

A 'crimmigrant ban'? Global mobility, urban (in) security and the changing dynamics of judicial practices

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journals.sagepub.com/home/pun**Eleonora Di Molfetta** 

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Abstract

In the last decades, western countries have developed a set of policies and practices aimed both at crime prevention and social reassurance. Within this trend, the old-fashioned sanction of banishment has regained prominence. Banning orders, in particular, are widely used to remove from public spaces individuals who are deemed a threat to public safety and urban decorum. This article investigates the use of banning orders towards foreign defendants without a valid residence permit in an Italian criminal court. Based on empirical material collected during a one-year period of courtroom ethnography in Turin, this article sheds light on the rationales and objectives behind the use of banning orders. The interviews with courtroom actors reveal how banning orders have lost much of their preventive dimension to become an instrument of socio-urban control towards immigrants. This article invites future research to consider the role that urban management practices might play in the field of global mobility.

Keywords

Banishment, judicial practices, foreign nationals, urban policies, securitisation, crimmigration

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Introduction

From the 1980s, in almost all European countries, there has been an increased interest in security, or better the lack thereof, often understood in terms of incivilities and improper behaviour (van de Bunt and van Swaaningen, 2012). Marginal groups, such as homeless, prostitutes and drug addicts, are often portrayed as responsible for lack of security and urban decay. In Italy, as elsewhere, what mainly affects citizens' fear of crime is represented by visible manifestations of disorder and incivilities in the area in which they live (Selmini, 2011). Immigrants are at the top of the list of the 'social outcasts' deemed responsible for social downgrading, especially immigrants without a valid residence permit. This social group, often labelled *clandestini* to lay emphasis on their alleged crime propensity (Solano, 2014), stands 'at the intersection of class and race exclusions' (Mireanu, 2014: 80). Consequently, images of crime and disorder are consistently associated with their presence in urban spaces (Melossi and Selmini, 2009). This situation leads to conflicts between residents and the 'unwanted guests' and it turns immigrants into the scapegoat for all economic and societal problems (Marzorati, 2010).

One of the most vivid consequences of this global obsession with security is visible in governments' reliance on preventive and exclusionary measures to control urban spaces. Although containment and confinement still remain important forms of spatial control, an old-fashioned tool of socio-spatial exclusion, that is banishment, has vigorously re-gained popularity (Beckett and Herbert, 2009). The use of banning orders has been documented across different national contexts, such as the US (Beckett and Herbert, 2009), Australia (Palmer and Warren, 2014), the UK (Crawford, 2009), Germany (Belina, 2007), the Netherlands (Schuilenburg, 2015), Italy (Crocitti and Selmini, 2017) and Denmark (Søgaard, 2018). Banning orders are measures adopted by administrative or criminal justice authorities to control undesirable behaviour by preventing an individual from doing something or staying in a certain area. These measures generally fall under the heading of 'prevention' and, as such, they might even be imposed on individuals who are not convicted of any criminal offence.

In this article, I intend to explore a particular form of banishment, that is a ban on residence, a measure imposed by judicial authorities on individuals accused of committing a crime on the ground that he – less often she – represents a danger to society. By using the criminal court of Turin (Italy) as a case study, this article explores the use of banning orders towards a particular group of defendants, namely foreign defendants who stand trial as irregular. This social group seems to be the preferred target of practices of banishment from judicial authorities. This article has two aims. First, by looking at the law-in-action, I intend to shed light on why courtroom actors rely heavily on banishment towards foreign defendants, especially in cases of drug trafficking. Second, I use this case-study to explore the relationship between urban management practices and migration management practices. In other words, I question whether judicial practices of banishment fall within the domain of 'crimmigration' (Stumpf, 2006) and, in particular, if they can be understood as bordering practices. With the latter term, in line with Diener and Hagen (2012), I refer to national or local practices that, far from taking place at

the traditional border site, occur *within* the territory and yet can obstruct or discourage mobility, even unintentionally.

The structure of this article is as follows. The next paragraph provides an overview of the developments in the field of crime prevention. Then, it follows a paragraph which attempts to build a bridge between the literature on urban securitisation and bordering practices by highlighting common traits in governments' approach to urban management and migration control. The next paragraph describes the practices of banishment which are the focus of this article, namely bans on residence. This is followed by a brief methodological account of the ethnography conducted in the criminal court of Turin. The empirical paragraphs explore objectives and rationales behind magistrates' reliance on banishment towards foreign defendants without a valid residence permit. The last paragraph contains the conclusion and discusses theoretical implications and avenues for further research.

