Commentary

Europe: ‘speech crime’ and deportation

By Liz Fekete

Abstract: Throughout Europe, reforms to immigration law are being introduced which effectively tie rights to citizenship and residence to limitations on freedom of speech; the penalty for breaching these is, increasingly, deportation. So far, these measures have only been applied to Muslims, usually religious leaders, held to have made inflammatory or offensive statements – offences which could be dealt with under existing public order law. But the use of immigration legislation to deal with such issues bypasses the need for judicial transparency and overrides the rights of the accused. In the process, a separate, parallel justice system is set up which lacks any checks and balances on state power.

Keywords: citizenship, immigration law, incitement, Muslim, public order, terrorism

Throughout Europe, immigration reforms are being introduced which tie citizenship and residence rights to constraints on freedom of speech. For those who breach these constraints, the punishment can be deportation. This analysis is based on seventeen cases in which attempts have been made to fast-track ‘national security’ deportations through the use of immigration law in France, Germany, Italy, Poland and the Netherlands. All involve Muslims, none of whom has been formally accused of involvement in any terrorist offence; thirteen involve clerics or religious leaders who have been deported, or threatened with deportation, because of statements that they have made 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, rather than pursued under immigration law.

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 accordance 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 and the evasion of due process. Grafting anti-terrorist measures on to immigration law nullifies the proper checks and balances. There is no duty of disclosure, no legal aid available to the accused and none of the safeguards normally provided under criminal law.

**Reforms to immigration law**

Following the killing of controversial film-maker Theo van Gogh in November 2004, the Dutch government announced that it would introduce new measures to deal with Muslim clerics who preach hate. But before this, in summer 2004, France, Germany and Spain had brought in significant changes to immigration and aliens’ legislation to make it easier to deport foreigners even if they were not accused of any terrorist offence. The French government 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 committed ‘acts of explicit and deliberate provocation or discrimination, hatred or violence against a particular person or a group of people’. 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 people for a range of offences unrelated to the original intention of the amendment. The recent German immigration law (effective from 1 January 2005) simplified the procedure for the expulsion of foreigners, who can now be expelled not only for proven wrong-doing, but also on the basis of an ‘evidence-based threat prognosis’ – 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 could 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. In Spain, a reform of immigration law enables the deportation of foreigners, including long-term residents, on the basis of suspicion that they may, in the future, commit an ‘outrage’
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.

While the spur to such ‘reforms’ was different in each country, all the legislation is remarkably similar in that it is not aimed at those accused of any specific terrorist offence or 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, 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. Among other things, this requires states to criminalise the direct or indirect public provocation of terrorism and/or recruitment and training for terrorism. Persons accused of such crimes are to be either tried or extradited. The convention was agreed, despite the concerns of the Parliamentary Assembly and the Commissioner for Human Rights of the Council of Europe, which felt that it could lead to an erosion of the rights to freedom of expression and freedom of association.

The ‘preachers of hate’

Across Europe, amendments to immigration law have been introduced on the back of intense public attention directed at so-called ‘preachers of hate’. In the UK, citizenship law was reformed after the press focused on the case of Abu Hamza, a notorious preacher at Finsbury Park mosque. In the Netherlands, new measures were introduced after the Dutch security services described the Al Forqaan mosque in Eindhoven as one of six mosques where anti-western values were preached. In France, the new law was introduced in response to the case of Abdelkader Bouziane, an imam who appealed against deportation to Algeria. Although Norway and Switzerland have not amended their immigration laws, xenophobic and centre-Right parties 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 called for Swiss citizenship to be withdrawn from ‘fundamentalist Muslims’.

In Norway, Progress Party leader Carl Hagen, responding to a Norwegian government white paper on security, demanded stronger measures against groups that publicly express views ‘that frighten the Norwegian people’.

