



Deportation to Tunisia of a person deemed to be a threat to national security to Germany not in breach of the Convention

In its decision in the case of [Saidani v. Germany](#) (application no. 17675/18) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the applicant's deportation from Germany to Tunisia because he was deemed to be a potential offender who posed a threat to national security (so-called "Gefährder"), based on his activities for "Islamic State".

The Court found that there was a real risk that the death penalty would be imposed on Mr Saidani in Tunisia. However, this penalty would *de facto* constitute a life sentence since there was a moratorium on carrying out executions, which had been respected since 1991. The Court also saw no reason to depart from the domestic court's findings that there was a possibility to review a life sentence with a view to subsequent release and that there was a clear mechanism for it in Tunisian law and practice.

Principal facts

The applicant, Haykel Ben Khemais Saidani, is a Tunisian national who was born in 1980 and lived in Frankfurt am Main.

On 1 August 2017 the Ministry of the Interior of the Land of Hessen ordered the applicant's deportation because he was deemed to pose a threat to national security (so-called "Gefährder"), and declared that order to be enforceable immediately. A request for interim measures to the Federal Administrative Court by Haykel Saidani was rejected in September 2017 on the condition that the Tunisian authorities would provide diplomatic assurances. In March 2018 the Federal Administrative Court amended its decision and rejected the applicant's request altogether. It considered that there was a real risk that the applicant would be sentenced to death or to a life sentence in Tunisia. However, in light of the moratorium on carrying out capital punishment and the assurances given by the Tunisian authorities, there was no real risk that the applicant would be executed. Should the applicant be sentenced to the death penalty, that sentence would *de facto* amount to a life sentence as there was information available that each and every death penalty was sooner or later commuted into life sentences by way of a Presidential pardon. Subsequently, the person serving a life sentence could apply for review and parole after having served 15 years in prison.

By a decision of 4 May 2018, served on 7 May 2018, the Federal Constitutional Court declined to consider the constitutional complaint by Mr Saidani for adjudication. It found that the Federal Administrative Court had comprehensively established, in fact and in law, the circumstances of the case. It endorsed the finding that the applicant, even if he were sentenced to the death penalty, would not have a well-founded fear of that sentence being executed. In so far as death penalty constituted *de facto* a life sentence, the Federal Administrative Court had not exceeded its margin of appreciation when it considered the sentence which the applicant could expect in Tunisia to be reducible and that the applicant had a realistic chance, both *de jure* and *de facto*, to be released after having served a certain period of time in prison. That determination was supported by factual submissions by the Tunisian authorities and reports on that country. There were no indications that the existing possibilities of commuting a death penalty into a life sentence and of subsequently

reducing that sentence would not be applied to persons convicted under the new Anti-Terrorism Act. The Tunisian President had previously pardoned persons convicted of terrorist offences.

The European Court of Human Rights decided on 7 May 2018 to reject a request for an interim measure to stay the deportation of Haykel Saidani from Germany to Tunisia.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 2 May 2018.

Relying on Articles 2 and 3 of the Convention and Article 1 of Protocol No. 13, the applicant complained that he faced the risk of death penalty in connection with terrorism charges and that that penalty would neither be commuted into a life sentence nor be reducible. He alleged in particular that there was no sufficient mechanism in Tunisia to review and possibly reduce a life sentence given to persons originally sentenced to the death penalty.

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

Yonko **Grozev** (Bulgaria), *President*,
Angelika **Nußberger** (Germany),
Lətif **Hüseynov** (Azerbaijan),

and also Milan **Blaško**, *Deputy Registrar*.

Decision of the Court

Articles 2 and 3 of the Convention and Article 1 of Protocol No. 13

The Court reiterated that Article 2 of the Convention and Article 1 of Protocol No. 13 prohibited the extradition or deportation of an individual to another State where he or she would face a real risk of being subjected to the death penalty, as did Article 3 of the Convention in relation to a real risk of inhuman or degrading treatment.

The Court noted that the charges against Mr Saidani in Tunisia carried the death penalty and that the Tunisian authorities had confirmed that there was a real risk that that sentence would be delivered. However, since every death penalty judgment was sooner or later commuted to a life sentence by a pardon by the Tunisian President, Mr Saidani could not claim to have a well-founded fear of being executed. The Court endorsed the domestic courts' risk assessment in the light of the Tunisian moratorium on carrying out executions, also taking into account the fact that the Tunisian authorities had provided diplomatic assurances to that end in the applicant's case.

Furthermore, the Court agreed with the domestic courts' findings that the life sentence to be expected by Mr Saidani was reducible and that he had a realistic prospect of being released after serving a certain period of time in prison. He would have two instruments constituting valid possibilities for reducing his sentence, either following the procedure on parole set out in the Tunisian Code of Criminal Procedure or by way of another presidential pardon.

Lastly, the Court was satisfied that the mechanism for reviewing the life sentence met the criteria set out by the Court under Article 3: it was based on objective, pre-determined criteria of which a prisoner could be aware at the time of the imposition of the sentence. Thus, it was sufficiently foreseeable for Mr Saidani that the death penalty would eventually be commuted to a life sentence and that the possibility of subsequent release on parole would be governed not only by the rules on pardoning but also by the provisions of the Tunisian Code of Criminal Procedure.

Since the Court did not see any reason to depart from the findings and conclusions of the domestic courts, it unanimously rejected the application as manifestly ill-founded.

The decision 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.