

Removing Refugee Protection

*The hidden cost of
September 11th*

Liz Fekete

Liz Fekete is head of European research at the Institute of Race Relations (www.irr.org.uk) where she edits the European Race Bulletin. This article forms part of a special issue of the Bulletin entitled Racism: the hidden cost of September 11, which is available from the Institute.

The emergency powers and other policing measures adopted by European Union member states amid one-dimensional parliamentary and media debate, are generating a climate and culture of suspicion across Europe against foreigners, with Arabs, asylum seekers and those of Middle-Eastern appearance emerging as the new 'enemy aliens'. It is a 'sus' culture which has been given respectability by the EU's attempts to abandon international laws which, first, guarantee asylum rights to those involved in legitimate acts of political violence in their home countries (on the grounds that rebellion is sometimes necessary to overthrow repression) and, second, grant protection to those foreign nationals who are, by international law, 'non-removable' because they cannot be sent back to countries that practise torture or capital punishment. It is a 'sus' culture, that, in demonising asylum seekers as terrorists, leads to the lowering of standards of refugee protection by increasing possibilities for exclusion. While this power to exclude is not entirely new (the Refugee Convention itself provides that protection should not be given to those reasonably believed to be guilty of 'war crimes, crimes against humanity, acts contrary to the purposes and principles of the UN, or serious non-political crimes, committed outside the country of origin'), its extent and scope is no longer clearly limited and defined. And this power to exclude has, of course, been further legitimised by the EU Council's attack on refugees' right to oppose tyranny abroad (as evidenced in the failure of EU law to distinguish between terrorism and legitimate political violence).

The following cases illustrate the ways in which the standards of refugee protection have been lowered, and a climate of suspicion has been ratcheted up since September 11.

Zari and Ahmed Hussein Agaiza, who have lived in Sweden since 1999 and whose asylum applications are still pending, were forcibly

returned to Egypt on 18 December 2001 on an Egyptian government aeroplane. Agaiza had been sentenced in absentia in Egypt to 25 years hard labour on charges of taking part in an armed attack on the Egyptian embassy in Pakistan – charges which he denies, saying that he was living in Iran at the time of the bomb attack. The Swedish authorities recognised that the men had a well-founded fear of persecution but still excluded them from protection on the basis of connections to organisations which had been responsible for acts of terrorism.

In October 2001, Muhammad Abd Rahman Bilasi-Ashri, an Egyptian asylum seeker sentenced in absentia to 15 years in prison for supporting Egyptian Islamic Jihad, was arrested in Austria. A court quickly ordered his extradition, even though in 1999 the Supreme Court had ruled against his extradition. Bilasi-Ashri's name surfaced during a British investigation of London-based Islamic radicals suspected of involvement in the bombings of two US embassies in Africa in 1998, according to a British police memo. But the British inquiry on him has been dropped.

A Kurdish woman, Nuriye Kesbir, who is a member of the Kurdistan Workers Party (PKK) presidential council in Turkey, has been in detention in the Netherlands since her arrival on 27 September 2001 and faces extradition despite her asylum claim and despite the likelihood of torture (rape and sexual humiliation of women prisoners in Turkey is well documented) and the death penalty. The PKK is not banned in the Netherlands.

Mohamed Chalabi had already served an eight-year prison sentence in France for his role as head of a support network of the Group of Armed Islam (GIA). As he was born in France, and is the father of four French children, he should have been protected from deportation to Algeria. Moreover, normally such prisoners, having served their sentence in France, would be deported to a safe third country rather than being sent to a country where they would face the death penalty. Nevertheless, on 9 November 2001, the French government acceded to an Algerian request and returned Chalabi to Algeria.

Zakaria Toukal, despite support from the computer company which employs him, could be deported to Algeria. Toukal, who spent eleven months in custody awaiting trial, was originally picked up for questioning in the course of an inquiry into the Chalabi network. Subsequently released, but still awaiting the court case, Toukal married a French student, fathered two children, completed a degree course in robotics and gained employment as a research and development engineer. Then, in March 2000, Toukal was convicted, but the instruction that he be permanently removed from France was not enacted and he continued to live and work legally in France, with his residence permit regularly renewed. But after September 11, the authorities – concerned about his robotics degree – arrested him and placed him under administrative detention. A first attempt to deport him to Algeria failed when he refused to board the plane. An appeal has been launched and Toukal has asked the interior minister to place him under house arrest with the right to work. The Alcatel company has kept his job open for him.

In Germany, a new law has been introduced to allow the state to disband religious organisations with suspected links to terrorism. At the same time, the government is negotiating with Turkey for the extradition of the radical Islamist Metin Kaplan, who heads the Cologne-based Islamic group, the 'Caliphate State', and is wanted in Turkey on treason charges. Previously, Germany had resisted the extradition of Kaplan, who has been imprisoned in Germany since 1999 on public order charges, on the grounds that Kaplan would be subjected to torture and the death penalty. But now it is pressing ahead with extradition.

From demonisation to exclusion

The background to these exclusions predates September 11. Indeed, for several years, there has been pressure on European governments from countries such as Turkey, Saudi Arabia, Algeria and Sri Lanka, to alter asylum policies so as to make extradition of political dissidents easier. The allegation, repeated over and over again, was that Europe's asylum system provided a safe haven for terrorists, thereby allowing terrorist organisations to regroup in Europe and exploit it as an organisational and logistical base from which to raise funds, procure arms and plot terrorist attacks in their country of origin. Many European countries had attempted to appease their overseas critics with whom they had military, diplomatic and economic ties. But, prior to September 11, this did not so much involve caving in to extradition requests as institutionalising the 'dissident=terrorist' equation through anti-terrorist laws which proscribed various political parties and associated social organisations and created new offences based on association with proscribed organisations, rather than on actual involvement in illegitimate violence.