In the name of security: from prevention to exclusion?

One of the latest developments in the governance of crime across western countries is represented by policies and discourses aimed not only at preventing certain behaviour, but also at strengthening public perception of safety (Zedner, 2000). Although each national context approaches these ideas and practices differently, they all share some common traits. In detail, Selmini points to the growing interest from governments to citizens' perception of security, the adoption of strategies different from the 'traditional' penal intervention, the reliance on different kinds of legal instruments and a new vocabulary surrounding crime prevention and security (2011:162–163). As a result, crime prevention takes on a different dimension, in that policies adopted under the banner of 'security' are much concerned about placating citizens' feelings of insecurity than fighting crime. In other terms, these policies represent a shift from managing crime to managing fear of crime (van de Bunt and van Swaaningen, 2012). Interestingly, what triggers citizens' fear of crime is not crime in and of itself, but rather disorder and incivilities in the area in which they live, such as public drinking, drug use and brawls since they 'signal' that social control is lacking (LaGrange et al., 1992; Peršak and Di Ronco, 2018). Together with reducing fear of crime, then, security governance includes the enhancement of social control (Selmini, 2011).

The idea that certain social groups constitute a threat to security and must be kept under the watch of public authorities is nothing new. Marginalised groups deemed disturbing or dangerous, such as homeless, drug addicts, prostitutes, gypsies and immigrants, are often the target of practices of spatial exclusion. Within this trend, the old-fashioned sanction of banishment is back. Banning orders are part of a broader trend of 'security-obsessed urbanism' (Schuilenburg, 2015: 279), which relies on spatial exclusion 'to manage people and situations that bother and disturb – but do not endanger – other urban residents' (Beckett and Herbert, 2009: 63). In the European context, the most prominent target of banishment is represented by immigrants (Bergamaschi et al., 2014). The fact that immigration is predominantly framed as a matter of security (Huysmans, 1995; Lazaridis, 2011), a process

known as ‘securitisation’ of migration, has contributed to the development of practices of spatial exclusion towards the very group deemed responsible for lack of safety and urban decay in our cities.

It is interesting to note that, when it comes to immigrants, the punitive approach in dealing with urban security results in policies of exclusion that constrain immigrants’ opportunities in the city in which they live (Varsanyi, 2008). As Ambrosini (2013: 143) puts it, local policies of exclusion consist of

measures adopted by local authorities that aim to separate immigrants from the indigenous component of the population, by establishing specific, albeit implicit, indirect or hidden prohibitions against them, setting up special screening procedures or limiting their access to benefits and resources.

Along this line, policies of exclusion are various and might consist in widespread checks on foreign-looking people (Barker, 2017) often to discourage their presence in certain urban areas (Mantovan, 2018; Quassoli, 2004), restrictions to access to – or withdrawal of – essential services to non-citizens (van der Leun, 2003; Weber, 2013), and city ordinances (Ambrosini, 2013; Crocitti and Selmini, 2017; Varsanyi, 2008) that disproportionately affect immigrants, especially those undocumented. These developments are consistent with the thesis that countries manage non-citizens also *within* the national territory by relying on a variety of legal instruments (Franko and Bosworth, 2013).

Urban management or migration management?

For understanding practices of banishment exerted toward non-members, both the literature on urban securitisation and on bordering policies have much to offer. The two theoretical strands point to a number of common traits which are worth emphasizing. The first relates to the hybrid character of urban and migration policies. Banning orders are mostly adopted ‘under an administrative regulatory process that operates in tandem with criminal laws dealing with public order’ (Palmer and Warren, 2014: 430). In particular, banning orders address behaviour and situations which *per se* do not constitute crime, yet a penalty is imposed for non-compliance with them. In other terms, the infringement of banning orders opens the path to criminal justice intervention (Beckett and Herbert, 2009). When it comes to controlling migration, the regulatory approach is quite similar. The hybrid character of policies aimed at non-citizens was extensively analysed in the famous article on the ‘cimmigration crisis’ published by American scholar Juliet Stumpf (2006), followed by a growing body of research on the topic in the European context (Aliverti, 2012; Fabini, 2017; Franko, 2011; van der Leun and van der Woude, 2012; Wonders, 2017). Although migration management differs across countries, scholars agree that governments’ approach to global mobility encompasses a variety of administrative and criminal law tools, thereby making the boundaries between ‘regulating’ and ‘punishing’ immigrants increasingly blurred (Kanström, 2000).