In Germany, a furore over the government’s attempt to deport Metin Kaplan, the leader of the fundamentalist Caliphate State organisation, provided the backdrop to mounting calls for reform. Kaplan, who had already served a prison sentence in Germany for incitement to murder, was reprieved by a court ruling which stated that his extradition...
to Turkey was unsafe because evidence against him might have been obtained by the Turkish police’s torture of his supporters, and because he faced the threat of torture and degrading treatment if handed over. Subsequently, in October 2004, the German authorities succeeded in deporting Kaplan after a higher court ruled that a written agreement obtained from the Turkish authorities was a sufficient safeguard against his being maltreated. But Kaplan’s case allowed the centre-Right parties and the media to portray the Social Democrat-led coalition government as soft on terrorism. For example, Günther Beckstein, the Christian Social Union Bavarian interior minister, described the initial failure to deport Kaplan as ‘one of the biggest disgraces for the secret services in years’. Hence, the new German immigration law that was introduced included powers to deport ‘intellectual incendiaries’ or leaders who publicly incite hate, violence and terrorist acts. Regional state officials do not have to seek federal approval before issuing such deportation orders. This gives state premiers like Beckstein (who has accused Turks in Bavaria of living in ‘parallel societies’) licence to deport foreign nationals with virtually no judicial checks on their decisions. The state of Hessen reported that, in the first two weeks of February 2005, it deported ten imams for ‘preaching religious hatred’. North-Rhine Westphalia planned to deport fifty individuals, while a further twenty were under close surveillance. Beckstein confirmed that he proposed to expel 100 ‘Islamic extremists’ under ‘Aktion Kehraus’ (‘Operation Sweep Out’). The German authorities have also been at the forefront of a campaign to introduce ‘risk profiles’ of Islamic clerics across Europe.

Expanding national security crimes

Immigration laws have always contained clauses that allowed for the deportation of foreign nationals on national security grounds. In the UK, for example, the 1971 Immigration Act allows for the deportation of foreign nationals if they are suspected of endangering national security or committing a serious criminal offence. Such laws, common across Europe, tend to bypass the usual checks on state power embodied in due process. What seems to be happening today, however, is that the definition of what constitutes a threat to national security is being expanded to include ‘speech crimes’. Espousing anti-western sentiments, questioning integration, voicing illiberal sentiments and advocating discrimination against specific groups in society may all now come under the definition of a ‘national security’ threat that warrants deportation.

In France, reform of immigration law was necessary, it was stated, to deal with those who give sermons or make speeches that espouse anti-western and anti-Enlightenment values. The (then) interior minister Dominique de Villepin declared that: ‘Today, one can no longer
separate terrorist acts from the words that feed them.’ Thus, Salafist clerics have been expelled because they are ‘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, among other offences, to have rejoiced at 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, the director of a Paris mosque, was accused of delivering sermons that incited hatred of western societies and of Israel, and allowing Islamic newspapers that glorified jihad to be circulated in a prayer room. In April 2004, the deportation of Abdelkader Bouziane, imam at the Al-Forquan mosque in Lyon, was carried out after the newspaper Lyon Mag published an interview with him in which he was quoted as saying that the Qur’an authorised men to beat their wives and that the stoning of women was permissible.

Comparable ‘speech crimes’ have led to the deportation of Muslim clerics from Germany. In Bremen, in February 2005, a 43-year-old Egyptian imam was identified in the media as a ‘preacher of hate’; even though the public prosecutor’s office confirmed that it had no evidence on which to base a prosecution, he was deported, seemingly because he had called on Muslims to defend their religion against the ‘evils of imperialism’. In Berlin, the constitutional court ordered that Yakup Tasci, imam of the Mevlana mosque, Kreuzberg, should be deported on the grounds that he represented a serious danger to public safety. It cited a 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. Another case is that of Salem El R., the imam of the Al-Nur mosque in Berlin, who was alleged to have said: ‘May God protect the mujaheddin in Chechnya, Palestine and Iraq . . . May God let a tornado sweep away the enemies of Islam, smash them and destroy them.’

Similarly, in the Netherlands, the interior minister Rita Verdonk wants to use immigration law to facilitate the speedy deportation of ‘undesirable aliens’ who pose a threat to public order and national security. Three imams, accused by the security services 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.

