



### [ECTHR - A.S v. France](#)

The applicant, a Moroccan national who acquired French nationality, was sentenced to seven years' imprisonment in 2013 for involvement in a conspiracy to carry out terrorist acts in France and other countries. He was deprived of his French nationality and was served with an expulsion order: despite requesting an interim measure under grounds of Article 3 ECHR he was returned to Morocco.

The applicant claimed, *inter alia*, that his removal violated his rights under Article 3 ECHR due to the risk that he would be exposed to ill-treatment in the event of his return and that his removal in breach of the European Court of Human Rights (the Court) interim measure violated Article 34 ECHR.

**Case name (in original language) :** A.S v. France

**Case status:** Decided

**Case number:** 46240/15

**Citation:** European Court of Human Rights, A.S v. France (application no. 46240/15), 19 April 2019

**Date of decision:** 19/04/2018

**State:** France

**Court / UN Treaty Body:** European Court of Human Rights

**Language(s) the decision is available in:** French

**Applicant's country of birth:** Morocco

**Applicant's country of residence:** France

**Legal instruments:** European Convention on Human Rights (ECHR), Other international law

**Key aspects:** Deportation and removal, Deprivation of nationality, Procedural safeguards

**Relevant Legislative Provisions:**

*National Level*

- French Civil Code - Article 25, 1°

- CESEDA - Articles L. 521-3; L. 522-1; L. 523-1; L. 513-3; L. 523-2
- Code of Administrative Justice - Articles L. 776-1 and L. 776-2

### *European Convention on Human Rights*

- Art. 3 (prohibition of torture and inhumane treatment)
- Article 8 (right to private and family life)
- Article 14 (prohibition of discrimination)
- Article 1 of Protocol No. 7 (right to challenge an expulsion order)
- Art. 34 (right to challenge violation of the rights of the convention)
- Article 41 (right to award a just satisfaction)

### *1951 Convention Relating to the Status of Refugees*

- Article 1
- Article 33(1)

## **Facts**

The applicant is a Moroccan national who arrived in France in 1991 before marrying a French national and having two children. He acquired French nationality on 22 April 2002.

The applicant was alleged to have made numerous trips from 2002 onwards to Syria, Jordan, Saudi Arabia and Morocco, establishing numerous contacts with well-known Islamists in these countries. In a judgment of 22 March 2013, the Paris Criminal Court sentenced him to seven years imprisonment and deprived the applicant of all of his civic, civil and family rights for a period of five years and seized property connected to a conspiracy to carry out terrorist acts in France and in other countries.

On 28 May 2014, he was subject to a decree of deprivation of nationality, based on his conviction by the Paris Criminal Court. The decree also specified that the pronouncement of a measure of deprivation of French nationality against him would not have the effect of rendering him stateless. He appealed to the *Conseil d'État* (Council of State) against this measure, requesting in support of his appeal the referral to the *Conseil Constitutionnel* (Constitutional Council) of a priority question of constitutionality ("QPC"). On 23 January 2015, the Constitutional Council ruled that the legal provisions in question were in conformity with the Constitution.

On 11 May 2015, the Council of State rejected the applicant's appeal against the decree of 28 May 2014.

In July 2015, the applicant submitted an asylum application claiming that he would be exposed to a risk of ill-treatment if returned to Morocco. This request was rejected and on 22 September 2015 the applicant was served with an expulsion order and returned to Morocco, despite an interim measure issued by the French Court that same day requesting the French government not to remove the applicant until 25 September.

In Morocco, the applicant was placed in pre-trial detention. On 10 March 2016, the Rabat criminal chamber of first instance, after considering that the French courts had only punished part of the facts attributable to the applicant, found him guilty of gathering in an organised group to prepare and commit terrorist acts, possession and illegal use of firearms and ammunition as part of a collective plan to seriously undermine public order, and sentenced him to five years' imprisonment. He was released in December 2016 as he had already served his sentence in France.

