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# BOFAXE



## Expulsion of Foreigners Involved in Riots in France

### Replies and Comments

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### Focus

#### European Convention on Human Rights, 5 November 1950

##### Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

#### ECHR, *Nasri v. France*, 13 July 1995. Concurring Opinion of Judge Pettiti

"The European Court will in the future probably have to specify the criteria which it intends to adopt. The threshold level of convictions and re-offending, physical and linguistic handicaps taken into account, the nature of offences, the substance of family life and definition of the family community to be protected under article 8, definition of European public order in this context."

On 9 November 2005, Mr. Sarkozy, the French Minister of Interior, ordered the expulsion from France of all foreigners involved in the urban riots that have shaken France in the last few weeks. This decision is not without legal consequences as it reminds us of a series of judgements of the European Court of Human Rights against France that occurred between 1995 and 1997 as a consequence of the French policy to expel foreigners who had committed certain crimes. While some of the decisions were in favour of France, others pointed to infringements of the Convention (ECHR). In particular, applicants claimed that their right to family and private life protected under article 8 had been violated.

In this regard, the Court had first to examine whether the State's action interfered in the family and private life of the individual, a question that was always answered in the positive as expulsion inevitably obstructs the life of the individual, in particular if he/she has relatives in France.

A second step consists in investigating whether the conditions set out in article 8(2) are fulfilled, i.e. whether the expulsion was "in accordance with the law", whether it pursued a legitimate aim and whether it was "necessary in a democratic society" to attain such an aim. In all cases, the Court adjudicated that the two first conditions were satisfied.

In contrast, the necessity to expel such individuals was debated at length. As a matter of principle the Court recognised that each State should be granted a certain margin of appreciation when deciding whether the measure is justified by a pressing social need and proportionate to the legitimate aim. In other words, the State must strike a balance between the applicant's right to respect for his private and family life and the prevention of disorder or crime. Undoubtedly, as dissenting opinions pinpoint, the test leads to a lack of legal certainty so that it is usually difficult for the State to ascertain whether it is acting in conformity with the ECHR.

First, the Court examines the applicant's ties with France, i.e. his relation with family members, his knowledge of the language of the country to which he shall be expelled, his time spent in France and in particular his schooling and so on. Second, the Court looks at the seriousness of the crimes committed by the individual. Generally, in cases where individuals had kept closed relations with their country of nationality (see *Boughanemi v. France*, *Bouchelkia v. France*) or had not shown any desire to acquire French nationality if entitled to do so (*Boujlifa v. France*) the Court found no violation of article 8 and this despite the fact that some of the applicants had spent a considerable amount of time in France. Consequently, if France wishes to abide by article 8 ECHR it must ensure that those individuals expelled for rioting have strong ties with their country of nationality. This can only be determined on an individual basis and, therefore, no general statement can be made on the matter. Further, cases that were adjudicated in favour of France involved individuals who had lived on the earnings of prostitution and had been convicted on numerous occasions of various criminal activities (see *Boughanemi v. France*) or who had committed an aggravated rape and a theft (see *Bouchelkia v. France*) or an armed robbery (*Boujlifa v. France*) or had engaged in drug trafficking (*Mehemi v. France*). It is therefore highly unlikely that expulsions for crimes such as vandalism fall within the purview delineated by the Court. As a result, one may expect that in a couple of years, these individuals will appeal to the French judicial system alleging a violation of article 8 ECHR and, possibly, successfully lodge a complaint to the European Court of Human Rights.

### Responsibility

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