Nr. 6: Al Hanchi in democratisch Tunesië

Europees Hof voor de Rechten van de Mens 15 november 2011, Appl. No. 48205/09 (Bratza, Lech Garlicki, Mijović, Hirvelä, Nicolaou, Bianku, De Gaetano)

De Tunesiër Al Hanchi komt tijdens de oorlog van 1992-1995 naar Bosnië en sluit zich aan bij de buitenlandse Moedjahedien. Hij blijft na de oorlog in Bosnië en verkrijgt eind 1995 een identiteitskaart op basis van vervalste gegevens. In 1997 trouwt hij met een Bosnische vrouw met wie hij twee kinderen krijgt. In april 2009 stelt de vreemdelingendienst vast dat hij illegaal verblijft en hij wordt in vreemdelingenbewaring geplaatst. In mei 2009 stelt de vreemdelingendienst vast dat hij een bedreiging vormt voor de nationale veiligheid. Zijn uitzetting wordt bevolen en hij wordt ongewenst verklaard voor de duur van vijf jaar. In juli 2009 vraagt Al Hanchi asiel, waarbij hij stelt dat leden van de buitenlandse Moedjahedien in Tunesië worden verdacht van terrorisme en daarom mishandeld. Het asielverzoek wordt afgewezen in augustus 2009. Het hiertegen ingesteld beroep loopt nog bij het Grondwettelijk Hof.
Het Hof overweegt dat de democratische overgang in Tunesië in volle gang is en dat reeds stappen zijn gezet om de onderdrukkende structuren van het voormalige bewind te ontmantelen. De veiligheidsdienst is opgeheven, aan alle politieke gevangenen is amnestie verleend en in een aantal gevallen is vervolging ingesteld tegen hooggeplaatste ambtenaren die zich schuldig hebben gemaakt aan marteling. Ook is Tunesië toegetreden tot de facultatieve protocollen bij het Anti-Folterverdrag en het IVBPR, waardoor het zich heeft onderworpen aan internationale toezichtmechanismen. Hieruit blijkt, aldus het Hof, dat het nieuwe bewind vastbesloten is om een definitief einde te maken aan de cultuur van geweld en straffeloosheid die heerste onder het voormalige regime. Gelet hierop loopt Al Hanchi geen reëel risico op mishandeling in Tunesië.

Art. 3 EVRM

Al Hanchi
tegen
Bosnië-Herzegovina

Procedure
1. The case originated in an application (no. 48205/09) against Bosnia and Herzegovina lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Tunisian citizen, Mr Ammar Al Hanchi ("the applicant"), on 19 August 2009.

2. The applicant was represented by Mr K. Kolić and Vaša prava, a local non-governmental organisation. The Bosnian-Herzegovinian Government ("the Government") were represented by their Agent, Ms M. Mijić.
3. The applicant alleged, in particular, that his deportation would expose him to the risk of treatment contrary to Article 3 of the Convention and that his detention amounted to a breach of Article 5 § 1 of the Convention.
4. On 10 December 2009 the President of the Fourth Section of the Court decided, in the interests of the parties and the proper conduct of the proceedings, to indicate to the Government that the applicant should not be expelled to Tunisia until 15 January 2010 (Rule 39 of the Rules of Court).
5. On 12 January 2010 a Chamber of the Fourth Section of the Court decided to give notice of the application to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1) as well as to extend the interim measure mentioned above pending the Constitutional Court's decision on the applicant's application for interim measures and for a period of seven days following notification of that decision to the applicant.
6. On 2 February 2010 the Chamber decided to extend the interim measure of 10 December 2009 until further notice.
7. In the light of the change of regime in Tunisia, on 8 March 2011 the Chamber decided that the parties should be invited to submit further written observations on the admissibility and merits of the application (Rule 54 § 2 (c) of the Rules of Court).

