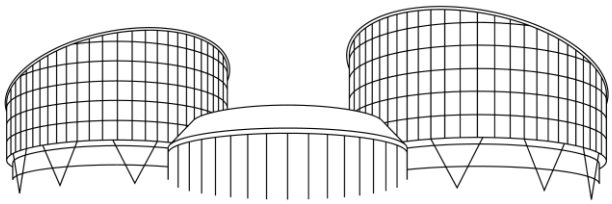

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF DBOUBA v. TURKEY

(Application no. 15916/09)

JUDGMENT

STRASBOURG

13 July 2010

FINAL

13/10/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Dbouba v. Turkey**,**

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
Danutė Jočienė,
András Sajó,
Nona Tsotsoria,
Işıl Karakaş,
Kristina Pardalos, *judges,*
and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 22 June 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 15916/09) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Tunisian national, Mr Saafi Ben Fraj Dbouba ("the applicant"), on 24 March 2009.

2. The applicant, who had been granted legal aid, was represented by Mr M. Sfar, the president of the *Collectif de la Communauté Tunisienne en Europe*, a non-governmental organisation in Paris. Mr Sfar was approved by the President of the Chamber to represent the applicant in the proceedings before the Court pursuant to Rule 36 § 4 (a) of the Rules of Court. The Turkish Government ("the Government") were represented by their Agent.

3. On 24 March 2009 the acting President of the Chamber to which the case had been allocated decided, in the interests of the parties and of the proper conduct of the proceedings before the Court, to indicate to the Government of Turkey, under Rule 39 of the Rules of Court, that the applicant should not be deported to Tunisia until the Court comes to a conclusion regarding the application.

4. On 24 June 2009 the President of the Second Section decided to give notice of the application to the Government. It was also decided that the admissibility and merits of the application would be examined together (Article 29 § 3) and that the case would be given priority (Rule 41).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1967 and is currently being held in the Gaziosmanpaşa Foreigners' Admission and Accommodation Centre in Kırklareli.

A. The applicant's arrival in Turkey and the criminal proceedings brought against him

6. In 1986 the applicant became an active sympathiser of the Islamic Tendency Movement, an illegal organisation in Tunisia. In 1989 the organisation was renamed *Ennahda*. He was arrested and questioned by the police on various occasions. As a result of persecution by Tunisian security forces, the applicant left Tunisia in 1990 and arrived in Syria, via Libya and Egypt. In 1992 he went to Italy and in 1994 he returned to Syria.

7. According to the applicant's submissions, in 1996, when the applicant went to the Tunisian consulate in Damascus, Syria, to renew his passport, he was detained and questioned by Tunisian officials there. Subsequently, he left Syria and arrived in Turkey.

8. Between 1996 and 2007 the applicant lived in the province of Şanlıurfa without a residence permit.

9. On 19 June 2007 the applicant was arrested by officers from the Anti-Terrorist Branch of the Şanlıurfa Police Headquarters within the context of a police operation conducted against al-Qaeda. On 20 June 2007 he was transferred to the Bursa police headquarters. On 22 June 2007 the Bursa Magistrates' Court ordered his pre-trial detention.

10. On 9 August 2007 the Istanbul public prosecutor filed a bill of indictment with the Istanbul Assize Court, charging the applicant and twenty-two others with membership of al-Qaeda. As regards the applicant, the public prosecutor noted that he was protected by another suspect, the person who was responsible for the Bursa area, and gave Arabic lessons to members of al-Qaeda.

11. On 24 January 2008 the Istanbul Assize Court held the first hearing on the merits of the case. During the hearing the applicant made statements to the effect that his asylum request had been rejected at the end of 1996 and he had been living in Turkey for more than ten years. He further maintained that he had not been involved in the activities of al-Qaeda and that he could not return to Tunisia because he risked ill-treatment and the death penalty in his home country. At the end of the hearing, the court decided to release the applicant pending trial. The court however banned the applicant from leaving the country.