But since September 11, while there has been further pressure towards proscription, the most significant development has been the increasing willingness to acquiesce to extradition requests, to appease not just international partners in the Coalition Against Terrorism but also the UN Security Council. Previously, extradition requests from countries that practised torture were refused, on the grounds that refugees and asylum seekers were protected under international treaties, European law and the tradition that the threat of torture overrides any extradition requests. But, in September 2001, in the first clear prompt to change existing practice, the UN Security Council passed a resolution urging that states 'ensure in conformity with international law, that refugee status is not abused by the perpetrators, organisers or facilitators of terrorist acts, and that claims of political motivation are not recognised as grounds for refusing requests for the extradition of alleged terrorists'. Then, on October 16, president Bush wrote to Romano Prodi, president of the European Commission, suggesting 40 measures to combat terrorism, including a request to bypass the extradition process and 'explore alternatives to extradition including expulsion and deportation'. This was followed by the publication of an EU working document in December that suggested that, in future, it would be legitimate to extradite people to states that practise torture, as long as 'legal guarantees' were received

from that state that no such torture would be practised. Ominously, the EU working document stated that after September 11, the European Court of Human Rights may need to rule again on the balance 'between the protection needs of the individual set off against the security interests of the state'.

It is this pressure, principally from the UN Security Council and the US, then, that provides the background to the cases outlined above – cases that are viewed by civil libertarians across Europe as constituting human rights abuses carried out by European governments. Many human rights organisations in Europe have alerted the public to the degradation of democracy and human rights standards that such secret and sickening deals incur. Thus, the League of Human Rights described the secret deal between the French ministry of foreign affairs and the Algerian government to deport Mohamed Chalabi as a 'sordid procedure' amounting to 'extradition in disguise', only made possible in the post-September 11 climate. In Austria, lawyers for the Egyptian facing trial at home for Islamic activism, have condemned the government's decision to extradite as nothing more than 'revenge for September 11'. The Swedish branch of Amnesty International (AI) has described the proceedings surrounding the deportation of the two Egyptian asylum seekers who the Swedish Security Police (Säpo) accused of being members of an armed Islamist group, as grossly unfair. It accuses the Swedish government of being in breach of its international obligations not to send anyone back to a country where he or she would be at risk of serious human rights violations. Another case, involving four Islamists arrested on the information of a tortured al-Qaida suspect in Algeria (information he later retracted) is causing consternation in the Netherlands. Yet, politicians seem impervious to criticism. In Germany, the federal interior minister responsible for new anti-terrorist legislation, has promised that the new laws will make deportations such as that of Metlin Kaplan easier and the Right's candidate in the 2002 presidential elections, Edmund Stoiber, only agreed to back anti-terrorist legislation on condition that more such deportations followed.

Partners with state terror

Governments justify extradition on the grounds that they have, or will receive, guarantees that those sent back will not be tortured or subjected to the death penalty. But Amnesty has pointed out that such guarantees are an 'insufficient safeguard', as acknowledged by the European Court of Human Rights which, in 1996, told the British government to refuse an extradition request from the government of India for a Sikh resident in Britain on the ground that written guarantees of proper treatment could not facilitate extradition because whatever the 'good faith of the Indian government', the violation of human rights 'is a recalcitrant and enduring problem in India'. Amnesty has already documented evidence that Ahmed Hussein Agaiza, extradited from Sweden to Egypt, has been held in isolation, tortured and now has difficulty in moving. And although Algeria guaranteed not to imprison Chalabi, he was immediately arrested on arrival in Algiers and charged with 'creating and belonging to an armed terrorist

group which had intended to commit crimes of devastation and destruction'. Such facts do not seem to concern politicians unduly. Germany's interior minister, Otto Schily, says that he would be happy to return suspects to such countries as Egypt, Algeria and Turkey as long as he can get guarantees that they will not face the death penalty.

In fact, what these cases demonstrate is Europe's increasing links with authoritarian regimes that practise state terror, something that has long concerned human rights organisations and lawyers who have been exposing the close working relationship between European security services and secret services abroad involved in widespread human rights abuses. For example, Germany, which proscribed the PKK in 1993 and Kurdish associations believed to finance the PKK, has had a close working relationship with Turkey while France has worked with the Algerian government to target Islamic fundamentalists living in France. The UK's Terrorism Act 2000, with its list of proscribed organisations, undoubtedly reflected the close working relationship the British secret services were developing with their counterparts in countries like Sri Lanka, Turkey and Algeria.

But since September 11, these informal relationships are being institutionalised at the highest level, thanks to the imperatives of the International Coalition Against Terrorism. The deals being struck, the information exchanged, go well beyond the fight against al-Qaeda. The US and Europe are launching a 'War Against Terrorism' which has in its sights a myriad of organisations and political movements across the globe, which are not connected to al-Qaeda and cannot be understood simply as 'religious jihads'. Rather, they require a contextual understanding of the concrete political and social problems of their countries. The War Against Terrorism is leading European governments to embrace those countries that, in practising state terror, create the very culture of repression which drives oppositional groups towards rebellion and may lead them to respond to terror with terror tactics of their own. A European-wide approach to the anti-terrorist fight, which would have examined cause and effect in particular countries and adopted specific policies accordingly, has been thrown out in favour of the instant gratification of immediate arrests for the benefit of appeasing coalition partners, particularly the US.