

Introduction

1 A refugee who has been granted the right of lawful residence in a particular State needs the assurance that this right will not be withdrawn, with the result that he again becomes an uprooted person in search of refuge. Such assurance is given in Article 32 of the 1951 Convention and Article I(1) of the 1967 Protocol relating to the Status of Refugees. These provisions, however, also recognize that circumstances may arise in which a State may consider expulsion measures.

2 Problems connected with the expulsion of refugees include the difficulty in drawing the line between the basic protection of the refugee and the legitimate interests of his State of residence, the extremely serious consequences of expulsion for the refugee and any members of his immediate family residing with him, and the difficulty, indeed impossibility in many cases, of enforcing an expulsion measure.

3 For the purposes of the present Note, expulsion does not include return of the refugee to his country of origin, which is regulated by the principle of non-refoulement, a matter which is dealt with in a separate Note submitted to the Sub-Committee.

Legal basis for the expulsion of refugees Article 32 of the 1951 Convention and Article I (1) of the 1967 Protocol

4 According to Article 32(1) of the 1951 Convention: "The contracting States shall not expel a refugee lawfully in their territory except on grounds of national security or public order."

The concept of "national security or public order" may be difficult to apply in a particular case. The travaux préparatoires to the provision argue in favour of a restrictive interpretation in the sense that a refugee should only be expelled as a last resort and as the only practicable means of protecting the legitimate interests of the State.

5 The above interpretation can be supported by various considerations of a more general nature:

(i) Since a refugee, unlike an ordinary alien, does not have a home country to which he can return, his expulsion may have particularly severe consequences. It implies the withdrawal of the right of residence in the only country - other than his country of origin - in which the refugee is entitled to remain on a permanent basis, and the loss of the rights that the 1951 Convention and the 1967 Protocol provide for refugees lawfully staying in the territory of a Contracting State. Thus, the very seriousness of the consequences of expulsion for a refugee in itself justifies a restrictive interpretation of the circumstances in which it should take place.

(ii) In assessing the gravity of acts prejudicial to "national security or public order", it should be remembered, that the refugee is an uprooted person in an alien and unfamiliar environment, and consequently may encounter difficulties of adaptation and integration. This situation may create a psychological condition in which failure to conform to the laws and regulations of the country of residence - although in no way excusable - might perhaps be considered less grave than in the case of persons who have not been uprooted from their normal environment. This can of course only be determined by a careful examination of all the circumstances of a case, including the seriousness of the offence committed. Any mitigating circumstances should, if possible, be taken into account in determining the appropriateness of expulsion.

(iii) The expulsion of a refugee may result in great hardship for any close family members residing with him. In other words, expulsion may have serious consequences for persons other than the one against whom it is primarily directed. This is a further justification for a restrictive interpretation of the circumstances in which expulsion might be appropriate.

(iv) These considerations are not intended to justify or condone unlawful acts committed by a refugee which should be the subject of prosecution under normal penal procedures. It should not be overlooked, however, that the expulsion of a refugee can be regarded as an "additional" punishment to which a national of the country committing the same offence would not be liable.

Problems of enforcement of expulsion measures against refugees

6 Even in cases where expulsion may be justified under Article 32 of the 1951 Convention, its enforcement may involve considerable difficulty. A refugee expelled from his country of residence is not necessarily able to proceed to another country to take up residence, and the difficulty in obtaining such a right of admission may be very great, if not insurmountable. If the refugee tries to enter another country irregularly, he will in all probability be liable, in that other country, to punishment and to a new measure of expulsion because of his unlawful entry or presence. He may indeed be returned to the country that first expelled him, where because of his previous expulsion, his position would again be illegal. There have been cases in which refugees have been pushed back and forth from one country to the other over a considerable period, without being able to regularize their situation in either country.

7 It should also be mentioned that, because it may require a considerable time for a refugee under an order to be admitted to another country, detention prior to expulsion may be much more prolonged - than in the case of an ordinary alien who can readily return to the country of his nationality.

Conclusions

8 In view of the very serious consequences of expulsion for a refugee, it should be resorted to only in exceptional circumstances, bearing in mind both the need for a restrictive interpretation of Article 32 of the 1951 Convention and the general considerations referred to above.

9 Consideration should also be given to the consequences of an expulsion measure for the close family of the refugee and to the question whether the refugee is able to proceed to another country other than his country origin.

10 Where an expulsion measure is combined with custody or detention, it should be ensured that such custody or detention is not unduly prolonged.

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