



Application against Belgium by a joint Belgian and Moroccan national who was subjected to ill-treatment in a Moroccan prison: inadmissible

In its decision in the case of [Aarrass v. Belgium](#) (application no. 16371/18) the European Court of Human Rights has unanimously declared the application inadmissible.

The case concerned a Belgian and Moroccan national who alleged that the Belgian State had failed to provide consular protection in order to defend him from the serious breaches of his physical and psychological integrity to which he had been subjected while imprisoned in Morocco. He relied on Articles 1 (obligation to respect human rights) and 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights.

The Court noted that the Belgian authorities had not remained passive or indifferent and that they had taken steps to intercede with the Moroccan authorities, on both a diplomatic basic or on humanitarian grounds, in order to improve the applicant's situation. Those efforts had not been successful and appeared to have had no impact on the applicant's conditions of detention. However, this situation did not arise from inertia on the part of the Belgian consular officials working in Morocco, but from the systematic refusal on the part of Moroccan authorities, who had exercised exclusive control over the applicant's person.

The application was thus manifestly ill-founded. The decision is final.

Principal facts

The applicant, Ali Aarrass, is a Belgian and Moroccan national who was born in 1962.

Mr Aarrass was arrested on 1 April 2008 in Melilla (Spain) under an international arrest warrant issued against him by the Moroccan authorities so that he could be tried in that country on charges of criminal conspiracy, belonging to a terrorist organisation, and carrying out terrorist attacks likely to cause disrupt public order. In December 2010 he was extradited to Morocco and immediately detained pending trial. In October 2012 the Rabat Court of Appeal sentenced him to 12 years' imprisonment.

Between 2010 and 2013 lawyers representing Mr Aarrass contacted the Moroccan authorities on several occasions, without success, to complain of the conditions in which he was being held (solitary confinement, inhuman and degrading conditions of detention – no contact with his family, no mattress in the cell, lack of food, no access to healthcare). They also wrote to the successive Belgian Ministers of Foreign Affairs, requesting that the applicant be granted consular protection by the Belgian consular authorities in Morocco. These requests were refused on the grounds that Belgium applied customary international law relating to consular relations, under which a State may not afford diplomatic protection to one of its nationals against another State if the individual concerned also possesses the nationality of the latter State.

In November 2013 Mr Aarrass applied to the Brussels First-Instance Court for an injunction ordering the Belgian State to provide consular protection and/or to ensure that his physical and psychological integrity was preserved.

In February 2014 the President of the First-Instance Court, sitting as the judge responsible for urgent applications, held that Article 36 § 1 of the Vienna Convention on Consular Relations of 24 April 1963 granted the applicant only subjective rights, to be exercised against the State of residence, that is, Morocco. The president also noted that Belgian consular officials were entitled under Article 36 § 1 of the Vienna Convention to communicate with the applicant. In consequence, holding that the

allegations of inhuman and degrading treatment were proven in view of the reports submitted in support of the request, and considering that the applicant had a subjective right not to be subjected to such treatment, the president urged the Belgian State to afford the applicant its consular protection, to the effect that he should be granted the possibility of communicating with the Belgian consul in Morocco if he asked to do so.

In March 2014 the Belgian Embassy in Rabat asked the Moroccan authorities to allow the applicant to communicate with the Belgian consul. This request was refused by the Moroccan authorities, as they wished to avoid creating a precedent that would be contrary to Morocco's practice of not providing consular assistance to its own nationals where the latter were detained in the State of their other nationality.

In September 2014 the Brussels Court of Appeal upheld the order by the president of the first-instance court and instructed the Belgian State, on pain of penalty for non-compliance, to request the Moroccan State to authorise the Belgian consular authorities in Morocco to visit the applicant and to speak with him.

Between 2014 and 2017 the Belgian authorities unsuccessfully contacted their Moroccan counterparts, through written notes and telephone exchanges, asking to be able to visit the applicant, sometimes in the context of consular protection, and sometimes from a humanitarian standpoint. On one occasion, in October 2015, it proved possible to organise a visit by members of the Moroccan National Commission for Human Rights, and the applicant's sister was able to visit him in hospital.

In the meantime, in September 2017 the Belgian Court of Cassation quashed the court of appeal's judgment, holding that, while the Vienna Convention recognised that the sending State and its nationals enjoyed certain rights, it did not impose an obligation on the sending State to provide consular assistance to one of its nationals. The case was remitted to the Liège Court of Appeal, before which it is pending.

The applicant was released in April 2020 after serving his sentence. He subsequently returned to Belgium on 15 July 2020.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 29 March 2018.

Relying on Articles 1 (obligation to respect human rights) and 3 (prohibition of torture, inhuman or degrading treatment) of the European Convention on Human Rights, Mr Aarrass alleged that the Belgian State had failed to comply with its positive obligation to provide him with consular protection with a view to ending the serious breaches of his physical and psychological integrity to which he had been subjected during his imprisonment in Morocco.

The non-governmental organisation Redress was given leave to intervene as a third party (Article 36 § 2 of the Convention and Rule 44 § 3 (a) of the Rules of Court).

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

Georgios A. **Serghides** (Cyprus), *President*,
Paul **Lemmens** (Belgium),
Dmitry **Dedov** (Russia),
Georges **Ravarani** (Luxembourg),
Anja **Seibert-Fohr** (Germany),
Peeter **Roosma** (Estonia),
Andreas **Zünd** (Switzerland),

and also Milan Blaško, *Section Registrar*.

Decision of the Court

The issue in the present case was whether the Belgian State was under a positive obligation to afford consular assistance to the applicant during his imprisonment in Morocco, in order to avoid the risk of ill-treatment from materialising.

The Court noted that the Belgian authorities had not remained passive or indifferent. On the contrary, they had, on several occasions and especially following the order by the President of the Brussels First-Instance Court, taken steps to intercede with the Moroccan authorities, either on a diplomatic basis or on humanitarian grounds, in order to improve the applicant's situation. It was true that those efforts had not been successful and appeared to have had no impact on the applicant's conditions of detention. However, this situation did not arise from inertia on the part of the Belgian consular officials working in Morocco, but from the systematic refusal of the Moroccan authorities, who exercised exclusive control over the applicant, to create a precedent that would be contrary to Morocco's practice of not authorising consular assistance to Moroccan nationals where they were detained in the State of their other nationality.

In consequence, the Court considered that, assuming that a positive obligation to intervene could be inferred from Article 1 taken together with Article 3 of the Convention, the application was manifestly ill-founded and had to be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

The decision 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.