The Right of Repatriation and State Obligations in Europe

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Syrian refugee camps held thousands of refugees and foreign terrorist fighters and their relatives.

What is the new case about?

In July 2025, 47 French jihadists were transferred from the Derik prison in Syria, where they had initially been captured, to Iraqi authorities in Baghdad for legal proceedings, awaiting trial in the central prison of Al-Karkh in Baghdad for their membership in the Islamic State (IS). In 2026, French lawyers for 25 of the jihadists appealed multiple times for their repatriation to France to be tried by French courts, arguing unfair trial conditions, the possibility of the death penalty and the inhuman treatment faced by the jihadists in prison (Seelow, 2026a).

Legal proceedings in France were unsuccessful; hence, the lawyers representing the jihadists lodged an appeal with the European Court of Human Rights (ECtHR) on 4 September 2026. On 16 September, the lawyers were warned by a family member that the trials of jihadists by Iraqi

authorities would start on 20 September at the Central Criminal Court in Baghdad (Seelow, 2026b). The lawyers, in the meantime, visited some of the detainees with authorisation, and reported torture and unwillingness of local authorities to cooperate.

Then, the lawyers decided to proceed with a request under the ECtHR's Rule 39 of the Rules of the Court for interim measures in situations of imminent and irreparable harm. The risk of being sentenced to the death penalty and inhumane imprisonment conditions with torture were argued by the applicants to qualify as irreparable harm.

They requested, through Article 2 (the right to life) and Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights (ECHR) and Article 1 of Protocol No. 13 to the ECHR (abolishing the death penalty), the applicants' repatriation to France or arrest and search warrants issued by French courts to be handed over to the French judiciary. In the alternative, they demanded diplomatic actions to ensure that Iraqi authorities will not proceed with the death penalty or unfair trial conditions (ECtHR, 2026).

On 23 September 2026, six days after the request for interim measures, the ECHR refused to grant the measures on the ground that France has no jurisdiction over the applicants, a ground that mostly applies to extradition or expulsion cases by Contracting Parties.

This does not mean the applicants' case is dismissed. However, the broad question highlighted once again by this case is whether there is a duty of European governments to repatriate their nationals, and whether repatriation refusals can be subjected to independent review, and if so, in which circumstances?

These questions on European human rights law will be evaluated in this brief through two important cases: H.F. and Others v. France, decided on 14 September 2022, and the 27 February 2025 decision of the Cour administrative d'appel de Paris (Paris Administrative Court of Appeal), which relied on the former as a precedent.

H.F. and Others v. France – is there a right to be repatriated?

In 2014 and 2015, applicants' (H.F. and M.F., and J.D. and A.D.) daughters L. and M. travelled to IS-controlled Syria with their partners to IS-controlled Iraq and Syria territories. The two women gave birth to children (2014, 2016 of L. and 2019 of M.) during their time in Syria and Iraq. The women and their children were reportedly arrested in al-Hol and Roj camps, administered by Kurdish authorities, under inhuman and degrading conditions. These conditions included malnutrition, dehydration, war injuries, post-traumatic stress, and violence and sexual exploitation risks. Both women were described by the applicants as very thin, with severe war-related health conditions, and their children suffered from other physical and psychological disorders as well.

The parents of both women had requested from French authorities their repatriation to France. In the case of L., the Paris Administrative Court dismissed her case on the grounds that she had knowingly left the country to join a terrorist organisation at war with the coalition in which France was participating. Furthermore, it is up to the authorities in the region to assess their criminal liability and, after a finding of no liability, France would take steps appropriate to their circumstances.

Similarly for M., the Paris Administrative Court and consequently the Conseil d'État and Paris tribunal judiciaire (first-instance court) ruled against the urgent application made by her counsel, which argued that urgency was satisfied due to the proven risk of death and inhuman or degrading treatment in al-Hol camp. Proceedings before all three authorities concluded that neither the Paris Administrative Court nor the first-instance court had jurisdiction over France's international relations in Syria (H.F and Others v. France, 2022).

Under these circumstances, the applicants requested the repatriation of their daughters with their grandchildren, arguing that they had the right to be repatriated into France, arguing that such a right exists under Article 3 § 2 of Protocol No. 4 (the right to enter the territory of the State of which one is a national). In addition, they argued that France has jurisdiction, under Article 1 of the ECHR, over their French-national daughters due to its state capacity, as demonstrated by previous repatriation operations, to enforce Article 3 of the ECHR.