## **Legal arguments by the applicant**

### ***1. Regarding potential violation of Article 3***

The applicant complained that the enforcement of his removal to Morocco exposed him to a risk of treatment contrary to article 3 ECHR.

The applicant first argued that he was deported while exposed to a risk of treatment prohibited by Article 3 of the Convention, which manifested itself in his "disappearance" immediately after his arrival in Morocco.

Secondly, he claimed that the conditions of detention in Morocco, including overcrowding and a lack of natural light, were inadequate and amounted to inhuman and degrading treatment.

Thirdly, he argued that the French authorities had not sought any guarantee from the Moroccan authorities that he would not be detained or tried a second time for the acts that had already justified his conviction in France.

### ***2. Regarding potential violation of Article 34***

The applicant contends that by handing him over to the Moroccan authorities, in breach of the measure indicated by the Court under Rule 39 of the Rules of Court, the French State has failed to fulfil its obligations under Article 34 ECHR. He also argued that his removal was politically motivated.

In addition to the above, the applicant also relied on Article 8 ECHR, Article 1 of Protocol No. 7 to the Convention, and Article 14 ECHR.

## **Legal arguments by the opposing party**

### ***1. Regarding potential violation of Article 3***

The French Government raised a plea of non-exhaustion of domestic remedies. It submitted that the applicant had lodged an application with the Court before the Cour Nationale du Droit d'Asile (CNDA) had ruled on his application for recognition of refugee status and thus had examined the risk of treatment contrary to Article 3 of the Convention. Furthermore, the Government argued that the applicant's appeal against the expulsion order of 14 August 2015 was still pending before the ordinary administrative courts and that this appeal would enable him to prevent or redress the alleged violations.

The Government submitted, *inter alia*, that the applicant had not shown that he had been exposed to any actual and personal risk of ill-treatment by the Moroccan authorities. Although he maintained that he had been arrested on his arrival in Morocco and then placed in the Salé prison, the applicant had in no way established that he had actually been subjected to treatment prohibited by Article 3 ECHR.

### ***2. Regarding potential violation of Article 34***

The Government argued that it co-operated fully with the Court's Registry in order to ensure the full implementation of the measures taken under Rule 39 of the Rules of Court. The Government recalled that the Court's Registry had only contacted them at 10.45 a.m. with a view to determining the date of the applicant's expulsion. At 12.05 p.m. the Registry informed the Government that the above-mentioned interim measure had been adopted. However, the very short time between the notification of the interim measure (12.05 p.m.) and the departure of the aircraft (12.35 p.m.) did not allow the Government to interrupt the aircraft's take-off. The Government concluded that they had therefore done everything possible to comply with the interim measure and concluded that they could not be accused of a violation of Article 34 ECHR.

## **Decision & Reasoning**

### ***1. Regarding potential violation of Article 3***

The Court recalls, by way of introduction, that the applicant had submitted an asylum application to the Office for the Protection of Refugees and Stateless Persons (OFPRA) and that his application was rejected on 25 August 2015. On 21 December 2016, i.e., after the case was referred to the Court, the CNDA dismissed the appeal against that decision. The Court considers that in the present case the applicant's application for asylum to OFPRA enabled him to have the reality of the risks he allegedly faced in his country examined, while remaining temporarily in the country until a decision on his application was taken. In the light of the foregoing, it considered that the applicant had exhausted an effective remedy.

The Court observes that the applicant was deported to Morocco on 22 September 2015. This is therefore the relevant date to be taken into account when assessing whether there had been a real risk of ill-treatment in that country. In assessing this risk, the Court referred to a report from Amnesty International according to which Morocco has taken measures to prevent the risk of torture and inhuman and degrading treatment. It concluded that the nature of the applicant's conviction and the national and international contexts explain why he may be subject to control and surveillance measures on his return to Morocco.

The Court observes that while the applicant was detained it is apparent that he had access to a lawyer as soon as he was taken into custody, that it is not contended that he was not able to maintain contact with the lawyer throughout the proceedings, and that he was released on 21 December 2016.