The second issue relates to the exclusionary character of urban and migration policies. Banning orders, even when imposed on individuals who have committed a criminal offence, enhance the power of the state to exclude certain social groups, mainly those in marginal socio-economic conditions. Besides being experienced as punitive by those banned (Beckett and Herbert, 2009; Søggaard, 2018), banishment reproduces social inequalities present in society and reinforces the division between ‘good citizens’ and ‘failed citizens’ (Anderson, 2013). By governing urban spaces through exclusion, banning orders define who is deserving of ‘the right to the city’ (Mitchell, 2003) and who must be removed from public spaces because a source of disorder and unsafety (Bergamaschi et al., 2014; Palmer and Warren, 2014). Migration policies, for their part, are exclusionary in that they establish who are the insiders and who the outsiders, who is worthy of membership and who is not. Hence, the exclusionary character of migration policies touches upon issues of citizenship and belonging (Bosworth and Guild, 2008). Apart from its practical implications, migration management holds a symbolic dimension because it reassures citizens ‘about the priority of their status compared to that of outsiders’ (Ambrosini, 2013: 143) by reproducing the ‘us’ versus ‘them’ rhetoric and reinforcing membership (Franko, 2020; Gibney, 2013; Kaufman, 2015).

The third issue relates to the circumstance where punitive approaches to urban and migration management are driven and justified by the same concern, that is security (or better an alleged threat to it). Banning orders represent a tool to govern social marginality by displacing individuals identified as troublesome and dangerous by ‘normal people’ (Weber and McCulloch, 2019; cf. also Beckett and Herbert, 2009). Banishment, in other words, is rooted in the idea that certain behaviour and situations (e.g. prostitution, drug dealing, begging) represent a danger for urban safety (Crocitti and Selmini, 2017). When it comes to migration management, security still remains the most prominent role of borders (Diener and Hagen, 2012). The literature on this topic has highlighted how detention (Bosworth, 2019; Kaufman, 2013) and deportation (Brotherton, 2018; Khosravi, 2009) represent key tools in managing and removing the ‘criminal aliens’ (Gibney, 2013). In fact, practices intended to control mobility are driven by a ‘security threat’ rationale, in that exclusion of immigrants is grounded on the idea that they are not just unwanted non-members, but they are dangerous (Bosworth and Guild, 2008).

Because of the overlaps between instances of urban securitisation and bordering practices, this article draws on both theoretical strands to explore meanings and rationales behind judicial practices of banishment in the criminal court of Turin. In doing so, it contributes to fill a significant gap. On one side, empirical research on urban securitisation that focus specifically on banning orders towards immigrants is missing. On the other, most literature on migration control is concerned with detention and deportation, and the use of banning orders remains largely unexplored. By providing an empirical account of how the banners make use of banishment towards non-members, this article contributes to both scholarships together with stimulating a conversation between them. Before moving to the empirical materials and exploring the boundaries between urban and migration management, I briefly describe the methodological approach of this case-study.

Methodology

The local setting of this study is the criminal court of Turin, a city in northwest Italy. Turin represents a suitable case-study because of the significant presence of immigrants in the city, which is nearly double the percentage at the national level. Owing to the fact that Turin experienced significant demographic, social and urban transformations due to migratory movements (Cingolani, 2016), the city represents a strategic site to explore major macro-social trends in society (Sassen, 2010). This article draws on part of the qualitative data collected during a one-year period of courtroom ethnography over the course of 2018, in particular on courtroom observation and interviews. I observed 148 direct proceedings, that are fast trials used to process street-crimes, 113 of which involved foreign defendants. I took unstructured notes of what I saw and listened to in small notebooks. Because direct proceedings are scheduled on a rotation mechanism, I was able to observe many and diverse courtroom actors 'in action'. This circumstance allows for a more nuanced image of judicial practices that could account for similarities and differences between the multiple decisional dynamics encountered.

