

Deporting a foreign mujahedin to Tunisia would not breach his human rights

In today's Chamber judgment in the case [Al Hanchi v. Bosnia and Herzegovina](#) (application no. 48205/09), which is not final¹, the European Court of Human Rights held, unanimously, that there would be:

No violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, if the applicant were deported to Tunisia.

The case concerned the complaint by a foreign mujahedin that, if he were deported to Tunisia, he would be ill-treated.

Principal facts

The applicant, Ammar Al Hanchi, is a Tunisian national who was born in 1965 and is currently in Istocno Sarajevo Immigration Centre (Bosnia and Herzegovina).

He arrived in Bosnia and Herzegovina during the 1992-95 war and joined the foreign mujahedin. The mujahedin phenomenon is explained by the International Criminal Tribunal for the former Yugoslavia (ICTY) as a religious movement in which Muslims fight a jihad, or a holy war. According to the evidence presented before the ICTY, foreign mujahedin went to Bosnia and Herzegovina to help their Muslim brothers defend themselves against the Serbian aggressors and to spread their beliefs which they felt were the most faithful expression of the Islamic texts. The mujahedin arrived mostly from North African countries, the Near East and the Middle East.

In December 1995, Mr Al Hanchi obtained a national identity card on the basis of a forged decision granting citizenship to someone else. In 1997 he married a citizen of Bosnia and Herzegovina with whom he had two children, born respectively in 1998 and 2000.

In April 2009, during a random check, the authorities established that he was an illegal immigrant. As a result, they placed him in a Sarajevo immigration centre in order to deport him. His application for judicial review of his detention was rejected as out-of-time. His detention was extended on a monthly basis.

In May 2009, relying on secret intelligence reports, the Aliens Service decided that Mr Al Hanchi was a threat to national security, ordered his deportation and prohibited his re-entry for a period of five years. That decision was upheld by the Ministry of Security and by the State Court, and is currently pending before the Constitutional Court.

In July 2009, Mr Al Hanchi applied for asylum claiming that, as a suspected terrorist, he would be ill-treated if sent back to Tunisia. His application was rejected and on 10 December 2009 he was served with a removal order. He immediately applied to the

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

European Court of Human Rights asking not to be deported to Tunisia. As an interim measure, the Court granted his request until further notice.

Mr Al Hanchi lodged an application for interim measures against his expulsion also with the Constitutional Court, which was refused in January 2010. He is still detained in the Sarajevo immigration centre.

Complaints, procedure and composition of the Court

Relying on Article 3, Mr Al Hanchi complained that his deportation would expose him to the risk of ill-treatment, as he had joined the foreign mujahedin in Bosnia and Herzegovina and would therefore be treated as a suspected terrorist in Tunisia. He further complained under Article 5 § 1 (right to liberty and security), Article 6 § 1 (right to a fair trial) and Article 8 (right to respect for private and family life), that his detention pending deportation had been unlawful, that the deportation proceedings had been unfair, and that the authorities' decision to expel him and to prohibit his re-entry for five years had breached his private and family life.

The application was lodged with the European Court of Human Rights on 19 August 2009.

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

Nicolas **Bratza** (the United Kingdom), *President*,
 Lech **Garlicki** (Poland),
 Ljiljana **Mijović** (Bosnia and Herzegovina),
 Päivi **Hirvelä** (Finland),
 George **Nicolaou** (Cyprus),
 Ledi **Bianku** (Albania),
 Vincent A. **de Gaetano** (Malta), *Judges*,

and also Lawrence **Early**, *Section Registrar*.

Decision of the Court

Ill-treatment (Article 3)

The Court recalled its well-established case law in which it had repeatedly found that States had the right to control the entry, residence and expulsion of aliens. However, due care had to be taken so that expulsions did not expose people to the risk of torture or other forms of ill-treatment in the receiving country.

As the Parliamentary Assembly of the Council of Europe and UN Special Rapporteurs had noted, steps were currently being taken in Tunisia to move towards a democratic system. Those measures included amnesty granted to all political prisoners, the dissolution of the State Security Service, which was widely accused of human rights abuses during the former regime, and the dismissal or prosecution of some high-ranking officials for past abuse of human rights.

While cases of ill-treatment in Tunisia were still reported, they were sporadic incidents and there was no indication that Islamists were systematically targeted as a group after the change in regime. Indeed, it had widely been reported in the media that a leader of the principal Tunisian Islamist movement had now returned to Tunisia after a 20-year long exile and had even been able to register a political party.

Furthermore, Tunisia had acceded to the Optional Protocol of the UN Convention against Torture which had a preventive system of visiting places of detention; Tunisia had also

adopted the Optional Protocol to the International Covenant on Civil and Political Rights recognising the competence of the UN Human Rights Committee to hear individual cases alleging ill-treatment.

All the above demonstrated the determination of the Tunisian authorities to eradicate, once and for all, the culture of violence and impunity which had prevailed during the former regime.

Consequently, the Court concluded that there was no risk that, if deported to Tunisia, Mr Al Hanchi would be ill-treated. Therefore, there would not be a violation of Article 3.

Other articles

The Court dismissed the remaining complaints by Mr Al Hanchi.

In particular, it found that he had been detained with a view to deportation in strict compliance with domestic law, in suitable conditions and not on the basis of arbitrary reasons.

In addition, as regards the alleged unfairness of the deportation proceedings, the Court recalled that decisions concerning the entry, stay and deportation of aliens were not protected under Article 6, as they do not involve the determination of civil rights and obligations.

And, lastly, concerning Mr Al Hanchi's complaint related to his private and family life, the Court observed that it had already established in earlier cases that an appeal to the Constitutional Court of Bosnia and Herzegovina was, in principle, an effective remedy under the Convention. Given that Mr Al Hanchi's complaint was still pending before that court, and that the Convention did not require applicants complaining about their deportation under Article 8 to have access to a remedy with automatic suspensive effect (in contrast with such complaints under Article 3), that complaint was premature.

Finally, the Court indicated to the Government that they should not deport Mr Al Hanchi until this judgment became final, in accordance with Article 44 § 2.

The judgment is available only in English.

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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.