Yousef Mammery of the Marseille Council of Muslims has identified working-class, badly-educated Muslim communities as the real target of these measures. As he noted: ‘There are very orthodox people in all religions, who live life on the margins of modern society.’ The French Coalition Against Islamophobia, the Union of French
Islamic Organisations and the Human Rights League all condemn the hot-tempered rhetoric of badly-educated Muslim clerics, but they also defend their right to be afforded the same access to justice as those from other communities. Mammery added that ‘extreme doesn’t necessarily mean dangerous’. Pointing to the case of Bouziane, he observed that the imam ‘wasn’t very clever but it wouldn’t be fair to say he was dangerous’. He argued that litigation, not expulsion, was the answer to any alleged public order offences.18

Hitherto, the usual response to crimes of incitement has been to bring charges under existing public order laws. But the use of deportation instead of public order legislation means that Muslim clerics are being excluded from the ordinary rule of law. Instead, they are being enclosed within a parallel, shadow justice system that is operated through immigration law, has a lower standard of proof and delivers greater punishments for those deemed guilty. To date, only Muslims have been caught up in this parallel justice system. Thus, clerics deemed a threat to European values are denied access to the protection of the European Convention of Human Rights (ECHR) which guarantees the right to a fair trial; to be presumed innocent until proven guilty; to be informed promptly and in detail of the nature and cause of an accusation; and to examine or have examined witnesses.

The role of the media
Because the threat that these individuals are said to pose derives from their words, not their deeds – threatening national security through inflammatory speeches and sermons – the issue of ‘credible evidence’ is crucial. But the evidence presented against those facing ‘national security’ deportations often seems to be based on little more than newspaper articles which quote inflammatory (or merely offensive) statements, or simply regurgitate the views of unnamed security sources. There is then no opportunity to challenge possible misrepresentations. For example, 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. But 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’.19 Similarly, Abdelkader Bouziane’s lawyers argue that extracts from a newspaper article did not accurately reflect his views, pointing out that the ninety-minute interview on which it was based was quoted selectively, that the imam speaks poor French and that his comments were seriously distorted.20 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’. A German television station sent undercover journalists to his
mosque in Berlin and filmed the cleric criticising Germans for being unclean: Germans were, he suggested, dirty and sweaty because they did not shave under their armpits. It was only after this television programme was aired that the senator for internal affairs supported Tasci’s deportation for ‘seriously endangering public safety and order’ and placing in danger the ‘peaceful coexistence between Germans and non-Germans’. Lawyers for Tasci have 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. The same factors seem to be at play in Italy, where Muslims have also been deported following stories in the media. 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 (he also claimed to know Osama bin Laden).

Evidence based on secret intelligence
Untested evidence presented by the security services does not 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 Midhat Güler, the only security service evidence against him was a note blanche which did not implicate Güler in terrorist acts but accused him of inciting hatred of western societies and of Israel in his sermons. The deportation to Algeria of Yousef Mahlili, an imam from Bilbao who moved to Mourenx to preach in a town close to the French-Spanish border, 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. And in Germany, 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.

No right of appeal
A fair system would establish a meaningful right of appeal prior to deportation but, in France, Italy and the Netherlands, individuals only have the right to launch an appeal after deportation. In France, Abdelkader Bouziane’s appeal after his deportation was successful, but in Italy, despite a regional court ruling that Abdel Qader Fadlallah Mamour’s deportation to Senegal was illegal, the possibility of his return was vetoed by the interior minister. In Germany, a special
panel has been set up within the Federal Administrative Court in Karlsruhe as the sole court of appeal; the German appeal system is similar to the UK’s Special Immigration Appeals Commission (SIAC). 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, but evidence on whose cases is considered too sensitive for disclosure in open court. Hence, SIAC’s proceedings are mostly carried out in secret session.

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-September 11 counter-terrorism measures which extend the definition of terrorism from concrete acts of extreme violence to ‘any form of support’ for terrorism, ‘active or passive’. In an open 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 be slim. But fast-track deportations of foreigners via immigration powers bypass open courts and due process. It is true that, where established, administrative tribunals can provide some checks; in the case of Abdelkader Bouziane, for instance, the French administrative tribunal refused to accept in 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’.25

The Muslim religious leaders deported under these provisions have not come recently to Europe; nor were they, like Nation of Islam leader 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 there. Abdelkader Bouziane had lived in France for twenty-five years on a renewable residence permit. Midhat Güler had lived in France since 1976; Abdul Karim al-Tibsi had been legally resident in Italy for twelve years. As such, they should enjoy residence rights, including freedom of speech and assembly and be entitled to safeguards in the ECHR, which protect the right to family and private life. The ECHR holds that expulsion, which separates someone from his or her family and sever[s] links built up in the country of residence, must be proportionate to a legitimate aim, such as protecting national security or the prevention of crime or disorder. In the past, the European Court of Human Rights has
ruled against deporting immigrants who have served prison sentences for serious crimes, on the grounds that such deportation would be disproportionate (a form of double punishment) and a violation of the right to family life. But when Muslim clerics are denied due process, the principle of ‘proportionality’ also falls.