Together with observation, I conducted 46 interviews with judges, public prosecutors and defence attorneys. The great majority of respondents was recruited after observing them 'at work', whereas a minority was introduced by a gatekeeper. To obtain a representative sample, respondents were selected to reflect as much diversity as possible, in terms of gender, age and years of service. Respondents were contacted through an email that briefly explained the purpose of the study and asked whether they agree to be interviewed. There was no remuneration to participate in the research. Before starting each interview, I explained in greater detail the purpose of the study and obtained informed consent. Respondents were asked whether they agree to have the interview recorded and all but four agree. When recording was not permitted, I took extensive notes.

Interviews were tailor-made to the specific tasks of the three key players in the court. Interviews were semi-structured: they started by asking to respondents some general questions about how long they have served their function, and whether they could tell something about recent developments in judicial practices. After, the interview addressed more specific topics related to sentencing foreign defendants without a valid residence permit. A question on bans on residence was not included in the original list, but it was later added after observing this practice in direct proceedings. Interviews lasted on average fifty minutes. They were conducted in Italian and never translated into English to avoid adding another layer and remain as close as possible to the original source. This is because many subtleties of the Italian language would have been lost with translation.

Interviews were transcribed into text form and transferred to ATLAS.ti software, together with fieldnotes. All files were saved with a numerical code, and any information that could have allowed to trace back a respondent's identity was erased, hence ensuring anonymity and confidentiality. Additionally, the data collected were saved in one encrypted USB stick to prevent unauthorised access or copying. The empirical

material was analysed by using codes both in Italian and in English. Italian was used for describing codes, where an English translation would have been misleading, while English was used for abstract and pattern codes. This resulted in a code system which was used to interpret an integrated dataset consisting of both transcripts and fieldnotes.

Why banishment?

From observation of direct proceedings, it emerged that a significant number of foreign defendants without a valid residence permit are subject to a ban on residence, a precautionary measure foreseen by article 274 of the Italian code of criminal procedure. Precautionary measures are measures that restrict a defendant's personal freedom before a conviction become final if there are evidence of guilt and one of the risks foreseen by law, namely risk of reoffending or escape or evidence tampering. A ban on residence is mostly imposed to prevent risk of reoffending and, quite interestingly, often in cases of drug trafficking of a mild nature. In detail, an individual accused of such a crime is banned from Turin *'to sever the ties with the criminal context that the defendant has in the territory'*, as judges read out. This formula is often accompanied by some considerations about a defendant's status, for example criminal record, lack of an employment and/or a fixed abode. Given the presence of such 'push' factors, judges impose a ban on residence with the purpose of distancing the accused person from the city in which he or she has developed a network of suppliers and customers. Banishment, hence, is meant to prevent reoffending through removal from a context deemed criminogenic.

When I asked my respondents about the significant use of banning orders they make, many of them referred to it as something of relatively new, a sort of 'later adjustment'. In particular, both magistrates and defence attorneys claim that the use of banning orders towards foreign defendants without a valid residence permit was prompted by a change in the law related to drug trafficking. At the beginning of 2014, to reduce prison overcrowding, the Italian government prevented the imposition of pre-trial detention for drug trafficking of a mild nature by making it an autonomous offence punishable by a maximum term of imprisonment of 4 years.¹ With pre-trial detention out of the picture, the next precautionary measure available in terms of seriousness is house arrest. The problem is that the great majority of foreign defendants who stand trial as irregular lack a fixed abode, hence judges are unable to impose such a measure. The 'rediscovery' of banishment, then, falls within this context and its purpose is to provide an answer to the phenomenon of immigrants' involvement in drug trafficking of a mild nature. Despite the lack of statistical data to confirm this 'later adjustment' in the court of Turin, courtroom actors claim that the current use of banishment stems precisely from the legislative reform:

A ban on residence is the most used measure now because we cannot impose pre-trial detention [for drug trafficking of a mild nature] any longer. The punishment threshold is too low (Judge, interview n. 11)

The problem is that for cases of drug trafficking of a mild nature we cannot impose pre-trial detention. Hence, the only answer that you can give to this phenomenon is reporting to the police and, for those who believe in it, a ban on residence (Judge, interview n. 5)

