Revoking citizenship: ‘a form of punishment more punitive than torture’

The expansion of the use of US drones in the ‘war on terror’ has rightly attracted alarm and criticism. The unmanned planes are used to carry out assassinations on suspected terrorist targets, often with scant regard for due process or any resulting ‘collateral damage’ which frequently claims the lives of innocent victims.

It is known that UK Government agencies and secret services assist their US counterparts by gathering information and intelligence which is subsequently used to target victims of drone attacks. Indeed, since 9/11, successive UK Governments have made numerous legislative attempts to facilitate this contribution, only to be thwarted when the new laws are ruled to be incompatible with human rights. Detention powers brought in under the Terrorism Act 2006 or the current Government’s lengthy frustrations in fighting successful appeals against deportation orders are two such examples.

New powers, introduced earlier this year, which permit the stripping of British citizenship from individuals who hold dual nationality or naturalised British citizens, may have overcome these hurdles – as without their British citizenship, an individual’s recourse to human rights and rights of appeal are severely curtailed.

British citizenship is commonly revoked while individuals are in international transit, rendering their passports invalid by the time they reach their destination. The individual is then detained by border authorities and passed on to the national police or secret services for questioning.

Though the stripping of citizenship is not a new tool at the Government’s disposal, it is now sufficient that the Home Secretary demonstrate only ‘reasonable belief’ that the individual can secure an alternative passport – potentially rendering individuals Stateless and without any legal rights – a situation described by the Supreme Court as a ‘form of punishment more punitive than torture’.

Concerns were raised about the new powers at a meeting in Camden Town Hall on 5th August 2014, entitled: ‘Dangerous Surveillance: Drones, Data and Deprivation of Citizenship’.

Namir Shabibi, a caseworker at Reprieve, which provides representation and assistance to prisoners of the ‘war on terror’, explained that through a series of agreements with compliant States where human rights cannot be invoked, the UK Government facilitates the detention and often torture of individuals abroad for the purposes of intelligence gathering and that, without citizenship, pressure can no longer be put on the Foreign Office to lobby for their release.

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Speaking at the meeting, organised by the Campaign Against the Arms Trade and held at the Camden Town Hall on 5th August 2014, solicitor Alastair Lyon of Birnberg Peirce Solicitors highlighted the extreme difficulty of appealing the grounds upon which individuals are deemed a threat to national security as the assessment frequently relies on secret evidence which neither the accused nor their legal representative have sight of.
The release of the Employment Tribunal figures for April to June 2014 made unwelcome reading for employment lawyers. The total number of claims issued (18,106) was down 76 per cent on the same period a year ago. Just as important was the 24 per cent fall in claims compared to the previous quarter from January to March 2014.

Part of the context is that the coalition Government’s introduction of Employment Tribunal fees has led to a one-off reduction in the total number of claims. The fall has happened because the combined cost of the hearing and issuing fees (£1,200 for unfair dismissal or discrimination claims) was set high compared to the value of claims. The median award in either jurisdiction is around £5,000 and in most cases the claimant has to fund their legal costs from their damages. It is too early to say with certainty what the long-term effect of fees has been, but it is likely to cause a permanent decline in the number of cases of, at a rough estimate, 60 per cent.

In addition, since 6th May 2014, all new claims have been required to go through a pre-issue conciliation period, during which claimants are required to register their claim with Acas, to establish whether the claims are capable of settlement. The impact of Acas has been to convert what would have been a 60 per cent or so decline in the number of claims to a total decrease of 74 per cent.

The Government’s analysis is that the further fall in the number of claims is welcome. Tribunal litigation has enormous hidden costs, which are psychological as well as financial, for both workers and employers. The Government’s logic is that now both parties benefit from a system which focuses their minds on settlement.

Even if this was true, there are a number of cautions worth recognising. Firstly, the Acas system is not designed to unblock negotiations which have become stalled. Rather is it a test intended to catch the ‘low lying fruit’, the cases which were already on the verge of settlement. When a worker contacts Acas, they are required to give few more details than their name and address and their employer’s contact details. They are then telephoned by an Acas officer.

While a claimant in any area of law, on their first attendance with their solicitor, would be expected to give the full details of their case, Acas calls are much shorter. Workers are not always asked what their complaint is about, nor even, in the initial call, how much money they are seeking by way of settlement. Acas officers are cautious to be seen to ‘give legal advice’, or to be seen to be ‘taking sides’. Calls to the employer are, in many cases, equally brief. The employer is asked if they have an intention to settle. No pressure is put on an employer if the answer is no. Unless the parties each already have an intention to settle, the Acas officer will move on to the next case.

Secondly, where no settlement is reached, Acas acts as a buffer between the claimant and issuing a claim. The intended structure of pre-action litigation is now as follows: a worker has three months from the act about which they complain to issue. They must contact Acas within this time. The case is then held by Acas for a month; and then, if no settlement is reached, a worker is issued with a certificate, without which they cannot issue a claim. The three month time limit is extended for the period in which the case was with Acas.

Employment law has seen, in the past, a very large number of cases concerning what the Tribunal should do when cases are late, including in situations where the delay is as short as a few minutes or as long as several years. In a context where time limits are already closely guarded there is an enormous potential for satellite litigation, for example where Acas wrongly fails to issue a certificate, or where there is a dispute between any of the employee, the employer or Acas about whether the claim was with Acas for the requisite period or not.

With those two major cautions in mind, it is worth returning to the principal argument in favour of compulsory Acas conciliation, that it will settle a number of cases which would otherwise have gone to a contested hearing.

A year ago, broadly speaking, around 18,000 claims per month were issued, of which 6,000 settled and 12,000 reached some other outcome, be it success or failure at a final hearing or disposal at an interim hearing. Today, it seems that around 17,000 workers a month contact Acas and around 3,000 cases are settled. Of the remaining 14,000 cases, 8,000 disappear altogether. In other words, workers, not receiving any satisfaction, simply drop out of the system with nothing and around 6,000 claims are issued.

The number of settlement agreements is running at half the level of a year ago: 3,000 per month now in 2014, as compared to 6,000 per month in 2013. It follows that workers have not been rescued from the uncertain waters of court and brought to the safe harbour of negotiated settlement. Instead, both the number of claims and settlements are sharply down on a year ago. The overarching picture is one in which workers’ rights have been sharply curtailed.

David Renton