12. According to the information in the case file, the criminal proceedings against the applicant are still pending before the first-instance court.

B. Deportation proceedings

13. On an unspecified date the applicant reapplied to the Office of the United Nations High Commissioner for Refugees ("the UNHCR") and requested to be recognised as a refugee.

14. Following his release from pre-trial detention and prior to his placement in a foreigners' admission and accommodation centre, on 25 January 2008 the applicant was questioned by two police officers at the foreigners' department of the Kocaeli police headquarters. According to the document containing his statements, the applicant was informed that a procedure for his deportation had been initiated. He was then asked to make statements as to his application to the UNHCR. The applicant maintained that his lawyer had contacted the UNHCR on his behalf and that he had been interviewed by the UNHCR on 18 January 2008. The applicant further contended that he did not wish to be sent to Tunisia, as he risked the death penalty and ill-treatment in his country of origin.

15. On 5 March 2008 the director of the department responsible for foreigners, borders and asylum attached to the General Police Headquarters requested the Kocaeli governor's office to ensure the applicant's removal from Turkey. The applicant could not however be deported, on account of the decision of the Istanbul Assize Court banning him from leaving Turkey.

16. On 17 October 2008 the deputy director of the Kocaeli police headquarters requested the Istanbul Assize Court to annul its decision banning the applicant from leaving the country. He stated in his letter that the applicant had provoked others in the Centre and had started a protest by not accepting the meals served. The deputy director also noted that the applicant was a person liable to be deported under Article 19 of Law no. 5683.

17. On 3 December 2008 the applicant was recognised as a refugee under the UNHCR mandate.

18. On 23 December 2008 the applicant made an official application to the Ministry of the Interior for temporary asylum in Turkey. He was interviewed by officials from the Ministry of the Interior about his request between 9 and 12 November 2009, but has not been informed of the outcome of that interview.

19. In the meantime, on 22 January 2009 the Istanbul Assize Court set aside its decision of 24 January 2008.

20. According to the Government's submissions, the procedure for the applicant's deportation had been re-initiated following the decision of the Istanbul Assize Court of 22 January 2009. However, the procedure was suspended due to the application of the Rule 39 measure. The Government

maintained that the applicant had been living in Turkey without seeking asylum. He had sought asylum only after it had been decided to remove him from Turkey. His request for temporary asylum was rejected since he was a suspected al-Qaeda member and therefore his presence in Turkey endangered national security and public order.

21. According to a letter of 14 September 2009 written by Mr Rashid Ghannouchi, one of the founders and the chairman of *Ennahda*, the applicant is a member of the Ennahda Party of Tunisia and would be at risk of imprisonment and torture if removed to Tunisia on account of his affiliation with that organisation.

C. The applicant's placement in the Kocaeli police headquarters and the Kırklareli Foreigners' Admission and Accommodation Centre

22. The applicant was placed in the anti-terrorist branch of the Kocaeli police headquarters following the decision of the Istanbul Assize Court dated 24 January 2008 (see paragraph 11 above).

23. On 11 March 2008 the applicant was transferred to Kırklareli Foreigners' Admission and Accommodation Centre, where he is currently being held.

24. As regards the conditions in which he was kept in the Kocaeli and Kırklareli facilities, the applicant submitted that in Izmit he had been kept in a 9 sq.m cell where there were two benches of 0.75 x 0.90 metres. He had to call the warders when he needed to go to the toilet. He was given a meal once a day and did not have the right to leave his cell. During his detention in Izmit he had no access to his family or his lawyer. He therefore started a hunger strike, as a result of which he was allowed to see his lawyer three times.

25. As to the Kırklareli Foreigners' Admission and Accommodation Centre, the applicant maintained that he had been held in a 16 sq.m room with three other detainees. He was provided with meals three times a day. However, the food was of very poor quality. There was no drinkable water and therefore he was obliged to buy mineral water. He also noted that the detainees were not provided with any hygiene or cleaning products and that the warders had an aggressive attitude towards the detainees.

