



Operation Nexus

1 This is the title of an operation launched by the Metropolitan Police in September 2012 which has recently attracted a certain amount of media attention. The object of it is to use deportation as a sanction against foreign unconvicted criminals. Deporting convicted criminals is not usually a problem, subject to the operation of Article 8 (right to family life) of the ECHR, which has frequently in recent years been invoked as a means of preventing deportation. Article 8.2 prohibits interference with this right:

“except ..in accordance with the law and as necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the protection of health or morals, or for the protection of the rights and freedom of others.”

2 This wording does not make it mandatory that the person to be deported shall have been convicted of any crime if this exception is to be upheld, and the case which has recently attracted attention has been that of a Jamaican suspected of committing five rapes over a period of years but never convicted because the Crown Prosecution Service had doubts about the credibility of witnesses or because prosecution of him failed for other reasons and the defendant was acquitted. His case was determined by the Upper Tier of the Tribunal’s Immigration and Asylum Chamber, *Farquharson v. Secretary of State for the Home Department* [2013] UKUT 146. The evidence of the appellant’s conduct was reviewed in detail and the Tribunal concluded that the appellant was “a source of future danger to vulnerable women”. The Tribunal ruled that the evidence of criminal activity must be assessed on the civil standard of balance of probabilities, which is significantly less than the requirement of proof of criminal charges beyond reasonable doubt, the standard of proof in criminal trials.

3 The stated policy of the Metropolitan Police is to target more serious or prolific offenders and the achievement of this necessitates immigration checks on just about every foreign national who is arrested, including EU citizens, whether or not charged with any offence. The size and scope of the operation can be judged from the fact that over an eight week period checks were carried out on 41,712 individuals, 10,312 of whom were identified as foreign nationals, roughly half EU and half non-EU. Of these 1432 were identified as prolific or high harm offenders, 212 were detained and 153 were given temporary admission by UKBA. The source of this information is the website of Migrants’ Rights Network, quoting a briefing by the Metropolitan Police which they attended. We are not told whether any of the 1432 were in fact deported.

4 The Operation has started in London but is expected to be undertaken nation wide in due course. Migrants' Rights Network has expressed concerns on a number of grounds:

- (i) checks against the UKBA data base will be carried out by police who may not be competent to interpret the information provided;
- (ii) there has not been any consultation with migrant communities;
- (iii) the operation raises serious concerns for migrant communities and may compromise relations between the police and those communities.

5 Whatever substance these concerns may have, there is nothing unlawful or indeed new about the Operation. The Home Office has for years had the ambition of deporting Abu Qatada and may now be nearer to achieving it, but he has never been charged with any offence though he has long been publicly described as a dangerous individual. Reluctance to bring charges against Abu Qatada is attributed to the need for MI5 and the police to avoid publicity for and protect their sources of information. No doubt there are many other similar individuals who for similar reasons cannot be charged but may pose a threat to national security. What is new about Operation Nexus is firstly that it may result in the deportation of unconvicted criminals whose crimes are not political or connected with terrorism and secondly that it is a large scale operation which is likely to grow in size and importance.

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