

Convicted terrorist's expulsion to Algeria exposed him to risk of ill-treatment

In today's Chamber judgment in the case [Labsi v. Slovakia](#) (application no. 33809/08), which is not final¹, the European Court of Human Rights held, unanimously, that there had been a:

violation of Article 3 (prohibition of inhuman or degrading treatment), Article 13 (right to an effective remedy) and Article 34 (right of individual petition) of the European Convention on Human Rights.

The case concerned the expulsion of an Algerian man, convicted in France of preparing a terrorist act, from Slovakia following his unsuccessful asylum request.

The Court held in particular that terrorist suspects faced a serious risk of ill-treatment in Algeria at the relevant time and that the applicant's expulsion, in disregard of an interim measure issued by the Court, prevented it from properly examining his complaints.

Principal facts

The applicant, Mustapha Labsi, is an Algerian national who was born in 1969 and is currently detained in Algeria.

Having spent time in several European countries and, excluded from France following his conviction of preparing a terrorist act, Mr Labsi arrived in Slovakia in April 2006. He had previously married a Slovak woman, with whom he has a child; divorce proceedings are pending.

In Slovakia, Mr Labsi unsuccessfully lodged three asylum requests, in particular on the grounds that, having been convicted in his absence of membership of a terrorist organisation in 2005 by an Algerian court and sentenced to life imprisonment, he risked being ill-treated in Algeria. In August 2008, the Supreme Court of Slovakia found that he could not be extradited to Algeria. It relied on a number of international documents and concluded that there were valid reasons to fear that Mr Labsi would be exposed to ill-treatment there. In particular, the Algerian Department of Intelligence and Security had been reported to have systematically used torture against people thought to have information about terrorist activities.

However, on 30 March 2010, the Supreme Court upheld the decision dismissing his third asylum request, holding in particular that he had not shown that he could be persecuted for political or any other relevant reasons. In this court's view, although it had been admitted in the context of the asylum proceedings that Mr Labsi faced a real risk of inhuman treatment in Algeria, subsidiary protection could not be granted to him, as he

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

represented a safety risk in Slovakia, on account of his conviction in France of involvement in a terrorist organisation and other information available. Following the Supreme Court's decision, Mr Labsi was expelled to Algeria in April 2010, despite the fact that the European Court of Human Rights had issued an interim measure in 2008, under Rule 39 of its Rules of Court, to the effect that Mr Labsi should not be extradited to Algeria before the final outcome of his asylum case before the Constitutional Court.

Complaints, procedure and composition of the Court

Mr Labsi complained that his expulsion exposed him to the threat of being ill-treated by Algerian authorities, in violation of Article 3. He further alleged that he did not have an effective remedy in respect of that complaint, in violation of Article 13. Finally, he complained of a violation of Article 34 in that the Slovak Government had disregarded the interim measure issued by the European Court of Human Rights.

The application was lodged with the European Court of Human Rights on 18 July 2008.

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

Josep **Casadevall** (Andorra), *President*,
Alvina **Gyulumyan** (Armenia),
Egbert **Myjer** (the Netherlands),
Ján **Šikuta** (Slovakia),
Ineta **Ziemele** (Latvia),
Mihai **Poalelungi** (Moldova),
Kristina **Pardalos** (San Marino), *Judges*,

and also Santiago **Quesada**, *Section Registrar*.

Decision of the Court

Article 3

The Court noted that the Algerian authorities had indicated to the Slovak Government that, if returned to Algeria, Mr Labsi would have a fair fresh trial in respect of offences which were not punishable by the death penalty, and that torture and other forms of ill-treatment were subject to heavy penalties under Algerian criminal law. Those assurances were of a general nature and had to be considered in the light of the information available at the time of Mr Labsi's expulsion as to the human rights situation in Algeria. In August 2008, the Slovak Supreme Court, with reference to a number of international documents, had found that his extradition was not permissible, concluding that there were justified reasons to fear that he would be exposed to treatment contrary to Article 3 in Algeria. A real risk of his being exposed to ill-treatment there had also been acknowledged in the asylum proceedings.

Furthermore, a number of reports from international bodies and organisations – the UN Human Rights Committee and the UN Committee against torture, Amnesty International – had highlighted that individuals suspected of terrorist activities were exposed to a real risk of ill-treatment by the Algerian Department of Intelligence and Security. In two judgments in cases against France, in December 2009 and September 2011², the Court had found that the respective applicants, convicted of terrorism-related offences, were at a serious risk of being subjected to treatment in violation of Article 3 if removed to Algeria.

² *Daoudi v. France* (19576/08) of 3 December 2009 and *H.R. v. France* (64780/09) of 22 September 2011

In view of the documents before it, the Court found no reason for reaching a different conclusion in Mr Labsi's case. Accordingly, at the time of his expulsion, there had been substantial grounds for believing that he faced a real risk of being subjected to treatment contrary to Article 3 in Algeria. The Slovak Government's argument that the expulsion had nevertheless been justified because he represented a security risk could not be accepted, the guarantee under Article 3 being absolute. Moreover, Mr Labsi was reported to have been detained by the Department of Intelligence and Security for 12 days following his return to Algeria. According to the Algerian authorities he was placed in El Harrach prison and tried by the Algiers Criminal Court. However, there had not been any follow-up to the request for a visit of a Slovak official with a view to verifying if the Algerian authorities' assurances as regards Mr Labsi's treatment had been complied with. The guarantees that he would be protected against the risk of ill-treatment had thus been insufficient. Accordingly, his expulsion to Algeria violated Article 3.

Article 13

The Court found that Mr Labsi's expulsion also violated his rights under Article 13. Expelled to Algeria only one working day after the Supreme Court's judgment of March 2010 – upholding the dismissal of his asylum request – had been served on him, he had been effectively prevented from attempting to obtain redress by means of a constitutional complaint.

Article 34

Mr Labsi's expulsion to Algeria, in disregard of the interim measure issued by the Court, had prevented the Court from properly examining his complaints in accordance with its settled practice and from protecting Mr Labsi against treatment contrary to Article 3. His expulsion had occurred prior to the exchange of observations of the parties and his representative has lost contact with him since then. The gathering of evidence in support of his allegations had thus proved more complex. Accordingly, there had been a violation of Mr Labsi's right of individual application as guaranteed by Article 34.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Slovakia was to pay Mr Labsi 15,000 euros (EUR) in respect of non-pecuniary damage (to be held in trust for him by his representative) and EUR 2,500 in respect of costs and expenses.

The judgment is available only in English.

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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.