In the ruling, the ECtHR maintained that the jurisdiction of Contracting States cannot be assumed automatically on the basis of nationality under Article 1 of the Convention. Further, a general view of jurisdiction as the State's capacity to take action is overly simplistic and legally uncertain.

Instead, the Court explained that jurisdiction can be established in two ways: territorial control and control over persons (Pijnenburg, 2022). In this case, the Court held that France has no territorial control over Syria or the camps in question. Moreover, because nationality does not sufficiently establish jurisdiction, nor do domestic legal procedures, France was found to have no effective control over the women. Therefore, the Court found France to lack jurisdiction over the applicants' complaint under Article 3.

On the other hand, the Court's consideration of the argument under Article 3 § 2 of Protocol No. 4 became the defining element of the case. In general, the Court ruled that there is no general duty or right of repatriation in international law or European law (Mulder et al., 2025) (H.F. and Others v. France, 2022, para. 259). The article does not guarantee a general right for nationals outside its borders to enter national territory. It is about the prohibition of expulsion of nationals, which is reflected in the first paragraph. For women and children, the legal question concerned nationals who had voluntarily left the country and had not been there before. Hence, it is a negative obligation not to deprive someone of nationality, rather than a positive obligation to repatriate.

While Article 3 § 2 of Protocol No. 4 did not establish a general right of repatriation, the Court recognised in paragraphs 260 and 261 that the provision may impose certain positive obligations on states towards their nationals outside their borders. These obligations, for instance, the issuance of travel documents, are intended to ensure that nationals can effectively and practically exercise their right to enter national territory. These may be imposed where a refusal of an act of State to its nationals might, in practice, lead to outcomes comparable to expulsion.

The Court reasoned that these obligations should be narrowly interpreted and required only in exceptional circumstances, for example, when children in situations of extreme vulnerability face a threat to their life or physical well-being. And where such circumstances exist, the needed review will be limited to ensuring effective protection against arbitrariness in the state's discharge of the obligation.

On the question of whether there are exceptional circumstances in the case, the Court recognised several facts as such in paragraphs 264-271. Classic channels of diplomacy being unavailable, that the women were never tried or investigated, no institution to do so was established, the general conditions in the camps, that States were urged to repatriate by local authorities and regional or international NGOs, and official state communication that French minors in Iraq or Syria are entitled to protection and can be repatriated, were cited as exceptional circumstances. In exceptional circumstances, the Court found that France had jurisdiction in respect of the alleged violation of Article 3 § 2 of Protocol No. 4, which it found to have occurred due to insufficient review.

In brief, the ECtHR found the French authorities responsible for carrying out the decision-making process concerning the requests for repatriation with appropriate safeguards against arbitrariness. The Court opined that in cases with extraordinary circumstances, authorities should prioritise respecting rights, integral to democratic society and the rule of law, over weighing politics. Hence, the Court held that the repatriation rejections must be examined individually and assessed on the facts by a body independent of and separate from the executive authorities of the State, though not necessarily judicial. Along with other measures of compensation, the Court called for the French Government to re-examine the requests to rule out arbitrariness.

Two 2025 decisions of the Paris courts – from a precedent to a landmark?

Following the precedent established by the ECtHR in H.F. and Others v. France, the Paris Administrative Court of Appeal has accepted to review a refusal to repatriate a mother and her children by the Ministry of Europe and Foreign Affairs in February 2025, due to exceptional circumstances explained by the ECtHR (Cour administrative d'appel de Paris, 2025). Hence,

the precedent was used by a French court in its decision to accept review rather than not, even though the refusal was not annulled or repatriation was not granted.

Furthermore, drawing on both the ECtHR case and the appellate court's decision, the Paris Administrative Court annulled the government's repatriation refusals for 28 children in similar camps in March 2025, on the grounds that the ministry did not provide the necessary documents with reasons. The government was ordered to re-examine the repatriation requests in two months and pay compensation to the applicants (Tribunal administratif de Paris, 2025). In both cases, the Paris courts departed from the traditional practice of national courts declining jurisdiction to review acts of state.

Therefore, the precedent set by H.F. and Others v. France became a landmark case on repatriation refusals, shaping the course and outcomes of future legal procedures pursued by nationals in exceptional circumstances seeking repatriation.

Conclusion

As both the written law and case law suggest, there is no general duty of nations to repatriate their nationals outside their borders, nor is there a general right of repatriation in international law. However, refusals in exceptional circumstances are subject to review by an independent and separate body for the Contracting Parties to the ECHR and should be accompanied by appropriate documentation to rule out arbitrariness in the decision.

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