy against interference with rights. The French, Italian and Dutch systems are working in such a way that the individual is deported prior to appeal. (Abdelkader Bouziane's lawyers launched a successful appeal from abroad.) Although a regional court in Lazio ruled Abdel Qader Fadlallah Mamour's deportation illegal, as he had merely expressed what amounted to 'personal views', he had already been deported to Senegal and the Italian interior minister ruled out the possibility of any return.³² In June, the Dutch interior minister Rita Verdonk told three imams to leave the country voluntarily, or be expelled. They have a month to appeal but they cannot stay in the Netherlands pending the outcome of any appeal.³³

The German immigration reform, which established that suspects could be expelled on the word of the interior minister alone, has set up a special panel within the Federal Administrative Court in Karlsruhe as the sole court of appeal. The German system of appeal seems to work along the lines of the Special Immigration Appeals Commission (SIAC) in the UK. Formally a 'superior court of record', SIAC is the sole court of appeal for foreigners living in Britain whom the home secretary wants to deport on national

security grounds, when some of the evidence against them is considered too sensitive to be disclosed in open court. Hence, much of the SIAC proceedings are carried out in secret session. Since the Anti-Terrorism Crime and Security Act (2001) the Commission has fallen into disrepute and is regarded as little more than a 'rubber stamp' for decisions already made by the home secretary.

Guilt by association

For the security services, an indicator of 'threat' is that a suspect has associated with other suspected wrong-doers or their associates. This is very much in accord with post-11-September counter-terrorism measures which extended the definition of terrorism from concrete acts of extreme violence to 'any form of support' for terrorism, 'active or passive'. In a court of law, the chances of a successful prosecution based on association with a suspected wrong-doer without any corroborative evidence of 'conspiracy to commit acts preparatory to violence' would surely be slim. But fast-track deportations of foreigners via immigration reform bypass the courts and due process.

It is true that an administrative tribunal can provide some checks. In the case of Abdelkader Bouziane, for instance, the French administrative tribunal refused to accept as evidence classified documents submitted by the interior minister which linked Bouziane to extremist groups. But the deportations of other Muslim clerics have been justified on the vague grounds of association with terrorists. Abdelkader Yahia Cherif, who was seeking political asylum in France at the time of his expulsion to Algeria, was accused of 'active relations with national or international Islamic movements that are in relation with organisations advocating terrorist acts'.³⁴

When crimes of association are created, whole communal, friendship or political networks can become stigmatised as 'associated with terrorism'. Midhat Güler, a sewing supplies salesman and director of a Paris mosque, was accused by the security services of being an associate of the Cologne imam Metin Kaplan, and founder of the Caliphate movement in France. But his lawyers deny the accusations, saying that while Güler knew Metin Kaplan, he was merely a family friend, and Güler had no political link with him or with the Caliphate State.³⁵ In Bremen, an imam of Egyptian descent who had condemned the 'evils of imperialism' (see above) was accused by the security services of links with a Turkish national currently held at Guantanamo Bay and with a German-Lebanese citizen who, at the age of 17, hijacked a bus in Bremen.³⁶

Residence rights curtailed

The Muslim religious leaders deported under these provisions have not come recently to Europe; nor were they, like Louis Farrakhan entering Europe from outside for a limited speaking tour. Most of the cases involve Muslims who have lived in Europe for years, decades even, and many have children born here. (Abdelkader Bouziane had lived in France for twenty-five years on a renewable residence permit; Abdallah Cam, who has four children, had lived legally in Villeurbanne for ten years; Midhat Güler had lived in France since 1976; Abdul Karim al-Tibsi had been legally resident in Italy for 12 years.) As such they should enjoy residence rights, including freedom of speech and assembly. As such they were entitled to safeguards enshrined in the European Convention of Human Rights, which protect the right to family and private life. These state that expulsion, which separates someone from his or her family and severs links they have built up in the country of residence, must be justified by a pressing social need (ie it must be proportionate to a legitimate aim such as protecting national security or prevention of crime or disorder). The European Court of Human Rights has in the past protected from deportation immigrants who have served prison sentences for serious crimes on the grounds that deportation would be disproportionate (a form of double punishment) and a violation of the right to family life. In the cases where Muslim clerics have been denied due process, we would never know whether the principle of 'proportionality' was adhered to.

Political pressure

Some of the other cases we have documented seem to be linked to the need to satisfy the demands of international partners in the International Coalition Against Terrorism.