26. The Government submitted that the applicant was held in satisfactory material conditions in Kocaeli Police Headquarters and the Kırklareli Centre, where he was accommodated.

II. RELEVANT LAW AND PRACTICE

27. A description of the relevant domestic law and practice can be found in the case of *Abdolkhani and Karimnia v. Turkey* (no. 30471/08, §§ 29-44, 22 September 2009).

28. A description of the situation of *Ennahda* members in Tunisia can be found in *Saadi v. Italy* ([GC] (no. 37201/06, §§ 65-79, ECHR 2008-...).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION

29. The applicant complained under Article 3 of the Convention that his removal to Tunisia would expose him to a real risk of torture and other forms of ill-treatment on account of his affiliation with *Ennahda*. He further submitted, without relying on any Article of the Convention, that he had not been interviewed by the competent authorities regarding his asylum request until November 2009, and has not been informed of the outcome of that interview. The applicant also contended that he was not able to challenge the decision to deport him as he had not been informed of any deportation order made in his respect.

30. The Court considers that the second limb of the applicant's aforementioned complaints should be examined from the standpoint of Article 13 of the Convention.

A. Admissibility

31. The Government submitted that the applicant had failed to exhaust the domestic remedies available to him, within the meaning of Article 35 § 1 of the Convention. They maintained in this connection that the applicant could and should have applied to the administrative courts and requested that the decision of the domestic authorities to refuse him temporary asylum be set aside, as should the decision to deport him taken in accordance with Article 125 of the Constitution.

32. The applicant submitted that he could not have challenged decisions which had not been served on him.

33. The Court reiterates that it has already examined and dismissed an identical objection by the respondent Government in the case of *Abdolkhani and Karimnia* (cited above, §§ 56-59). The Court finds no particular circumstances in the instant case which would require it to depart from this jurisprudence. The Court accordingly rejects the Government's objections.

34. The Court observes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

35. The Government submitted that the applicant's request for temporary asylum had been examined and rejected by the competent authorities. They noted in this connection that the applicant had not sought asylum for several years, despite the fact that he had been living in Turkey all that time. They submitted that the applicant had also travelled to Tunisia twenty-nine times in 1995 and 1996. In support of their submissions, the Government submitted a document which stated that the applicant had left Turkey from Hatay, the city situated on the border between Turkey and Syria. The Government further maintained that the applicant was accused of being a member of al-Qaeda and that he therefore posed a threat to national security and public order in Turkey. The Government considered that the applicant's removal to Tunisia would not expose him to any risk.

36. The Government further reiterated that the applicant could have applied to administrative courts and requested that the decisions taken in his respect in accordance with Article 125 of the Constitution be set aside. In support of their claim, the Government submitted copies of four Supreme Administrative Court decisions upholding first-instance court judgments annulling deportation orders issued in respect of four asylum seekers.

37. The applicant disputed the Government's submissions. He insisted that he had not been a member of a terrorist organisation but of *Ennahda*. The applicant further contended that he had applied to the UNHCR, requesting refugee recognition as early as 1997. He also noted that during 1995 and 1996 he had gone not to Tunisia but to Syria, since during those years he had been exporting textile products from Turkey to Syria. The applicant submitted that he had applied to the Turkish authorities immediately after he had been recognised as a refugee by the UNHCR. He noted in this connection that, despite the Government's submissions regarding the rejection of his temporary asylum request, he was interviewed by officials from the Ministry of the Interior in relation to his temporary asylum request between 9 and 12 November 2009. He was not however informed of the outcome of this interview (paragraph 18 above). The applicant finally submitted that he could not challenge the deportation decision and the decision rejecting his asylum claim, since they had not been served on him.

38. As regards the applicant's submissions under Article 3 of the Convention, the Court observes at the outset that the applicant claimed that he was a member of *Ennahda* and submitted a document according to which one of its founders, the chairman of *Ennahda*, had stated that the applicant was a member of the Ennahda Party of Tunisia and that he would be at risk of imprisonment and torture if returned to Tunisia on account of that affiliation. The Court further observes that the Government did not challenge the veracity of these allegations. The Court therefore finds no reason to doubt that the applicant was a member of *Ennahda* in Tunisia.

