

Mr. Kimmo Sasi

Rapporteur on the Urgent need to deal with new failures to co-operate with the European Court of Human Rights Parliamentary Assembly
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**AMNESTY
INTERNATIONAL**



EUROPEAN INSTITUTIONS OFFICE

Dear Rapporteur,

Ref: B1543

AMNESTY INTERNATIONAL'S CONCERNS ON BELGIUM'S DISREGARD FOR THE EUROPEAN COURT OF HUMAN RIGHTS' INTERIM MEASURE IN THE CASE OF NIZAR TRABELSI

Following your request for clarification to the Belgian authorities with regard to the case of *Trabelsi v. Belgium* (application no. 140/10) and the resulting response, Amnesty International would like to draw your attention to the attached note that contains the organisation's views and arguments on the outright violation of the European Court of Human Rights' interim measure by the Belgian government in Nizar Trabelsi's case.

In this note, Amnesty International argues that Belgium's extradition to the United States of Nizar Trabelsi on 3 October 2013 was a deliberate decision by the Belgian government to disregard the interim measure issued by the Court. This was done in blatant disrespect for the Court's jurisprudence and the European Convention on Human Rights (ECHR). Consequently, it is likely that Belgium violated the applicant's right to individual application (Article 34 ECHR).

In the interest of having the most comprehensive overview possible of relevant cases and in light of the importance of the negative precedent to Belgium's cooperation with the Court, we urge you to consider proposing an amendment with a view to adding Belgium to the list of countries that have breached the Court's interim measures in paragraph 4 of your draft resolution and to include Nizar Trabelsi's case in your report.

We are pleased to provide you with any additional information.

Yours sincerely,

Dr. Nicolas J. Beger
Director
Amnesty International European Institutions Office

Cc: PACE Legal Affairs and Human Rights Committee Secretariat

Additional Information to the draft resolution and report on the *Urgent need to deal with new failures to cooperate with the European Court of Human Rights*

Introduction

With this note Amnesty International would like to provide some additional information to your draft resolution and report on the *Urgent need to deal with new failures to cooperate with the European Court of Human Rights*, as approved by PACE's Legal Affairs and Human Rights Committee.¹

Amnesty International has had the opportunity to give input to the report and will therefore limit our current submission to this most recent information. The new information relates to a recent breach of an interim measure issued by the European Court of Human Rights (ECtHR or "the Court") to Belgium in the case of *Trabelsi v. Belgium* (application no. 140/10) and the applicant's extradition to the United States.

In the interest of having the most comprehensive overview possible of relevant cases and in light of the importance of the negative precedent to Belgium's cooperation with the Court, we believe it to be of the utmost importance to include the case in the list of countries that have violated the Court's interim measures.

Facts of the case

A summary of the facts of Nizar Trabelsi's case can be found in the statement of facts. The Court communicated the case to the Belgian government on 24 November 2012.²

At that time, an annulment request was pending before the Belgian Council of State (*Conseil d'État*). The supreme administrative court, in its judgment of 23 September 2013, decided to uphold the relevant Ministerial Decree allowing for Nizar Trabelsi's extradition.³ He was extradited very soon after this verdict, on 3 October 2013.

Communication between the Belgian government and the ECtHR on the case

As stated in paragraphs 18-25 of the statement of facts, the Belgian authorities, after having signed the Ministerial Decree to extradite Nizar Trabelsi, repeatedly asked the Court to lift its interim measure. There is no indication whatsoever that the Court accepted this request. Nor is there any indication that the Belgian government formally sought the lifting of the measure after the Council of State's ruling of 23 September 2013.

Amnesty International understands that the Belgian authorities did communicate with the Court after the Council of State's verdict was handed down. The Belgian Minister of Justice's cabinet confirmed in

¹ <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=20348&lang=EN>

² <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115504>

³ Conseil d'état, Arrêt du 23 Septembre 2013, no 224.770, Trabelsi, at www.raadvst-consetat.be/Arrets/224000/700/224770.pdf

a meeting with Amnesty International that it had requested the Court to give an indication of when it would be likely to rule on the case. The Court reportedly replied that a judgment was likely to be issued in the following weeks (*“dans les semaines qui viennent”*).