In the last quote, the expression ‘for those who believe in it’ is of particular interest. Here, the respondent refers to the fact that many magistrates, together with numerous defence attorneys, are sceptical about the effectiveness of banning orders in preventing risk of reoffending. This is because no one is responsible for ascertaining whether a defendant complies with the obligation imposed. Most often, the police find out that a defendant has violated a banning order while ‘randomly’ patrolling the city. At the same time, the circumstance where many respondents doubt about the effectiveness of banning orders, and yet consistently rely on them, requires a closer investigation. The interviews with courtroom actors reveal that the great majority of respondents were not that much concerned about preventing risk of reoffending. Rather, the ‘official’ objective of precautionary measure was somehow accompanied, often even replaced, by objectives that do not traditionally belong to the penal domain. In other words, courtroom actors use banishment to reach objectives that are not contemplated in the law-in-the-books (Sklansky, 2012). From the narratives of my respondents, I was able to identify three main objectives that add to the by-the-books objectives. At times, these objectives become the main driver behind banishment. What emerges from the interviews is that, whereas different courtroom actors favour different objectives, the latter partake in the same concern, scilicet exclusion of those deemed troublesome by ‘the community’.

Above all, the public must be reassured

It has been argued that ‘courts are part of the community’ and ‘what they do is in part a function of what the community expects of them’ (Feeley, 1992: 20). The idea of providing an answer to citizens’ requests for security was a recurring theme. In this regard, defence attorneys claim that the judiciary’s reliance on banishment stems from the circumstance where citizens complain about the visible presence of immigrants in urban spaces:

This is a factual hypocrisy. It is really a hypocrisy. The problem is that often citizens complain about drug trafficking of a mild nature. And if citizens, after the intervention of the police, after two or three days, see the same guy selling drugs in the same spot, they get mad, no? A ban on residence allows solving this problem here, substantially urban decorum (Defence attorney, interview n. 6)

There’s no rationale behind this measure. If I mess up badly in Turin, I go to Milan and I mess up badly there as well. They [immigrants] are simply removed, they are not here, so they do not disturb public order (Defence attorney, interview n. 1)

In Italy, as elsewhere, public reassurance is more and more becoming an objective of crime control and prevention strategies (Melossi and Selmini, 2009). Although

banning orders are likely to be violated since irregular immigrants lack the economic resources to travel or rent an apartment elsewhere, at least they placate citizens' fear. When I interviewed on the issue two experienced public prosecutors, who have served as such for more than thirty years, they asked how I would feel seeing groups of immigrants dealing in drugs outside my house. They claimed that residents do not see the 'big drug lords', but rather they see small drug dealers nearby their houses or in public spaces who are arrested today and released tomorrow. Residents complain about this 'visible' criminality, which delivers an image of urban decay. Hence, a ban on residence is the instant response to street-criminality, especially the kind of criminality that instils fear into the resident population, that is immigrants' involvement in drug trafficking of a mild nature.

It must be mentioned that in Turin the coexistence between native and foreign-born residents is not so peaceful, especially in those districts of the city that are more mixed in their demographical composition. Residents from these districts do not hide their prejudices and resentments towards immigrants, who are accused of having brought chaos, crime and disorder in the area in which they live. Citizens' dissatisfaction with the authorities' response eventually resulted in the establishment of spontaneous organisations of local residents who patrol by themselves the streets at night to intimidate drug dealers (Cingolani, 2016). In a situation of general discontent, magistrates use banishment to send a 'signal to the community', to make citizens 'feeling protected by the judiciary', as observed by a public prosecutor. Hence, although the effectiveness of this measure in preventing risk of reoffending is doubtful, this measure does show that 'the state is in control and is willing to use its power to uphold "law and order" and to protect the law-abiding public' (Garland, 2001: 133).

Bans on residence are almost exclusively used in cases involving foreign defendants who stand trial as irregular. In fact, national and foreign defendants with a regular residence permit would hardly receive this measure. This is because the law provides that judges, before imposing this measure, must consider a defendant's needs, in terms of accommodation, job and support.² In practical terms, if a defendant has a job, a house and a family, ordering him to leave the place of residence would be unduly harsh. This is why this measure is not used towards 'foreign defendants' as a whole. Rather, it is used towards foreign defendants who are in the most marginal socio-economic conditions, those who linger in the streets of the city selling legal or illegal goods to scrape some money together. This is the social group that inspires fear and dislike amongst the residents, they are the target of security policy, certainly not wealthy foreign investors. This is an instance where issues of race, citizenship and belonging intersect with social class, enhancing an even more exclusionary idea of membership.

