



Terrorist's expulsion to Morocco was not in breach of Article 3 of the Convention

In today's **Chamber** judgment¹ in the case of **A.S. v. France** (application no. 46240/15) the European Court of Human Rights held that there had been:

unanimously, no violation of Article 3 (prohibition of inhuman or degrading treatment), and by a majority, a violation of Article 34 (right of individual application) of the European Convention on Human Rights.

The case concerned the expulsion to Morocco of a Moroccan national who had been convicted in France of conspiracy to carry out terrorist acts, and who had previously been deprived of his French nationality for the same reason.

The Court noted in particular that Morocco had adopted general measures to prevent risks of treatment contrary to Article 3. The present application was therefore different from the case of *M. A. v. France*. Furthermore, despite his release, the applicant had failed to provide any evidence that his conditions of detention had exceeded the requisite severity threshold for a violation of Article 3.

As regards Article 34, the Court found that the expulsion order had not been served on the applicant until 22 September 2015, the day of his release, more than one month after the decision had been taken, and that he had been immediately taken to the airport for expulsion to Morocco. The applicant had therefore not had sufficient time to request that the Court suspend the decision, even though the French authorities had taken it a long time previously.

Principal facts

The applicant, A.S., is a Moroccan national who was born in 1970.

Mr A.S. arrived in France in 1991 and acquired French nationality in 2002. In 2013 he was sentenced to seven years' imprisonment for involvement, in 2007, 2008, 2009 and up to 30 April 2010, in a conspiracy to carry out terrorist acts in Paris, elsewhere in France, in Morocco, in Iran and in Afghanistan. In May 2014 he was deprived of his nationality. During his prison term Mr A.S. submitted an asylum application on the grounds that he feared ill-treatment if he returned to Morocco. His application was rejected on 25 August 2015. The Minister of the Interior issued an expulsion order against him on 14 August 2015, without informing him. On 21 September Morocco was established as the country of destination of the expulsion. The next day, on the date of his release, the applicant was served with the expulsion order. His lawyer lodged a request for an interim measure with the Court. At 12.05 p.m. on 22 September the Court indicated to the French Government that it should refrain from expelling the applicant until 25 September, but Mr A.S. was expelled to Casablanca at 12.35 p.m. on 22 September.

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.

On arrival in Casablanca Mr A.S. was arrested and remanded in custody, and then placed in preventive detention on 2 October 2015. On 10 March 2016 he was sentenced by a Moroccan court to five years' immediate imprisonment, but was released on 21 December 2016 by the Court of Appeal, on the grounds that he had already served his whole sentence in France for the same acts in respect of which he had been tried in Morocco. On 21 December 2016 the National Court on the Right of Asylum dismissed his appeal against the decision of the French Office for the Protection of Refugees and Stateless Persons (OFPRA).

Complaints, procedure and composition of the Court

The applicant had alleged that he had been expelled to Morocco despite the fact that in that country he had risked being subjected to ill-treatment prohibited by Article 3 (prohibition of torture and inhuman and degrading treatment). He had also complained of his conditions of detention in the Tiflet and Salé Prisons in Morocco. The applicant submitted that by expelling him to Morocco in breach of the interim measure indicated by the Court, France had failed in its obligations under Article 34 (right of individual application). The applicant also relied on Articles 8 (right to respect for private and family life), Article 1 of Protocol No. 7 (procedural safeguards relating to expulsion of aliens) and Article 14 (prohibition of discrimination).

The application was lodged with the European Court of Human Rights on 21 September 2015.

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

Angelika **Nußberger** (Germany), *President*,
Erik **Møse** (Norway),
André **Potocki** (France),
Síofra **O'Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Lado **Chanturia** (Georgia),

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

Decision of the Court

[Article 3 \(prohibition of torture and inhuman and degrading treatment\)](#)

The Court pointed out that the date of the applicant's expulsion to Morocco, that is to say 22 September 2015, should be taken into account in assessing whether there had been any real risk of his being subjected to treatment contrary to Article 3 in that country. The Court was also prepared to consider any subsequent information it might receive.

The Court observed that according to the Amnesty International report, Morocco had taken action to prevent risks of torture and inhuman and degrading treatment. It agreed with OFPRA's finding that the nature of the applicant's conviction and the national and international context of combating terrorism explained why A.S. might be subjected to control and supervisory measures on his return to Morocco, without such measures amounting *ipso facto* to treatment contrary to Article 3. The Court also noted that the applicant had not presented any evidence to prove that the persons presented as his accomplices who had been prosecuted in Morocco had sustained inhuman or degrading treatment.

The Court drew a distinction between the present application and the cases of *M.A. v. France* and *X. v. Switzerland*. M.A. had been expelled to a country which, unlike Morocco, had failed to take any practical action to prevent the risk of torture in detention. In *X. v. Switzerland*, the applicant had been able to prove that the third person who he submitted had been in a comparable position had

actually suffered treatment prohibited under Article 3. The Court noted that despite his release and his contacts with a lawyer, the applicant had failed to present any evidence, such as medical certificates, to show that his conditions of detention had exceeded the requisite severity threshold for a violation of Article 3.

The Court concluded that there could be no finding of a violation of Article 3.

Article 34 (right of individual application)

The Court noted, and the Government had in fact acknowledged, that the interim measure which it had indicated had not been complied with. It was fully aware that it was sometimes necessary to execute an expulsion order efficiently and expeditiously, but pointed out that the conditions for such execution should not be geared to depriving the person subject to expulsion of the right to request an interim measure from the Court. In the instant case the order had been served on the applicant on 22 September 2015, the day on which he was released, more than one month after the decision to expel him. A.S. had been immediately taken to the airport to be flown to Morocco. Consequently, A.S. had had insufficient time effectively to request that the Court suspend the decision, even though France had taken it a long time previously.

Moreover, the expulsion had rendered nugatory any finding of a violation of the Convention because the applicant had been expelled to a country which was not bound by the latter and in which he claimed that he was liable to be subjected to treatment which it prohibited.

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

Other articles

As regards the applicant's complaints under Article 8, Article 1 of Protocol No. 7 and Article 14, the Court observed that the applicant had complained of a violation of Article 8 before the Paris Administrative Court when contesting the expulsion order of 14 August 2015. That appeal was still pending before the Administrative Court of Appeal.

Consequently, those complaints had to be rejected as premature.

Just satisfaction (Article 41)

The Court considered that the finding of non-compliance with Article 34 was in itself sufficient just satisfaction for the damage sustained by the applicant.

Separate opinion

Judge O'Leary expressed a separate opinion, the text of 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.