So far, Amnesty International has been unable to verify whether this exchange between the Belgian government and the Court took place during the period in question (between 23 September and 3 October).

The Belgian government’s attitude towards the ECtHR’s interim measure in the case

In Nizar Trabelsi’s case, there can be no doubt that the Belgian authorities were informed about the Court’s interim measure. It is also clear that the Belgian government was well aware of the legally binding nature of the interim measure. The replies from the Minister of Justice to parliamentary questions on 8 October 2013⁴ and on 20 November 2013⁵ (both after the extradition took place) provide a striking indication in that respect. In response to a question by Member of Parliament Olivier Maingain, the Minister noted:

« La mesure provisoire imposée par la Cour européenne l’était en vertu du règlement de la Cour. La page juridique d’une telle mesure n’est donc pas la convention ni le protocole. La jurisprudence de la Cour estime qu’il existe une obligation de respecter une mesure provisoire.

Dans ce cas, le gouvernement a estimé que le non-respect de la mesure provisoire de la Cour était justifié en vue de l’obligation conventionnelle d’extrader, d’une part, et des considérations précieuses sur le plan de la sécurité publique, d’autre part. »⁶

In this reply, which was later repeated word-for-word, the Minister acknowledged the binding nature of interim measures according to the ECtHR’s jurisprudence, but went on to state that the Belgian government in any case chose not to respect the interim measure.

In other words, the Belgian government deliberately and intentionally decided to ignore the interim measure issued by the Court. It is noteworthy that the Minister referred to the decision as a government decision (rather than a decision by the Minister of Justice alone).

This statement by the Minister of Justice is consistent with his previous declarations on Nizar Trabelsi’s case. On 3 July 2013 for instance, the Minister underlined the following: *« Il y a encore toujours aussi un arrêté d’extradition exécutoire, seulement bloqué par une mesure provisoire de la Cour européenne des droits de l’homme. »⁷* Here again the Minister acknowledged the legally binding nature of interim measures and Belgium’s obligation to comply with them.⁸

⁴ <http://www.dekamer.be/doc/PCRI/pdf/53/ip160.pdf>, pp. 31-33.

⁵ <http://www.senat.be/www/?Mlval=/publications/viewPub&TID=83897548&LANG=nl>

⁶ <http://www.dekamer.be/doc/PCRI/pdf/53/ip160.pdf>, pp. 31-33.

⁷ www.dekamer.be/doc/CCRA/pdf/53/ac795.pdf, p. 34.

⁸ Since the interim measure was imposed in 2011, consecutive Ministers for Justice have consistently referred to the ECtHR’s indication as an impediment to extradite Nizar Trabelsi to the United States.

Response from civil society and bar associations

Human rights organisations were quick to criticise Belgium's disregard of the Rule 39 interim measure indicated by the ECtHR. Amnesty International and the *Ligue des droits de l'homme* Belgium reacted with a joint press release⁹ and wrote to the Minister of Justice to request a meeting. Representatives of Amnesty International and the *Ligue des droits de l'homme* met a representative of the Minister of Justice on 4 December 2013. During that meeting, it was confirmed that a policy decision by the government had taken precedence over a legally binding decision by the ECtHR. The Minister's representative did not deny the binding nature of Rule 39 interim measures nor did he claim that there was any confusion about whether or not the measure was still in place.