Making the problem go away

Together with reassuring citizens, a banning order results in a valid tool of socio-urban control and exclusion. The practice of ostracizing those deemed a threat for the community is not a novelty. The literature on urban governance stresses the move towards a 'security-obsessed urbanism' (Schuilenburg, 2015: 279), consisting

in the implementation of preventive and repressive measures to tackle groups and behaviour that disturb residents and instil in them fear and insecurity. Immigrants are amongst the social groups, if not at the top of the list, deemed a threat to security, especially the so-called ‘criminal aliens’ (Gibney, 2013). The latter are generally the preferred target of strategies aimed at controlling mobility through removal. From the narratives of courtroom actors, it emerges the idea of ‘cleaning up’ the city from undesirable and dangerous guests rather than the idea of preventing risk of reoffending from individual defendants. In fact, when I ‘provoked’ my respondents saying that a ban on residence sounds like ‘go and commit crimes somewhere else’, many confirmed that, when imposing this measure, their main concern is ‘to make the problem going away’:

I am responsible for a particular area, and I don’t want you to commit crimes in my area. So, first I make sure that you don’t commit crimes in my area and second, I make sure that your conduct doesn’t clog up my office (Public prosecutor, interview n. 13)

We are Piedmontese and we protect ourselves from a certain guy. He will go to Milan and then Milan will deal with him (Honorary assistant prosecutor, interview n. 3)

I understand your objection. Let’s say that it is an unmentionable thought of judges and the police to think ‘we get rid of this guy’ (Judge, interview n. 9)

As these excerpts show, magistrates are not concerned about the possibility that a defendant subject to a ban might reoffend. Rather, their main concern is, as the last respondent observes, ‘to get rid’ of certain defendants deemed destined to be outlaws due to their marginal socio-economic conditions. This practice seems to ‘de-individualise’ an individual defendant because it fails to distinguish foreign defendants as individuals and instead it treats them ‘as an undifferentiated mass’ (Stumpf, 2013: 68). Banishment, then, departs from the scope of crime prevention and becomes a tool to exclude a social group whose members lack formal authorisation *and* social recognition in the receiving society (Ambrosini, 2016). The emphasis on the *local*, as visible from the references to ‘my area’ and ‘being Piedmontese’, was contested by some respondents, who shared with me their concerns about this narrow approach to crime prevention. In detail, they claimed that banishment marks a return to the old Italian ‘parochialism’, together with a preference for ‘crime commuting’:

Some colleagues argue that you need to uproot a defendant from the *torinese* context...but honestly, it’s like to hiding behind excuses because a defendant goes to Bologna or Cuneo and enters very easily into such a context again [...] So it’s like saying ‘we get rid of the problem and now it’s the problem of someone else’. But we are on the same boat; we are all on the boat Italy. We cannot move the problem from one territory to another (Public prosecutor, interview n. 9)

It's nothing new. It's the old medieval ban. You must leave Turin. So, go and offend somewhere else. It's nonsense. The objective of a precautionary measure is to prevent future crimes. It is not to prevent future crimes in Turin (Judge, interview n. 5)

To me, it looks like a sort of cloaked deportation. Isn't it? I mean, you deal in drugs and I forbid you to stay in Turin. But well, this person is going to deal in drugs somewhere else. You did not solve the problem. You solve your problem that this person is no longer in the city. You didn't tackle the crime problem (Public prosecutor, interview n. 16)

In a similar way, a defence attorney criticised magistrates' reliance on banishment because, according to him, this measure is used with the sole purpose of removing certain people and behaviour from the city. He pleaded a case that provides a clear account of his negative opinion about banning orders. I interviewed him after observing the direct proceeding in which his client, charged with drug trafficking of a mild nature, was banned from the city. At the time when the trial was held, his client lived in Moncalieri, a town nearby Turin. The odd thing is that he lived close to the border between the two cities. In particular, his apartment was fifty metres away from Turin, and he was arrested in Turin. When the Public Prosecutor's office asked for banning the defendant from Turin, the defence attorney became quite annoyed. He argued that this measure did not make any sense because his client could have continued with his 'business' in Moncalieri rather than in Turin. Besides, he added that, given the proximity of his client's apartment to Turin, it would have been hard for him to adhere strictly to the measure as mistakes can easily occur. The judge, nonetheless, banned the defendant from Turin to the attorney's annoyance:

