



Removal to Algeria still entails a risk of ill-treatment by the Algerian authorities

In today's Chamber judgment in the case [H.R. v. France](#) (application no. 64780/09), which is not final¹, the European Court of Human Rights held, unanimously, that the enforcement of the order for the applicant's removal to Algeria would amount to:

A violation of Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights.

The case concerned proceedings for the applicant's removal to Algeria, his country of origin.

Principal facts

The applicant, H.R., is an Algerian national who was born in 1952 and lives in Lyons (France).

In the context of work carried out on his sister's house in Algeria, the Algerian authorities found that H.R. had assisted members of a terrorist group, and brought proceedings against him and three other people for "establishment of a terrorist group and attempted murder of national security officials".

H.R. came to France in 2000. He had two asylum applications refused by the French Office for the Protection of Refugees and Stateless Persons (OFPRA) and the Refugee Appeals Board (CRR); in addition, his application for territorial asylum was rejected by the Ministry of the Interior.

On 17 May 2004 H.R. was ordered to leave France within one month. He did not comply.

On 10 February 2009 H.R. was arrested. On the same day the prefect of the Rhône *département* served him with an order for his removal to Algeria. The Lyons Administrative Court dismissed an appeal by H.R., a decision which was upheld by a judgment of the Administrative Court of Appeal. H.R. claimed that he had not lodged an appeal on points of law with the *Conseil d'Etat* because any such appeal would, in his view, have been ineffective.

H.R. was released on an unspecified date by the liberties and detention judge because of formal defects in the procedure. However, he was re-arrested on 26 November 2009 and placed in administrative detention on the basis of the order of 10 February 2009. His removal to Algeria had to be postponed after he requested re-examination of his asylum application. The liberties and detention judge therefore ordered an extension of his administrative detention.

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 8 December 2009 OFPRA refused H.R.'s request on the grounds that "there [was] nothing in the applicant's claims to lend credence to his allegations of a threat to his safety".

That decision was served on H.R. the following day, when he also submitted a request to the European Court on Human Rights seeking interim measures under Rule 39 of the Rules of Court. The same day the Court decided to indicate to the French Government under Rule 39 that H.R. should not be removed to Algeria.

On 4 February 2010 H.R. was sentenced by the Lyons Criminal Court to 15 months' imprisonment for producing counterfeit currency, fraudulent possession and use of forged administrative documents.

He was detained in Lyons Prison and released on an unspecified date after having served his sentence.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), the applicant complained that the enforcement of the order for his removal to Algeria would place him at risk of ill-treatment.

The application was lodged with the European Court of Human Rights on 9 December 2009.

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

Dean **Spielmann** (Luxembourg), *PRESIDENT*,
Jean-Paul **Costa** (France),
Boštjan M. **Zupančič** (Slovenia),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Ann **Power** (Ireland),
Angelika **Nußberger** (Germany), *JUDGES*,

and also Claudia **Westerdiek**, *SECTION REGISTRAR*.

Decision of the Court

Article 3 (prohibition of torture and inhuman or degrading treatment)

The Court noted that there had been little change in the situation in Algeria between its judgment in the case of *Daoudi* (no. 19576/08) on 3 December 2009 and 23 February 2011 (the date on which the Government lifted the state of emergency), as various international reports had confirmed.

However, in the Court's view, H.R. had not demonstrated that he faced a real and current risk from the terrorists he had allegedly denounced.

As to the risk from the Algerian authorities, the Court stressed that, in contrast to the applicant in *Daoudi*, H.R. had not been convicted in France for terrorism-related offences, but for producing counterfeit currency. However his conviction was unlikely to have attracted the attention of the Algerian authorities or of the press, that did not mean that he would face no risk if he returned to Algeria.

The Court took note of the fact that H.R. had been tried *in absentia* by the Algerian courts in 1999 and sentenced to life imprisonment for “establishment of a terrorist group and attempted murder of national security officials”. In the Court’s view, that conviction for terrorism-related offences would be sufficient to draw the Algerian authorities’ attention to H.R. on his arrival at the airport if he were removed to Algeria.

Until the lifting of the state of emergency on 23 February 2011, the army and the civilian authorities (in particular the Ministry of the Interior) had been responsible for conducting the fight against terrorism. Several international organisations had reported cases of torture of suspected terrorists. In view of the fact that the state of emergency had been lifted only recently, the Court did not have specific information capable of confirming or refuting the existence of such practices. It noted that the fight against terrorism in Algeria was now conducted exclusively by the army and that, according to a press release from the Algerian Council of Ministers on the subject of two pieces of legislation enacted when the state of emergency was lifted, that did not amount to any “change in the situation” but to a continuation of “the role of the national people’s army in the struggle to put an end to terrorism”.

In view of the H.R.’s past (the heavy sentence imposed on him by the Algerian courts for terrorist links), the Court considered that he faced a real risk of being subjected by the Algerian authorities to ill-treatment contrary to Article 3 of the Convention should the order for his removal be enforced.

Article 13 (right to an effective remedy) taken in conjunction with Article 3

The Court was of the view that H.R. had had access to a remedy with automatic suspensive effect before the Administrative Court, of which he had made use. That remedy had enabled him to obtain an examination of his complaint under Article 3 (prohibition of torture and inhuman or degrading treatment). Accordingly, the Court held that the requirements of Article 13 had been satisfied in the present case. The Court dismissed the complaint as ill-founded.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that France was to pay the applicant 1,500 euros (EUR) in respect of costs and expenses.

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.