

A Comparative Human Rights Analysis of Expulsion as a Counterterrorism Instrument: An Evaluation of Belgium

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Abstract : Where criminal law used to be the traditional response to cope with the terrorist threat, European governments are increasingly relying on administrative paths. The reliance on immigration law fits into this trend. Terrorism is seen as a civilization menace emanating from abroad. In this context, the expulsion of dangerous aliens, immigration law's core task, is put forward as a key security tool. Governments all over Europe are focusing on removing dangerous individuals from their territory rather than bringing them to justice. This research reflects on the consequences for the expelled individuals' fundamental rights. For this, the author selected four European countries for a comparative study: Belgium, France, the United Kingdom and Sweden. All these countries face similar social and security issues, igniting the recourse to immigration law as a counterterrorism tool. Yet, they adopt a very different approach on this: the United Kingdom positions itself on the repressive side of the spectrum. Sweden on the other hand, also 'securitized' its immigration policy after the recent terrorist hit in Stockholm, but remains on the tolerant side of the spectrum. Belgium and France are situated in between. This paper addresses the situation in Belgium. In 2017, the Belgian parliament introduced several legislative changes by which it considerably expanded and facilitated the possibility to expel unwanted aliens. First, the expulsion measure was subjected to new and questionably definitions: a serious attack on the nation's safety used to be required to expel certain categories of aliens. Presently, mere suspicions suffice to fulfil the new definition of a 'serious threat to national security'. A definition which fails to respond to the principle of legality; the law, nor the preparatory works clarify what is meant by 'a threat to national security'. This creates the risk of submitting this concept's interpretation almost entirely to the discretion of the immigration authorities. Secondly, in name of intervening more quickly and efficiently, the automatic suspensive appeal for expulsions was abolished. The European Court of Human Rights nonetheless requires such an automatic suspensive appeal under Article 13 and 3 of the Convention. Whether this procedural reform will stand to endure, is thus questionable. This contribution also raises questions regarding expulsion's efficacy as a key security tool. In a globalized and mobilized world, particularly in a European Union with no internal boundaries, questions can be raised about the usefulness of this measure. Even more so, by simply expelling a dangerous individual, States avoid their responsibility and shift the risk to another State. Criminal law might in these instances be more capable of providing a conclusive and long term response. This contribution explores the human rights consequences of expulsion as a security tool in Belgium. It also offers a critical view on its efficacy for protecting national security.

Keywords : Belgium, counter-terrorism and human rights, expulsion, immigration law

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