Political pressure

In some cases, it seems that deportation is linked to the need to satisfy the demands of 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’. Three deportations from Germany appear to have been undertaken after pressure from the US and Israel. Two of these deportations involved Lebanese men who were long-term residents in Germany and linked to Hizbollah. In the first case, a German court refused to countenance an appeal, stating that Hizbollah was ‘waging a war with bomb attacks against Israel with inhumane brutality and against citizens’.26 In the second case, one Fadi Madi was deported for his ‘anti-Israel and anti-US stance’, after organising a conference in Berlin that the Simon Wiesenthal Centre in Israel had lobbied the German government to ban.27 The third case involved 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. He was also suspected of collecting donations in Germany to support Hamas and so violating Germany’s ‘spirit of seeking understanding among peoples’.28

In Cyprus, the deportation of ten Pakistani students in July 2005 may well have been carried out in order to appease the US, which had just issued a warning that foreign interests on the island could be targets for an attack. There was widespread consternation when the ten young men, described by their college’s director as ‘excellent students’, were arrested and linked to al-Qaida by the Cypriot media. But the interior minister refused to comment on the arrests, citing national security.29 The deportation of Abdul Karim al-Tibsi from Italy may have involved pressure from Algeria, another key ally in the International Coalition Against Terrorism. It is not unknown for the Algerian security services to spread disinformation about dissidents via a steady trickle of accusations in the press emanating from unnamed security sources. Similarly, the deportation to Yemen of Ahmed Ammar, a student studying for a doctorate on Islamic law in Poland, may have been ordered for political reasons; the internal security agency refused to give details of his alleged crimes, but Ammar contended that the motive was his opposition to the presence of Polish troops in Iraq.
Domestically, too, fast-track deportations under immigration law are politically expedient. Deporting a terrorist suspect to a country like Egypt, Algeria, Morocco or Turkey is a convenient alternative to either bringing charges under local anti-terrorist laws or embarking on the process of extradition to another country. Extradition in particular is a lengthy process with in-built legal safeguards which, crucially, give lawyers and human rights activists time and opportunity to challenge the order. Deporting someone via immigration laws, on the other hand, removes these safeguards from the accused.

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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**References**

1 The seventeen cases included in this analysis are: Abdelkader Yahia Cherif, Abdelkader Bouziane, Midhat Güler, Yousef Mahlili and Orhan Arslan in France; an unnamed Egyptian, Yakup Tasci, Fadi Madi, an unnamed Lebanese national, Salem El R. and an unnamed Jordanian in Germany; Abdel Qader Fadlallah Mamour and Abdul Karim al-Tibsi in Italy; three unnamed imams in the Netherlands; and Ahmed Ammar in Poland.

2 Van Gogh was murdered after making a film about domestic violence in which texts from the Qur’an were projected onto a woman’s naked body.

3 *Migration News Sheet* (July 2004).


5 *Expatica News* (23 February 2005).

6 *Migration News Sheet* (December 2004).

7 *Aftenposten* (17 November 2004).

8 As cited in Amnesty International, op. cit.


10 *Reuters* (23 January 2005).


14 *Berliner Morgenpost* (23 March 2005).

15 *Berliner Morgenpost* (10 May 2005).


18 Ibid.

20 *Agence France Presse* (23 April 2004); *Migration News Sheet* (July 2004).
21 *Berliner Morgenpost* (23 March, 15 April 2005); *Berliner Zeitung* (16 April 2005).
23 *Migration News Sheet* (July 2004).
24 *Migration News Sheet* (January 2005).
26 *Migration News Sheet* (February 2005).
27 *Deutsche Welle* (19 September 2004).
28 *Deutsche Presse Agentur* (20 May 2005).
29 *Agence France Presse* (9 July 2004).