39. In this connection the Court reiterates that, in the aforementioned *Saadi* judgment, it observed that the reports of Amnesty International and Human Rights Watch on Tunisia described a disturbing situation. It noted that those reports mentioned numerous and regular cases of torture and ill-treatment meted out to persons accused of terrorism (see *Saadi*, cited above, § 143). The Court sees no ground to depart from its findings in the *Saadi* judgment in the present case.

40. The Court further observes that, when the applicant made statements before the Istanbul Assize Court on 24 January 2008 and to the police on 25 January 2008, he mentioned that he did not wish to return to Tunisia as he risked being subjected to ill-treatment there. Before the police, he further noted that he had reapplied to the UNHCR. However, according to documents dated 5 March and 17 October 2008, the national authorities planned his deportation without an examination of his statements. Furthermore, the Government did not reply to the applicant's submissions that he had not been interviewed in relation to his temporary asylum claim before November 2009. Nor did they submit the documents relevant to this examination. They only submitted that the applicant's request for temporary asylum had been rejected since he was a suspected al-Qaeda member and, therefore, his presence in Turkey endangered national security and public order. The Court reiterates the absolute nature of Article 3 of the Convention: it is not possible to weigh the risk of ill-treatment against the reasons put forward for the expulsion in order to determine whether the responsibility of a State is engaged under Article 3, even where such treatment is inflicted by another State. The conduct of the person concerned, however undesirable or dangerous, cannot be taken into account (see *Chahal v. the United Kingdom*, 15 November 1996, § 81, *Reports of Judgments and Decisions* 1996-V; *Saadi,* cited above, § 138; *Abdolkhani and Karimnia*, cited above, § 91).

41. In these circumstances the Court is not persuaded that the national authorities examined his claims and took into account the requirements of Article 3 of the Convention. It fell to the branch office of the UNHCR to interview the applicant about the background to his asylum request and to evaluate the risk to which he would be exposed on the ground of his political opinions.

42. The Court for its part must give due weight to the UNHCR's conclusion on the applicant's claim regarding the risk he would face if he were to be removed to Tunisia (see *Jabari v. Turkey*, no. 40035/98, § 41, ECHR 2000-VIII; *NA. v. the United Kingdom,* no. 25904/07, § 122; *Abdolkhani and Karimnia*, cited above, § 82). The Court observes in this connection that, when the UNHCR interviewed the applicant, it had the opportunity to test the credibility of his fears and the veracity of his account of the circumstances in his home country. Following this interview, it found that the applicant risked persecution in his country of origin.

43. In the light of the UNHCR's assessment, the Court finds that there are substantial grounds for accepting that the applicant risks a violation of his rights under Article 3, if returned to his country of origin.

44. As to the applicant's complaint under Article 13 of the Convention, the Court notes that it is has already found that the applicant's allegations regarding the risk of ill-treatment and death in Tunisia had not been subject to a meaningful examination by the national authorities (see paragraph 41 above). Moreover, the Government failed to demonstrate that the applicant had been served with the decision rejecting his temporary asylum claim and the deportation order. The Court cannot attach weight to their submission that the applicant had been informed about the deportation procedure on 25 January 2008, since they failed to show that there had actually been a written decision served on him. Besides, following the re-initiation of the deportation procedure on 22 January 2009, the authorities once again failed to notify the applicant. Nor was the applicant ever served with the decision apparently refusing his temporary asylum request. In these circumstances, the Court is led to conclude that the applicant was not afforded an effective and accessible remedy in relation to his allegations that he risked ill-treatment and death in Tunisia. Finally, as regards the Government's submission that the applicant could have applied to the administrative courts, the Court reiterates that the judicial review of deportation cases in Turkey, as currently practised, cannot be regarded as an effective remedy, since an application for the annulment of a deportation order does not have automatic suspensive effect (see *Abdolkhani and Karimnia*, cited above, § 116).

