



Expulsion to Algeria: the Court finds a violation but makes no award for damages

In today's **Chamber** judgment¹ in the case of [M.A. v. France](#) (application no. 9373/15) the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights, and

a violation of Article 34 (right of individual application).

The case concerned the expulsion to Algeria of an Algerian national convicted in France of involvement in a terrorist organisation.

The Court found, in particular, that the expulsion of the applicant, whose conviction for terrorist offences had been known to the Algerian authorities, had exposed him to a real and serious risk of treatment contrary to Article 3. That risk was described in detail in the reports of the UN Committee against Torture and of several NGOs, describing the alarming situation in Algeria.

The Court observed that the French authorities had prepared the applicant's expulsion to Algeria in such a way that it had taken place only seven hours after the applicant had been informed of it. In so doing they had deliberately created a situation whereby the applicant would have great difficulty in submitting a request for an interim measure to the Court, and had lowered the level of protection under Article 3 of the Convention.

The Court reaffirmed that it was acutely aware of the extent of the danger posed to the community by terrorism and that it was legitimate for Contracting States to take a very firm stand against those who contributed to terrorist acts.

Principal facts

The applicant is an Algerian national who was born in 1976 and is currently in Algeria.

Having been involved in Islamist movements in Algeria, the applicant left his country of origin in 1999 and travelled to Spain and then France. In 2006 he was sentenced to seven years' imprisonment and was made the subject of a permanent exclusion order from French territory for involvement in a conspiracy to prepare acts of terrorism.

In 2010 the French authorities attempted to enforce the permanent exclusion order. On 19 April 2010 the applicant lodged a request with the Court for an interim measure under Rule 39 of the Rules of Court. On 26 April the Court indicated to the Government that they should not deport the applicant to Algeria for the duration of the proceedings. The applicant was released and made the subject of a compulsory residence order. By a decision of 1 July 2014 (application no. 21580/10) the Court declared his application inadmissible for non-exhaustion of domestic remedies, and the interim measure was lifted.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In December 2014 the applicant lodged an asylum application, which was rejected by the French Office for the Protection of Refugees and Stateless Persons (OFPRA) on 17 February 2015. He was informed of the OFPRA decision on 20 February while he was attending a police station in the framework of the obligations relating to his compulsory residence order. The authorities enforced the removal order and the applicant was immediately taken to Roissy airport in Paris.

The applicant's lawyer, having been informed that he was being expelled, submitted a fresh request for interim measures to the Court. The Court acted on the request the same day, indicating to the Government not to remove the applicant before 25 February. However, by the time the police received the necessary instructions, the doors of the aircraft had already closed with the applicant on board. The aircraft took off for Algeria at 4.15 p.m.

On his arrival in Algeria the applicant was taken into police custody and was then charged and placed in pre-trial detention. According to the information communicated by the parties to the Court, he is still being detained at Chlef Prison.

Complaints, procedure and composition of the Court

The applicant submitted that his removal to Algeria would expose him to a serious risk of treatment contrary to Article 3 (prohibition of torture and inhuman and degrading treatment), the Algerian Government having been informed of his conviction in France for terrorist offences. He stated that he had already been the victim of such treatment since arriving in Algeria and faced further similar risks. He alleged that by handing him over to the Algerian authorities, in breach of the interim measure indicated by the Court, the French Government had failed in its obligations under Article 34 (right of individual application). Finally, the applicant also relied on Article 8 (right to respect for private and family life), as well as Article 3 in respect of his wife and children.

The application was lodged with the European Court of Human Rights on 20 February 2015.

Judgment was given by a Chamber of seven judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,
 Erik **Møse** (Norway),
 André **Potocki** (France),
 Yonko **Grozev** (Bulgaria),
 Síofra **O'Leary** (Ireland),
 Gabriele **Kucsko-Stadlmayer** (Austria),
 Lətif **Hüseynov** (Azerbaijan),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 3

The Court reaffirmed that it was legitimate for Contracting States to take a very firm stand against those who contributed to terrorist acts. It observed, in relation to the instant case, that reports drawn up by the UN Committee against Torture and several NGOs described the worrying situation in Algeria. Those reports, dating from the year of the applicant's expulsion to Algeria, mentioned many cases of arrests by the Information and Security Department (DRS), particularly arrests of persons suspected of involvement in international terrorism. Such persons had then been held in detention without court supervision or the possibility of communicating with the outside world, and had often been ill-treated, or indeed tortured.

The Court noted that in France the applicant had been convicted under a detailed and reasoned judgment, which had been made public. On his arrival in Algeria he had, as he had feared, been arrested by the DRS and imprisoned. Given the applicant's profile and the fact that the Algerian authorities had been aware of his conviction for serious acts of terrorism, the Court considered that at the time of his removal to Algeria there had been a real and serious risk that he would face treatment contrary to Article 3 of the Convention.

The French authorities had therefore violated Article 3 of the Convention.

Article 34

The Court noted that the interim measure had not been observed, as in fact acknowledged by the Government. Being fully aware that the authorities might be required to implement an expulsion order rapidly and effectively, it reiterated that the conditions for the execution of such a measure should not be geared to depriving the expellee of the right to request the Court to indicate an interim measure. The Court observed that the applicant had not been notified of the decision to reject his asylum application of 17 February until 20 February, when his transport had already been organised and the Algerian authorities had already issued a laissez-passer, without his knowledge. The Court concluded that the French authorities had created conditions whereby the applicant would have found it very difficult to apply to the Court for a second interim measure. They had deliberately and irreversibly lowered the level of protection of the rights set forth in the Convention. The expulsion had deprived any possible finding of a violation of its efficacy.

The Court concluded that the French authorities had failed in their obligations under Article 34.

Other articles

The Court rejected the complaint concerning an alleged violation of Article 8 on the grounds that the applicant had not exhausted the available domestic remedies. As regards the applicant's allegation that his wife and children had been the victims of a violation of Article 3, the Court noted that the latter were not applicants in the case. That complaint was therefore rejected.

Just satisfaction (Article 41)

The Court considered that the non-pecuniary damage had been sufficiently compensated by the findings of violations. It held that France was to pay the applicant 4,000 euros (EUR) in respect of costs and expenses.

Article 46

Given the applicant's extremely vulnerable situation after his transfer to Algeria, the Court stated that it was incumbent on the French Government to do their utmost to obtain from the Algerian authorities a concrete and precise assurance that the applicant had not been, and would not be, subjected to treatment contrary to Article 3 of the Convention.

Separate opinion

Judge O'Leary expressed a separate opinion, which is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.