The facts
I. The circumstances of the case
8. The applicant was born in Tunisia in 1965. 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 in the *Hadžihasanović and Kubura* judgment, as follows:
"411. Witnesses for both the Prosecution and Defence agreed that the foreign mujahedin began to arrive in Zenica and Travnik during 1992, particularly in the second half of the year.
412. At that time, the borders of the RBiH (Republic of Bosnia and Herzegovina) were controlled by the organs of Republika Srpska or HVO authorities, which made it very difficult for the RBiH legal authorities, more specifically the MUP (Ministry of the Interior), to control the entry and movements of foreigners in the RBiH. Foreign mujahedin reached Bosnia via the Republic of Croatia and via Herzegovina where the HVO had established power. They frequently arrived as members of humanitarian organisations and did not register with the RBiH authorities.
413. Most of the foreign mujahedin came from the countries of North Africa, the Near East and the Middle East, i.e. Algeria, Afghanistan, Saudi Arabia, Qatar, Egypt, Iran, Pakistan, Tunisia, Turkey and Yemen. Some also came from European countries, but how many is not known.
414. Foreign mujahedin were easily recognisable by their traditional clothing and dark complexion. They had long beards and wore turbans or hats. Some wore camouflage uniforms or parts of camouflage uniforms, while others wore long white robes. There were also those with scarves around their head and neck. Most of them did not know the Bosnian language and spoke only Arabic. The foreign mujahedin carried automatic rifles and rocket launchers. Some had sabres or long knives. Some witnesses recognised the insignia the foreign mujahedin wore on their shoulders.
415. According to the evidence characterising the position of the foreign mujahedin, the term 'mujahedin' refers to Muslims fighting a *jihad*, or holy war. The foreign mujahedin went to Bosnia in order to help their Muslim brothers defend themselves against the Serbian aggressor and intended to leave the country once peace had been re-established. According to these same sources, the foreign mujahedin also wanted to spread their beliefs, which they felt were the most faithful expression of Islamic texts.
416. Most foreign mujahedin in Central Bosnia seem to have arrived as members of humanitarian organisations. Defence witnesses agreed that during the first phase they were involved in humanitarian activities. They provided quite significant aid to the local Muslim population, particularly food, and organised classes in religious instruction.
417. Starting in the second half of 1992 when conflicts broke out in Central Bosnia, foreign mujahedin became fighters. They furnished the local population with weapons and uniforms and provided military training. As explained below, the foreign mujahedin took part systematically in combat side by side with the ABiH.
418. Given their humanitarian involvement, the foreign mujahedin initially enjoyed a degree of trust and had the support of the local population. Young men, even minors, joined them. ABiH soldiers deserted their own units to join the ranks of the foreign mujahedin, especially in order to benefit from their material support. Some of the mujahedin married girls from the region. Over time, however, the foreign mujahedin tried to promote their view of fundamental Islam. They ordered the Bosnian women to cover their heads, condemned the consumption of alcohol and insisted that the local Muslims practice their religion. The foreign mujahedin burst into cafés and restaurants that served alcohol and if they saw a woman or young girl dressed in what they considered inappropriate fashion, they voiced their strong opposition. As a result of this rigid attitude, relations between the foreigners and the local population deteriorated."
9. Although he had never been given citizenship or a residence permit in Bosnia and Herzegovina, on 28 December 1995 the applicant obtained a national identity card on the basis of a forged decision of 15 February 1992 granting citizenship to a certain Marvon Mufti (that national identity card was revoked in

