



Request for replacement of sentence in the framework of a transfer from Morocco to France: application inadmissible

In its decision in the case of [Robert v. France](#) (application no. 1652/16) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned a request for the replacement of the sentence handed down by the Moroccan courts on a French national in the framework of a procedure for transferring him to France to serve the sentence.

The Court considered, in particular, that Articles 6 (right to a fair trial) and 7 (no punishment without law) did not apply to sentence execution and that the application should consequently be declared inadmissible.

The decision is final.

Principal facts

The applicant, Richard Robert, is a French national who was born in 1972 and is incarcerated in Yzeure (France). Mr Robert was prosecuted by the Moroccan authorities for acts relating to a terrorist network, and was accused, in particular, of having directed the network and incited the perpetration of terrorist acts. On 18 September 2003 the Criminal Division of the Rabat (Morocco) Court of Appeal sentenced him to life imprisonment.

On 15 May 2012, pursuant to the 10 August 1981 Franco-Moroccan Convention on assistance to detained persons and the transfer of convicted persons, Mr Robert was transferred to France in order to continue to serve his sentence. In that framework, he applied to a French court to change the sentence handed down by the Moroccan court.

By judgment of 31 May 2013 the Paris Criminal Court ruled that the applicable sentence should be appraised by comparing the Moroccan and French legislation in force at the time of the applicant's transfer to France, rather than the laws in force at the time of the impugned acts. Furthermore, the Paris Criminal Court pointed out that the aim was not to retry the applicant but merely to replace the sentence handed down in Morocco with the sentence which was most similar in French law, or reducing that sentence to the legal maximum term applicable in France. Accordingly, the life sentence was replaced with a 30-year prison sentence as laid down in Articles 421-2-1 and 421-6 of the Penal Code resulting from the 23 January 2006 Act. Mr Robert appealed.

The Paris Court of Appeal upheld the judgment, with the proviso that time served in Morocco should be deducted. Mr Robert appealed on points of law. On 24 June 2015 the Court of Cassation dismissed the appeal on points of law and upheld the judgment of the Court of Appeal.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 22 December 2015.

Relying on Article 3 (prohibition of torture), Article 6 (right to a fair trial) and Article 7 (no punishment without law), the applicant complained that the French courts, firstly, had ruled that the substitute sentence should be calculated on the basis of the provisions applicable at the time of his transfer, rather than of those in force at the time of the commission of the acts, and secondly, had

failed to take account of the context in which he had been convicted, claiming that the Moroccan courts had staged a show trial under the direct influence of the executive.

The decision was given by a Committee of three judges, composed as follows:

Mārtiņš Mits (Latvia), *President*,
André Potocki (France),
Lətif Hüseynov (Azerbaijan),

and also Milan Blaško, *Deputy Registrar*.

Decision of the Court

Articles 6 and 7

The Court noted from the outset that the French courts had, as requested by the applicant himself, only adjudicated on the adjustment of the sentence which he still had to serve in France following his transfer. The Court had already ruled on several occasions that Article 7 did not apply to the execution of a sentence, particularly, as in the present case, in the framework of a procedure for transferring a convicted person to another country.

The Court also pointed out that issues relating to sentence enforcement did not come under Article 6 either inasmuch as a domestic court is not called upon to determine the «merits» of a criminal charge within the meaning of Article 6 of the Convention.

The Court declared therefore that the complaints submitted under Articles 6 and 7 of the Convention were incompatible with the provisions of the Convention.

Article 3

Having regard to the evidence before it, the Court discerned no appearance of a violation of the rights and freedoms guaranteed by the Convention.

The Court declared the application inadmissible.

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.