Since 2001, the US has been pressing the European Commission to ease the laws on extradition of terrorist suspects and 'explore alternatives to extradition including expulsion and deportation'. Two deportations from Germany to Lebanon, and one from Germany to Jordan appear to have happened after pressure from the US and Israel. The two Lebanese men, long-term residents in Germany, were linked to Hizbollah. An unnamed representative of Hizbollah, who had lived in Germany for twenty years on a renewable residence permit, was told that he had to leave the country because he was 'a member of an organisation that supports international terrorism'.³⁷ (Only the military wing of Hizbollah, which had seven seats in the Lebanese parliament, was on the EU list of terrorist organisations. Nevertheless, in its latest annual report, Germany's domestic security agency

cited 850 members of Hizbollah living in Germany as constituting a threat.)³⁸ A German court refused to countenance the unnamed man's appeal on the grounds that Hizbollah was 'waging a war with bomb attacks against Israel with inhumane brutality and against citizens'.³⁹ Fadi Madi, a member of the International Movement Against American and Zionist Globalisation and Supremacy, has also been deported to Lebanon following the revocation of his visa in September 2004. Madi, who was deported for his 'anti-Israel and anti-US stance', had been an organiser of a conference planned to take place in Berlin in October 2004 which the Simon Wiesenthal Centre in Israel had lobbied the German government to ban. Subsequently, an investigation was launched by the German authorities into Fadi's 'membership of questionable organisations'.⁴⁰ The final case that merits a mention involves the deportation of an unnamed Jordanian national living in North-Rhine Westphalia who was expelled on the grounds that he had formerly been head of the Al-Aksa group (as this organisation has only recently been banned it seems that the law was applied retrospectively). He was also suspected of collecting donations in Germany to support the Palestinian group Hamas and by so doing had violated Germany's 'spirit of seeking understanding among peoples'.⁴¹

The deportation of ten Pakistani students from Cyprus in July 2005 may well have been carried out by the Cypriot government in order to appease its US allies who had just issued a warning that foreign interests on the island could be the target for attack. There was widespread consternation when the ten young men, described by the college director as 'excellent students', were arrested and linked in the media to al Qaida. But the interior minister refused to comment on the arrests, citing national security.⁴²

The case of Abdul Karim al-Tibsi may have involved pressure from Algeria - another key ally in the International Coalition Against Terrorism. As previously noted, Abdul Karim al-Tibsi was deported from Italy after an Arab journalist published an article alleging he had terrorist links. (It is not unknown for the Algerian security services to spread disinformation about its dissidents via a steady trickle of accusations in the press emanating from unnamed security sources.) The deportation to Yemen of Ahmed Ammar, a student studying for a doctorate on Islamic law in Poland, may also have been ordered for political reasons. The Polish internal security agency refused to give details of Ammar's alleged crimes, save citing a general threat to national security. But Ammar contended that the deportation order was due to his opposition to the war in Iraq, and the presence of Polish troops there.

And, domestically, too, fast-track deportation procedures are now politically expeditious. Public criticism is mounting that Europe's new anti-terrorist laws are anti-democratic and violate international human rights standards. In the UK, criticism focused until recently on the detention without trial of foreign nationals, while in other European countries human rights groups have criticised the fact that terrorist suspects have been deported on national security grounds to countries like Egypt, Algeria, Morocco and Turkey. Such extraditions being in violation of the principle of non-refoulement whereby foreign nationals cannot be extradited to a state where they risk persecution, the death penalty, torture or other degrading treatment or punishment.

Extradition is a lengthy process with inbuilt legal safeguards. Crucially, it gives time for lawyers and human rights activists to challenge the state's case against the accused. But deporting someone via immigration laws removes the accused from the safeguards of the criminal justice system. It could also be argued that such deportations merely displace the problem of terrorism - for those deported for speech crimes can, if they are so inclined, go on to incite violence against western targets and western tourists abroad.

Of course, there is an apparent logic to the argument that, following the Madrid and London bombings, the pronouncements of fundamentalist Muslim clerics are so dangerous that reforms are needed to allow for deportations. But any law that discriminates between one section of citizens and another undermines democracy and can alienate the very community whose support is most vital to the stamping out of terror.

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Footnotes

- 1 *Guardian* (27 May 2005); *Agence France Presse* (19 July 2005).
- 2 IslamOnline (28 July 2005).
- 3 *Agence France Presse* (7 July 2005).
- 4 *Agence France Presse* (19 July 2005).
- 5 *Migration News Sheet* (July 2004).

- 6 Amnesty International, Counter-terrorism and criminal law in the EU (AI Index: IOR 61/013/2005).
- 7 Exclusion or Deportation from the UK on Non-Conducive Grounds: a Justice Response (Justice, August 2005). See hrw.org/english/docs/2005/08/10/uk11620.htm
- 8 *Expatica News* (23 February 2005).
- 9 *Migration News Sheet* (December 2004).
- 10 *Aftenposten* (17 November 2004)
- 11 As cited in Amnesty International, Counter-terrorism and criminal law in the EU, *ibid*.
- 12 *Deutsche Welle* (24 November 2004).
- 13 *Expatica News* (16 June 2003).
- 14 IslamOnline (16 February 2005).
- 15 *Reuters* (23 January 2005).
- 16 *Times* (24 November 2004).
- 17 *Wall Street Journal* (9 August 2005).
- 18 *International Herald Tribune* (26 July 2005); *Agence France Presse* (7 September 2005).
- 19 *Migration News Sheet* (March 2005).
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