



## ECHR rejects complaint against Sweden over prolonged detention pending expulsion after Algerian failed to disclose real nationality

In its decision in the case of [Bencheref v. Sweden](#) (application no. 9602/15) the European Court of Human Rights has by a majority declared the application inadmissible as an abuse of the right of individual application. The decision is final.

The applicant, Kader Bencheref, had complained about the length of time that Sweden had held him in detention pending expulsion, lasting from September 2008 by the time of his application to the Court in 2015. However, the Court noted that Mr Bencheref had all along told the Swedish authorities that he was Moroccan, only revealing in 2016 that he was Algerian. The expulsion order had then been carried out within a few months.

The Court noted that it had not been informed about Mr Bencheref's Algerian nationality until 2017, after his expulsion. He had given no explanation for saying he was Moroccan or why he had finally decided to disclose his Algerian nationality to Sweden. The only probable explanation was that he had intended to deceive the Court about a crucial part of the case. The Court therefore had to reject the application as an abuse of the right of individual application.

### Principal facts

The applicant, Kader Bencheref, was born in 1985 and lived in Växjö, Sweden, until he was expelled to Algeria in 2017.

Mr Bencheref applied for asylum and a residence permit in Sweden in 2006, stating that he was of Moroccan origin and complaining about the conditions in that country. He was arrested on various charges later the same year, including attempted rape and assault, and was later found guilty. After a 2007 court of appeal decision, he was sentenced to three years in prison, expulsion and a 10-year ban on his return.

After his conviction, the migration authorities struck out his asylum application and in September 2008 he was placed in detention pending his expulsion to Morocco. He was subsequently held in detention pending expulsion, apart from a short period in psychiatric care in 2010 and in prison in 2014 after he had been found guilty of molesting detention centre officials and of damaging property. He made several unsuccessful appeals against the detention order.

In October 2016 he informed the Swedish authorities that he was of Algerian rather than Moroccan origin, leading to the enforcement of the expulsion order in February 2017 and his departure for Algeria. Mr Bencheref maintained his application to the Court after his expulsion.

### Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 18 February 2015.

Relying on Article 5 (right to liberty and security), Mr Bencheref complained that his detention had been arbitrary and completely disproportionate given that at the time he had submitted his complaint he had been in detention since September 2008, without the authorities being able to enforce the expulsion order.

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

Branko **Lubarda** (Serbia), *President*,  
Helena **Jäderblom** (Sweden),  
Helen **Keller** (Switzerland),  
Dmitry **Dedov** (Russia),  
Pere **Pastor Vilanova** (Andorra),  
Georgios A. **Serghides** (Cyprus),  
Jolien **Schukking** (the Netherlands), *Judges*,

and also Fatoş **Aracı**, *Deputy Section Registrar*.

## Decision of the Court

### Article 5

The Court noted that when Mr Bencheref had applied for asylum in 2006 he had stated that he was Moroccan. He had maintained that stance throughout the expulsion proceedings and had not disclosed the information about being Algerian until October 2016, which had led to his expulsion in February 2017.

The Court observed that the question of Mr Bencheref's nationality had had a real impact on the length of the proceedings for his expulsion: Sweden had been dealing with Morocco, which had refused to accept Mr Bencheref, and it was not until his Algerian nationality had been revealed that the order could be enforced.

Mr Bencheref had also stated in his application to the Court that he was Moroccan. He had not given any explanation for that claim or why he had not revealed his true nationality earlier. In the Court's view, the only reason for his behaviour was that he had intended to deceive the Court as to a core element of his case.

The Court concluded that the application had to be rejected as an abuse of the right of application under Article 35 §§ 3 (a) and 4 of the European Convention.

*The decision is available only in English.*

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