45. Consequently, the Court concludes that there would be a violation of Article 3 of the Convention if the applicant were to be removed to Tunisia. It further concludes that there has been a violation of Article 13 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

46. The applicant complained under Article 5 § 1 of the Convention that his detention was unlawful. He further contended under Article 5 § 2 of the Convention that he had not been informed of the reasons for his detention from 25 January 2008 onwards. The applicant also maintained under Article 5 § 4 of the Convention that he was not able to challenge the lawfulness of his detention. The applicant finally submitted under Article 5 § 5 of the Convention that he could not claim compensation for the aforementioned violations of Article 5.

A. Admissibility

47. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

48. The Government maintained that the applicant was accommodated in the Kırklareli Foreigners' Admission and Accommodation Centre. The reason for the applicant's placement in this centre was the authorities' need for his surveillance pending deportation proceedings. The Government contended that this practice was based on section 23 of Law no. 5683 and section 4 of Law no. 5682. They further contended that the applicant had been informed of his situation on 25 January 2008, when he had been questioned by the police following his release pending trial. As regards the applicant's complaints under Article 5 §§ 4 and 5, the Government submitted that the applicant could have applied to the administrative courts.

49. The applicant submitted that he was detained and that his detention did not have a sufficient legal basis in domestic law. He further maintained that the document containing his police statements of 25 January 2008 could not be considered as a notification of the reasons for his detention, since there was no reference to his subsequent detention in this document. The applicant repeated that he could neither challenge the lawfulness of his detention nor claim compensation for infringements of his rights under Article 5 §§ 1, 2 and 4 before the national courts.

2. The Court's assessment

a. Article 5 § 1 of the Convention

50. The Court reiterates that it has already examined the same grievance in the case of *Abdolkhani and Karimnia* (cited above, §§ 125-135). It found that the placement of the applicants in the Kırklareli Foreigners' Admission and Accommodation Centre in that case constituted a deprivation of liberty and concluded that, in the absence of clear legal provisions establishing the procedure for ordering and extending detention with a view to deportation and setting time-limits for such detention, the deprivation of liberty to which the applicants were subjected was not “lawful” for the purposes of Article 5 of the Convention.

51. The Court has examined the present case and finds no particular circumstances which would require it to depart from this previous case-law. There has therefore been a violation of Article 5 § 1 of the Convention.

b. Article 5 §§ 2, 4 and 5 of the Convention

52. The Court observes that, according to the document referred by the Government dated 25 January 2008, two police officers took the applicant's statements in relation to his application to the UNHCR. The applicant was told that he had been released pending trial on the charge of membership of al-Qaeda and that a deportation procedure had been initiated in his respect. The document in question does not contain any information as to the grounds for the applicant's detention in the Kocaeli police headquarters. In the absence of any other document in the case file to show that the applicant was formally notified of the grounds for his detention, the Court is led to the conclusion that the reasons for the applicant's detention from 25 January 2008 onwards were never communicated to him by the national authorities (see *Abdolkhani and Karimnia*, cited above, § 138).

53. The Court further observes that the Government did not make any submission relevant to the present case demonstrating that the applicant had had at his disposal any procedure by which the lawfulness of his detention could have been examined by a court and which allowed him to claim compensation for the violation of his rights enshrined under Article 5 §§ 1, 2 and 4. They merely submitted that foreigners in Turkey had the right to lodge actions with administrative courts in accordance with Article 125 of the Constitution. Nor have they provided the Court with any example where administrative courts speedily examined and ordered the release of an asylum seeker on grounds of unlawfulness and granted compensation for his or her unlawful detention.