I got mad when I heard that. This is a novelty, and it is a bad novelty. This novelty is called NIMBY, not in my back yard. I'll try to explain this to the judge, it is not less serious if my client deals in drugs in Moncalieri. You should safeguard the Italian Republic from crimes, you should not say 'well, I prevent this guy from making a nuisance of himself in my garden' (Defence attorney, interview n. 7)

These quotes stress the irrationality of banishment as a practice that does 'little more than recycle undesirables between neighbours' (Gibney, 2020: 292). A ban on residence, as used by magistrates in the court of Turin, evokes the idea of controlling public space by barring certain social groups from it. This is similar to what has been observed in other national contexts, where the use of banning orders build on the idea of combatting troublesome behaviour and increasing citizens' perception of security (Beckett and Herbert, 2009; van de Bunt and van Swaaningen, 2012). At the same time, when the threat to security is represented by non-members, issues of citizenship and belonging become more powerful. In fact, by banning those who lack formal recognition, magistrates reinforce through 'official' channels the idea of exclusionary membership, together with the idea that the city belongs exclusively to *torinesi*, the only legitimate owners (Marzorati, 2010).

Bypassing statutory limit for pre-trial detention

Besides being used *ad hoc* towards foreign defendants who stand trial as irregular, banning orders are highly instrumental, inasmuch as they are meant to achieve aims that magistrates set for themselves (Sklansky, 2012). This aspect is most visible in what I identified as the third main ‘driver’ behind the use of this measure. In particular, from the interviews the impression is given that magistrates use discretion to bypass the black-letter-law and remove, this time for good, the unwanted guests from the city. A defence attorney described how magistrates manage to ‘open’ the jail gates for defendants charged with drug trafficking of a mild nature, a crime for which pre-trial detention is, by law, not allowed:

Drug trafficking of a mild nature does not allow the imposition of pre-trial detention any longer. So, what’s the trick? And this is done with malice by judges. It is done with malice. I say it honestly. They think this way: I cannot send you to jail, but I am 90% sure that you will commit the same crime again, so what can I do? I don’t impose on you reporting to the police, this measure is statistically less used. And the reason is that, for example, you go to the police station at 18.00, sign your report and at 18.05 you deal in drugs again. At this point, the police arrest you and then they must release you again because formally you respected the precautionary measure, no? You went to sign your report to the police station, but afterwards you run your drug business again. The difference with a ban on residence is that, maliciously, I know that you, under no circumstances, can be found in Turin. Once the police find you here, I can send you to jail. Is that clear? It is done maliciously; the dishonesty of many judges is blatant (Defence attorney, interview n. 2)

The respondent here refers to a legal loophole used by magistrates to obtain pre-trial detention for drug trafficking of a mild nature. Article 276 of the Italian code of criminal procedure allows the aggravation of a previously breached measure, meaning that magistrates can confine defendants for offences that, in principle, do not meet the legal threshold for imposing pre-trial detention. Other defence attorneys made this point by claiming that magistrates use banning orders with the only purpose of opening the jail gates to foreign defendants without a valid residence permit. They believe that magistrates rely on banning orders not to reduce the likelihood that an individual defendant would reoffend, but rather to increase the chance of obtaining pre-trial detention for *a specific group* of petty criminals. Quite surprisingly, the great majority of judges and public prosecutors have made no secret of this ‘practice’:

A ban on residence in Turin is often a way to send them to jail. I am a supporter of the respect of defendants’ rights, I say so myself, but sometimes I order this measure so defendants will violate it and I send them to jail (Judge, interview n. 4)

I tell him [a defendant] that he cannot stay in Turin, but of course I know that he will remain here...so once they have found him, I can ask for jail (Public prosecutor, interview n. 13)

A ban on residence is an effective measure because as soon as the defendant violates this measure, I can ask the judge to aggravate it. Hence, the defendant goes to jail. I asked for this measure several times, it is really effective (Public prosecutor, interview n. 15)

