

# IMPLEMENTATION OF M.A. v. France



**Paul CHIRON**, chargé du soutien et des actions juridiques

## The case M.A. c. France (9373/15)

The M.A. case concerns the enforcement on 20 February 2015 of a removal order against the applicant, an Algerian national.

- M.A. was sentenced in 2006 in France to seven years' imprisonment and to permanent exclusion from French territory for terrorism-related acts
- M.A. due to risks of torture and mistreatment applied to the ECtHR for an interim measure (IM) in 2010
- The IM have ended in 2014 due to non-exhaustion of remedies
- M.A. applied to asylum, OFPRA rejected his application
- This expulsion of M.A. to his country took place despite risk of torture and mistreatment. The applicant applied to the Court for an interim measure. The ECtHR has indicated to the French government to not proceed the expulsion. But M.A. was deported to Algeria despite of the interim measure.

## The ECtHR found in this case violations :

- Of the article 3, in particular with regard to the applicant's profile,
- Of the article 34 because authorities had deliberately and irreversibly reduced the level of protection of Article 3 by creating conditions making it very difficult for him to apply to the Court and because French authorities violated interim measures.

**Action Plans** : 3 Action Plans were submitted by French authorities to the DH-DD :

- March 2019
- December 2019
- June 2021

**Action Reports** : 1 Action Report was submitted for the DH-DD of march 2022

**Government Communications** : 5 communications were transmitted to the DH-DD :

- September 2018
- December 2018
- June 2019
- September 2019
- September-October 2020

**CM Decisions** : 5 decisions

- September 2018
- December 2018
- March 2019
- December 2019
- June 2021

**NGO communication** : 1 communication was submitted by La Cimade (march 2022)

**Action Plans** : 3 Action Plans were submitted by French authorities to the DH-DD :

- March 2019

On Article 3 : France develops on the one hand the question of the possibility of appealing a decision rejecting an asylum application and the suspensiveness of a procedure against the administrative decision on the country of return

On Article 34 : France mentions that it is taking measures to avoid any new violation without presenting any concrete mechanism

- December 2019

- June 2021

**Government Communications** : 5 communications were transmitted to the DH-DD :

- September 2018
  - December 2018
  - June 2019
- } Presentation of elements on individual measures
- September 2019
    - Presentation of the case law of the Conseil d'Etat on exceptions to IM
  - September-October 2020
    - Presentation of concrete measures on Article 3 and 34

**NGO communication in January 2022** : French authorities replied considering that La Cimade's communication was inaccurate but they didn't replied on :

- **Mechanism ensuring compliance on Article 3**
- **Non-implementation convictions on Article 34**

## **Violation of Article 3 :**

- **Non-suspensive procedure**
- **Non-implementation convictions on Article 3**

**Non-suspensive procedure :**

French Actions Plans developed a special procedure but non-applicable to a lot of case about similar profile than M.A. This non-suspensive procedure jeopardizes the necessary examination of the risks of mistreatment and torture.

French law provides for several possibilities of expulsion measures. Some are specifically created for security threat cases or are dependent of criminal convictions.

For example :

**M.A. v. France (9373/15) :** Interdiction du territoire français / Judicial prohibition of the territory

**A.S. v. France (46240/15) :** Interdiction du territoire français / Judicial prohibition of the territory

**M.G. v. France (48932/20) :** Arrêté ministériel d'expulsion / Ministerial removal order

**D.O. v. France (58627/21) :** Arrêté ministériel d'expulsion / Ministerial removal order

**A.T. v. France (53254/20) :** Interdiction du territoire français / Judicial prohibition of the territory



## Failure to take into account convictions on the basis of Article 3

- Several cases concerned France about the examination of risks of torture and mistreatment but French authorities never took real measure to avoid new violation.
  - **BIVILARU and MOLDOVAN v. France** [40324/16] : **French authorities in their Action Plan said** : *“La Cour ayant constaté que la violation de l’article 3 de la Convention était circonscrite aux circonstances particulières de l’espèce, le Gouvernement est d’avis qu’aucune autre mesure générale n’est requise dans cette affaire.”*  
*The Court having found that the violation of Article 3 of the Convention was limited to the particular circumstances of the case, the Government are of the opinion that no other general measure is required in this case.*
  - **K.I. v. France** [5560/19] : *idem*

## **Violation of Article 34**

- **Violation of interim measures**
- **Expulsions organized to deliberately and irreversibly reduced the level of protection of Article 3**

### Violation of interim measures

- **N. B. and other v. France (49775/20)** : refusal to release a family in deportation center despite the IM

### Other cases

- **A.T. v. France (53254/20)** : start of execution of the removal order concerning a refugee despite the IM indicated two days before
- **M.M v. France (39131/20)** : execution of the removal order despite the undertaking to warn the Court

**Expulsions organized to deliberately and irreversibly reduced the level of protection of Article 3 :**

- **M.G. v. France (48932/20)** : Applicant was arrested the night before his expulsion despite refugee quality and older IM
- **M.I. v. France. (24486/21)** : Applicant was arrested the night before his expulsion
- **D.O. v. France (58627/21)** : Applicant was arrested the at 9:30 a flight was scheduled to 19:25

**Exceptions to compliance with interim measures :**

Conseil d'Etat, 9 novembre 2016 : *“Le Gouvernement français est donc tenu de respecter ces mesures, sauf exigence impérieuse d'ordre public ou tout autre obstacle objectif l'empêchant de s'y conformer”*

*The French Government is therefore required to comply with these measures, unless there is an overriding requirement of public order or any other objective obstacle preventing it from complying with them.*

### **Recommendations :**

La Cimade recommends to the Committee:

- To continue monitoring the implementation of M.A. v. France, under enhanced procedure;
- Debate the case again before the end of 2022

Furthermore, La Cimade recommends to the Committee:

- to ask France to implement legislative reforms to guarantee the suspensive nature of all asylum applications as well as the suspensive nature of any appeal against decisions determining the country of return;
- to ask France to guarantee that a reasonable period of time is given to the person to submit a request for an interim measure to the ECtHR