On 9 October 2013, the Brussels Bar Association reacted with the following statement: « *En ce cas, une violation aussi manifeste, par l'État belge, d'une décision de justice appellerait une condamnation morale des plus sévères.* »¹⁰

Likely violation of the applicant's right to individual application (Article 34 ECHR)

As is clearly outlined in your draft report, Rule 39 interim measures are binding on the state parties since the landmark *Mamatkulov and Askarov v. Turkey* judgment. Rightly so, the ECtHR concluded that: "*interim measures, as they have consistently been applied in practice [...], play a vital role in avoiding irreversible situations that would prevent the Court from properly examining the application and, where appropriate, securing to the applicant the practical and effective benefit of the Convention rights asserted. Accordingly, in these conditions a failure by a respondent State to comply with interim measures will undermine the effectiveness of the right of individual application guaranteed by Article 34 and the State's formal undertaking in Article 1 to protect the rights and freedoms set forth in the Convention*" (paragraph 125 of the judgment).¹¹

Since then, the ECtHR has confirmed this jurisprudence time and again. It seems that the Belgian authorities, by extraditing Nizar Trabelsi, deliberately disregarded the Court's case law; it is therefore likely that the Belgian government violated Article 34 ECHR. There is no indication whatsoever that Belgium took "*all steps which could reasonably have been taken in order to comply with the interim measure indicated by the Court*".¹² On the contrary, the Belgian government took proactive steps to disregard the interim measure. It further seems that the State had no intention of waiting for the Court's ruling on the case. As far as Amnesty International is aware, the Belgian authorities made no request to lift the interim measure after the Belgian Council of State had ruled on the case.

⁹ <http://www.liguedh.be/2012/1837-extradition-de-nizar-trabelsi--un-camouflet-a-la-cour-europeenne-des-droits-de-lhomme>

¹⁰ Le Conseil de l'Ordre français des avocats du barreau de Bruxelles, *Motion – Trabelsi*, 9 October 2013, at <http://www.barreaudebruxelles.be/>

¹¹ ECtHR, *Mamatkulov and Askarov v. Turkey*, application nos. 46827/99 and 46951/99, Grand Chamber judgment of 4 February 2005, at <http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-68183>

¹² ECtHR, *Rrapo v. Albania*, application no. 58555/10, judgment of 25.09.2012, at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-113328> (see paragraphs 81-88)

The very short period between the Council of State's verdict (23 September) and Nizar Trabelsi's extradition (3 October 2013) indicates that the Belgian government made a conscious decision to remove him as quickly as possible, undermining the effectiveness of Nizar Trabelsi's right to individual application guaranteed under Article 34 ECHR.

During the consideration of Belgium's periodic report by the United Nation's Committee against Torture, the Belgian government representative explained that both national security considerations and the government's expectations that the Court would decide in the state's favour by finding that Nizar Trabelsi's extradition would comply with Article 3 ECHR, were relevant to the government's decision.

The national security considerations were not further explained. Nor did the Minister's representative provide any details in the abovementioned meeting with Amnesty International and the *Ligue des droits de l'homme*.

As to the expectations on the outcome of the case before the ECtHR, it is very clear from the Court's jurisprudence that *"it is not open to a Contracting State to substitute its own judgment for that of the Court in verifying whether or not there existed a real risk of immediate and irreparable damage to an applicant at the time when the interim measure was indicated"* or *"to decide on the time-limits for complying with [such a] measure"*.¹³

Conclusion

Belgium's extradition of Nizar Trabelsi on 3 October 2013 was a deliberate decision by the Belgian government to disregard the interim measure indicated by the European Court of Human Rights in accordance with its jurisprudence. Amnesty International does not pretend to know either all the reasons behind this decision or all the details of the communication between the Belgian government and the Court, but it is clear that the Belgian government's decision showed blatant disrespect for the Court's jurisprudence and the European Convention on Human Rights. Consequently, it is likely that Belgium violated the applicant's right to individual application (Article 34 ECHR).

We therefore urge you to consider proposing an amendment with a view to adding Belgium to the list of countries that have violated the Court's interim measures in paragraph 4 of your draft resolution and to include Nizar Trabelsi's case in your report.

¹³ ECtHR, *Paladi v. Moldova*, application no. 39806/05, Grand Chamber judgment of 10.03.2009, at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-91702>