2002). In 1997 the applicant married a citizen of Bosnia and Herzegovina. They have two children, born in 1998 and 2000. It would appear that the applicant never returned to Tunisia after the 1992-95 war.
10. On 24 April 2009, during a random check, the Aliens Service of the Ministry of Security found that the applicant was an illegal immigrant in Bosnia and Herzegovina and placed him in Istočno Sarajevo Immigration Centre for deportation purposes. On 14 May 2009 he lodged an application for judicial review through his counsel, but the application was ultimately rejected as out of time. The initial detention period was extended on a monthly basis. Each of the extension orders was then upheld by the Court of Bosnia and Herzegovina ("the State Court") and some of them by the Constitutional Court. Appeals concerning the remaining extension orders are still pending before the Constitutional Court.
11. On 19 May 2009 the Aliens Service established that the applicant was a threat to national security, ordered his deportation and prohibited his re-entry for a period of five years. It relied on secret intelligence reports. On 22 June 2009 the Ministry of Security upheld the decision. On 10 November 2009 the State Court, having assessed the secret evidence, also upheld the deportation order. An appeal is pending before the Constitutional Court.
12. On 24 July 2009 the applicant claimed asylum. He maintained that Tunisian citizens who had joined the foreign mujahedin during the war in Bosnia and Herzegovina were treated in Tunisia as suspected terrorists and were subjected to ill-treatment. He added that Tunisian authorities had visited his family and had enquired about him shortly after the opening of his deportation proceedings. The applicant could not explain, however, how those authorities had learned about his activities in Bosnia and Herzegovina. The applicant submitted a statement by Mr Kousri, a Tunisian human-rights activist, asserting that a certain Badredine Ferchichi had been sentenced by a Tunisian military tribunal to three years' imprisonment for having fought in the war in Bosnia and Herzegovina.
13. On 27 July 2009 the Asylum Service interviewed the applicant with the help of an interpreter since the applicant did not speak any of the official languages of Bosnia and Herzegovina. It also had regard to reports of the United States Department of State, Amnesty International and Human Rights Watch on Tunisia, which mentioned many cases of ill-treatment meted out to suspected terrorists. The practices reported included hanging from the ceiling, threats of rape, administration of electric shocks, immersion of the head in water, beatings and cigarette burns. Allegations of ill-treatment were reportedly not investigated by the Tunisian authorities.
14. On 7 August 2009 the Asylum Service refused the asylum claim. It held that it had not been shown that the applicant would indeed be treated in Tunisia as a suspected terrorist and that he therefore did not face a real risk of being subjected to ill-treatment. The statement concerning the situation of Mr Badredine Ferchichi was not admitted to the file because the applicant had failed to provide a translation into an official language of Bosnia and Herzegovina. On 10 November 2009 the State Court upheld that decision. An appeal is pending before the Constitutional Court.
15. On 3 December 2009 the applicant lodged an application for interim measures with the Constitutional Court asking that his deportation be stayed pending the Constitutional Court's decision on the merits of the case.
16. Removal directions for 10 December 2009 at about 2 p.m., issued on 8 December, were served on the applicant on 10 December at about 10 a.m. The applicant immediately applied for interim measures with the Court and the President of the Fourth Section of the Court granted an interim measure the same day at about 1 p.m. (see paragraphs 4-6 above).
17. On 12 January 2010 the Constitutional Court refused the applicant's application for interim measures. The decision was notified to the applicant on 1 February 2010.
18. The applicant is still in Istočno Sarajevo Immigration Centre.

II. Relevant domestic law

A. Secret Data Act 2005

19. The Secret Data Act 2005 (*Zakon o zaštiti tajnih podataka*, Official Gazette of Bosnia and Herzegovina nos. 54/05 and 12/09) entered into force on 17 August 2005. Section 5 of that Act provides that the judges of the State Court and the Constitutional Court have access to all levels of secret data without any formalities (such as security clearance or special authorisation), if such access is required for exercising their duties.

B. Aliens Act 2008

1. Eligibility for international protection (refugee status and subsidiary protection) and for leave to remain on humanitarian grounds

20. The Aliens Act 2008 (*Zakon o kretanju i boravku stranaca i azilu*, Official Gazette of Bosnia and Herzegovina no. 36/08) entered into force on 14 May 2008. Section 105 thereof provides that a refugee is an alien who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside his or her country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside the country of former habitual residence, is unable or, owing to such fear, is unwilling to return to it. The same provision defines a person eligible for subsidiary protection as an alien who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that he or she would face a real risk of the death penalty or execution, torture or inhuman or degrading treatment or punishment in the country of origin or in the country of habitual residence, or there is a serious, individual threat to a civilian's life or per-

son by reason of indiscriminate violence in situations of international or internal armed conflict, and who is unable, or, owing to fear, is unwilling to avail himself or herself of the protection of that country.
The principle of *non-refoulement* is incorporated in section 91 of the Act, which reads as follows:
"An alien shall not be returned or expelled in any manner whatsoever to the frontiers of territories where his or her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion, regardless of whether or not the person concerned has been granted international protection. The prohibition of return or expulsion (*non-refoulement*) shall also apply to persons in respect of whom there is a reasonable suspicion for believing that they would be in danger of being subjected to torture or other inhuman or degrading treatment or punishment. An alien may not be returned or expelled to a country where he or she is not protected from being sent to such a territory either."
Pursuant to section 118 of the Act, an alien whose claim for international protection has been refused will nevertheless be granted leave to remain on humanitarian grounds, if his or her removal would breach the principle of *non-refoulement*. However, the alien concerned must be placed in detention if it has been established that he or she constitutes a threat to public order or national security.