54. Moreover, the Court has already found that the applicant was not informed of the reasons for the deprivation of his liberty from 25 January 2008 onwards (see paragraph 52 above). It considers that this fact in itself meant that the applicant's right of appeal against his detention was deprived of all effective substance (see *Abdolkhani and Karimnia*, cited above, § 141; *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 432, ECHR 2005-III). Accordingly, the Court concludes that the Turkish legal system did not provide the applicant with a remedy whereby he could obtain judicial review of the lawfulness of his detention within the meaning of Article 5 § 4 of the Convention (see *S.D. v. Greece*, no. 53541/07, § 76, 11 June 2009).

55. In the light of the above, the Court concludes that there has been a violation of Article 5 §§ 2, 4 and 5 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION WITHIN THE CONTEXT OF THE APPLICANT'S DETENTION

56. The applicant complained, without relying on any Article of the Convention, that the conditions of his detention in the Kocaeli Police Headquarters and the Kırklareli Foreigners' Admission and Accommodation Centre were poor.

The Court considers that this part of the application should be examined from the standpoint of Article 3 of the Convention.

57. The Government contested the applicant's argument.

58. In so far as the applicant's allegations concern the conditions of his detention in the Kocaeli Police Headquarters and in the absence of any procedure in domestic law, the Court observes that the applicant was transferred to the Kırklareli centre on 11 March 2008, while the application was lodged with the Court on 24 March 2009. This part of the application has therefore been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

59. In so far as the applicant's allegations concern the detention conditions in the Kırklareli Foreigners' Admission and Accommodation Centre, where the applicant is currently being held, the Court notes that it has already examined almost identical allegations and found that the material conditions in that centre were not so severe as to bring them within the scope of Article 3 of the Convention (see, for example, *Z.N.S. v. Turkey*, no. 21896/08, §§ 79-87, 19 January 2010).

60. Having examined the parties' submissions, the Court considers that the applicant has not put forward any new argument capable of persuading it to reach a different conclusion in the present case. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

62. The applicant claimed 12,500 euros (EUR) in respect of pecuniary damage for loss of income during the time spent in detention. He further claimed a total of EUR 235,000 in respect of non-pecuniary damage he had suffered as a result of violations of his rights under Articles 3 and 5 of the Convention.

63. The Government contested these claims, submitting that they were unsubstantiated and excessive.

64. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicant must have suffered non-pecuniary damage which cannot be compensated solely by the finding of violations. Having regard to the gravity of the violations and to equitable considerations, it awards the applicant EUR 11,000 for non-pecuniary damage.

65. The Court further considers, having regard to the particular circumstances of the case, to its finding of a violation of Article 5 § 1 of the Convention and to the urgent need to put an end to that violation, that the respondent State must secure the applicant's release at the earliest possible date (see *Assanidze v. Georgia* [GC], no. 71503/01, §§ 201-203, ECHR 2004-II).

B. Costs and expenses

66. The applicant claimed a total of EUR 6,000 for the legal fees of his representative in Turkey, EUR 5,250 for his legal representation before the Court and EUR 262 for telephone, fax and postal expenditure. In support of his claims, the applicant submitted two bills of costs prepared by his representatives.

67. The Government contested these claims, noting that only costs actually incurred could be reimbursed.

68. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 for costs and expenses in the domestic proceedings and EUR 3,000 for the proceedings before the Court.

C. Default interest

69. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 3 and 13 of the Convention (in relation to the deportation proceedings), as well as the complaints under Article 5 §§ 1, 2, 4 and 5 of the Convention, admissible and the remainder of the application inadmissible;

2. *Holds* that the applicant's deportation to Tunisia would be in violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 13 of the Convention, in relation to the applicant's complaint under Article 3 of the Convention;

4. *Holds* that there has been a violation of Article 5 §§ 1, 2, 4 and 5 of the Convention;

5. *Holds*
   (a) that the respondent State must secure the applicant's release at the earliest possible date;
   (b) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Turkish liras (TRY) at the rate applicable on the date of settlement:
      (i) EUR 11,000 (eleven thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
      (ii) a total of EUR 4,000 (four thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
   (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Françoise Tulkens
Deputy Registrar	President