



## The Court does not stop the deportation to Tunisia of a person deemed to be a “terrorist threat” to Germany

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

On 1 August 2017 the Ministry of the Interior of the Land of Hessen ordered the applicant’s deportation because he was deemed to be a “terrorist threat” (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 whole-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 whole-life sentence as there was information available that each and every death penalty was sooner or later commuted into whole-life sentences by way of a Presidential pardon. Subsequently, the person serving a whole-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 held 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 whole-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 in law or in fact that the existing possibilities of commuting a death penalty into a whole-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.

Mr Saidani’s lawyer applied to the Court for an interim measure (Rule 39 of the Rules of Court<sup>1</sup>) ordering a stay of the deportation. The lawyer complained under Articles 2 and 3 that the applicant faced the risk of death penalty in connection with the terrorism charges and that that penalty would neither be commuted into a whole-life sentence nor be reducible. The Court today decided not to stay the deportation.

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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.