The Court concluded that the applicant had failed to present evidence, such as medical certificates, showing his detention conditions to have exceeded the threshold of ill-treatment under Article 3 ECHR. As such, the Court was able to distinguish the facts of the case from those in *M.A. v. France* and *X. v. Switzerland*. Moreover, it was noted that the applicant had not provided evidence to show that persons identified as his accomplices in Morocco had suffered treatment exceeding the threshold under Article 3 ECHR.

### ***2. Potential violation of Article 34***

The Court recognised that it may be necessary for the competent authorities to implement a deportation order promptly and effectively. However, the conditions of such enforcement must not be such as to deprive the person being removed of the right to apply to the Court for an interim measure. The Court observes that although the Minister of the Interior decided on 14 August 2015 to deport the applicant, he was not notified of that decision until 22 September 2015, i.e., the day of his deportation and more than a month after this decision.

The Court noted that the French government itself acknowledged that it had not complied with the interim measure requested by the applicant. Moreover, the ECtHR found that the applicant had had insufficient time to request the Court to suspend the removal decision, since it had been served on him more than a month after the decision was adopted. Therefore, the Court concluded that the French authorities had failed in their obligations under Article 34 ECHR.

### **3. Regarding potential violations of other Article 8 ECHR, Article 1 of Protocol No. 7 to the ECHR and Article 14 of the ECHR**

The Court dismissed the applicant's remaining complaints as premature under Article 35 §§ 1 and 4 ECHR.

#### **Outcome**

No violation of Article 3 ECHR was found.

Violation of Article 34 ECHR.

#### **Caselaw cited**

- *I.M. v. France*, No. 9152/09, 2 February 2012
- *Y.P. et L.P. v. France*, No. [32476/06](#), 2 September 2010
- *Gebremedhin [Gaberamadhien] v. France*, No. 25389/05, 26 April 2007
- *Hirsi Jamaa and others v. Italy* [GC], No. 27765/09, 23 February 2012
- *Allanazarova v. Russia*, No. 46721/15, 14 February 2017
- *Sultani v. France*, No. [45223/05](#), 26 September 2007
- *A.M. v. the Netherlands*, No. 29094/09, 5 July 2016
- *F.G. v. Sweden* [GC], No. 43611/11, 23 March 2016
- *Mamatkoulov and Askarov v. Turkey*, No. [46827/99](#), 04 February 2005
- *Daoudi v. France*, No. [19576/08](#) 3 December 2009
- *Saadi v. Italy* [GC], [No. 37201/06](#), 28 February 2008

- *Ismoilov and Others v. Russia*, No. [2947/06](#), 24 April 2008
- *A and Others v. the United Kingdom* [GC], No. [3455/05](#), 19 February 2009
- *X. v. Switzerland*, No. [16744/14](#), 26 January 2017
- *Ergi v. Turkey*, No. [23818/94](#), 28 July 1998, Reports of Judgments and Decisions 1998 IV
- *Pivovarnik v. Ukraine*, No. [29070/15](#), 6 October 2016
- *Savridin Dzhurayev v. Russia*, No. [71386/10](#), 25 April 2013
- *Trabelsi v. Belgium*, No. 140/10, 4 September 2014
- *Mamazhonov v. Russia*, No. 17239/13, 23 October 2014
- *M.A. v. France*, No. [9373/15](#), 1 February 2018
- *Paladi v. Moldova* [GC], No. 39806/05, 10 March 2009
- *Al-Saadoon and Mufdhi v. United Kingdom*, No. 61498/08, 02 March 2010
- *D.B. v. Turkey*, No. [33526/08](#), 13 July 2010
- *De Souza Ribeiro v. France* [GC], No. [22689/07](#), 13 December 2012
- *Lounis v. France*, No. [49137/99](#), 25 April 2002
- *J.K. & others v. Sweden* [GC], No. [59166/12](#), 23 August 2016
- *Ouabour v. Belgium*, No. [26417/10](#), 2 June 2015