These are just few of the many quotes where magistrates explain why they heavily rely to such an extent on this measure. When I started discussing banning orders with my respondents, in the first instance they justified such use claiming that their ‘hands were tied’. They asserted that foreign defendants without a valid residence permit are ‘problematic’ because they lack a fixed abode, and therefore magistrates are ‘obliged to’ impose a banning order. However, when I pointed out that they could use reporting to the police to ‘keep an eye’ on certain defendants, they eventually acknowledged that reporting to the police is useless because the great majority of defendants will respect it. This way of reasoning is of certain interest in the light of the concept of *ad hoc* instrumentalism (Sklansky, 2012). When magistrates decide which measure imposing between a ban on residence and reporting to the police, their choice is not driven by concerns about which measure is more effective in preventing crime, as envisioned by the law-in-the-books. Rather, their choice is driven by the likelihood that a measure will be violated, thus ‘paving the way’ for imposing pre-trial detention. A public prosecutor belonging to the most progressive faction of the judiciary referred to this custom in these terms:

This is a pathological custom. When I request a precautionary measure and a judge imposes it, I request this measure because I hope that the defendant will respect it. I do not hope that the defendant will violate it so I can send him to jail. This should be the rule. (Public prosecutor, interview n. 16)

The respondent here defines this custom as ‘pathological’, as an anomaly of the system. It can hardly be denied that this practice represents a move away from the black-letter-law. Whereas a ban on residence should be imposed to prevent an individual defendant from reoffending, in practice it is deployed against an *ad hoc* group of defendants who must be confined because is deemed intrinsically outlaws (Stumpf, 2013). This instrumental use of bans on residence was common amongst many magistrates, especially those belonging to the most conservative faction of the judiciary, but not exclusively. In fact, progressive magistrates as well, despite their acclaimed sensibility for defendants’ rights, rely on this measure to ‘contain’ small drug dealers. Under the cloak of crime prevention, then, judicial practices are concerned with separation and exclusion of non-members from society.

Conclusion and discussion

This article explored meanings and objectives behind the use of precautionary measures towards foreign defendants in an Italian criminal court. In detail, it focused on a ban on residence, a measure meant to prevent risk of reoffending by removing an individual accused of committing a crime from a territorial context deemed

criminogenic. From observation and interviews it emerged that magistrates rely on banishment towards an *ad hoc* group of defendants, namely foreign defendants who stand trial as irregular. This is because defendants belonging to this group lack a job, a fixed abode, and any kind of social ties in Turin, hence it is possible to 'remove' them from the city. The use of banning orders is instrumental to reach a series of objectives that magistrates set for themselves (Sklansky, 2012). Three are the main drivers behind banishment: (1) placating citizens' concerns about the presence of immigrants in the city; (2) controlling the local territory; and (3) bypassing the statutory limit for imposing pre-trial detention. It follows that banishment has lost much of its preventive dimension to become an instrument of socio-urban exclusion. These findings are consistent with the claim that penal power directed at non-member changes its contours and embeds new meanings and aims (Barker, 2017; Franko, 2014; Zedner, 2010).

This article offered a cross-section of an Italian local reality that shows how urban management might be performed through traditional crime-prevention measures. In doing so, it invites scholars to consider less traditional sites and actors of urban management, and to explore how objectives and rationales of urban security might have seeped into other and different formal control institutions, such as criminal courts. At the same time, from the case-study it emerged not only how magistrates might be involved in issues of urban security, but also how objectives and meanings behind (judicial) bans on residence are familiar to both instances of urban management and migration management. Banishment is aimed at removal and exclusion of non-members from the local territory to provide members with the security, or better the *feeling* of security, they asked for. In this regard, it appears that when the threat to urban security is represented by the 'outsiders', urban management practices are infused by rationales similar to those of bordering practices, namely separation and exclusion of individuals who do not belong to the community. In other words, immigrants' exclusion from the territory 'in the name of security' encompasses ideas about membership and belonging. This is well represented by some respondents' references to the local community, as immigrants' exclusion from the city of Turin is somehow sustained by their 'not-being Piedmontese'. Hence, whereas urban management practices towards immigrants without a valid residence permit are still mainly driven by security concerns, these practices seem to take on new roles and meanings that closely resemble those of (internal) border control. The ambition of this article was to stimulate a conversation between the two theoretical strands and to invite scholars to explore the way in which urban securitisation might play a role in the field of global mobility.

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Notes

1. Law n.10/2014.
2. Article 283, 5 comma, Code of criminal procedure.

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