2. Deportation order and removal directions
21. An appeal against a deportation order suspends deportation (section 87 of that Act). A claim for international protection and an application for judicial review against a refusal of such a claim equally suspend deportation (sections 92, 109(9) and 117 of that Act). Pursuant to section 93 of that Act, once an alien has become expellable, removal directions are issued within seven days. An appeal against removal directions does not suspend deportation.

3. Detention for deportation purposes
22. Pursuant to section 99(2)(b) of that Act, an alien must be detained if it has been established that he or she constitutes a threat to public order or national security. Sections 100(3) and 102 of that Act provide that an initial detention order is valid for thirty days, but it may be extended any number of times for up to thirty days at a time. The total period of detention, however, may exceed 180 days only in exceptional circumstances, such as if an alien prevents his or her removal or if it is impossible to remove an alien within 180 days for other reasons.

III. International texts
A. Concerning Bosnia and Herzegovina
23. The General Framework Agreement for Peace, which put an end to the 1992-95 war in Bosnia and Herzegovina, was initialled at a military base near Dayton, the United States, on 21 November 1995 and signed in Paris, France, on 14 December 1995. It entered into force on the latter date.
24. Pursuant to Article III of Annex 1A to that Agreement, all foreign forces, including individual advisors, freedom fighters, trainers, volunteers, and personnel from neighbouring and other States, irrespective of whether they were legally and militarily subordinated to any of the local forces, had to be withdrawn from Bosnia and Herzegovina by 13 January 1996.

B. Concerning Tunisia
25. As to the situation in Tunisia before the recent change of regime, see *Saadi v. Italy* [GC], no. 37201/06, §§ 65-93, 28 February 2008.
26. The Parliamentary Assembly of the Council of Europe has recently looked at the situation in Tunisia after the change of regime (document no.12624 of 1 June 2011). The pertinent part of the explanatory memorandum reads as follows:
"12. For several weeks after the revolution of 14 January 2011, the political situation in Tunisia remained very unstable. The first provisional government, formed by the former Prime Minister Ghannouchi on 17 January with the participation of representatives of the 'legal' opposition parties (the few political formations that existed under the former regime) and independents, succeeded in making a number of decisions tending towards democratisation. But that government soon found itself under pressure from the demonstrators, who demanded the resignation of ministers who had served under Ben Ali.
13. At the same time, the political forces close to the former regime, from Ben Ali's RCD party (Constitutional Democratic Rally) and the security services, tried to stir up trouble in the country in order to shift the transition process towards a new authoritarianism under the guise of 'controlled' political liberalisation.
14. Faced with these attempts, the elements in favour of democratic change, particularly the unions and the active members of civil society, continued to exert pressure on the provisional government through demonstrations. They also began to form a National Council to Defend the Revolution, which demanded the calling of a constituent assembly and the dissolution of all institutions inherited from the Ben Ali era, namely Parliament, the RCD and the political police.
15. At the beginning of February, the two Chambers of Parliament passed a law allowing the Interim President, Fouad Mebazaa, to govern by legislative decree. Parliament was then suspended and dissolved. Moreover, on 19 February the Interim President issued a legislative decree declaring an amnesty for all political prisoners.
16. Among the main decisions of the Ghannouchi government should be noted the banning of the old ruling party, the RCD, as well as the establishment of a commission to reform texts and institutions which was supposed to prepare the democratic transformation of the country.
17. Mention should also be made of the dissolution of the Ministry of Communication (which it would be more accurate to call the ministry of propaganda and censorship) and a degree of liberalisation of the media. Reform of the press still remains to be carried

out, however. Indeed, we have been informed that non-governmental organisations (NGOs) encounter problems if they want to obtain radio frequencies.
18. On 27 February, the second government presided over by former Prime Minister Ghannouchi was forced to resign as a result of pressure from the protesters. The new transition government, headed by Mr Beji Caïd Essebsi, had no members who had been close to the Ben Ali regime and positioned itself as a cabinet of technocrats whose objective was to guarantee calm and stability during the transition period.
19. On 3 March, the Interim President set 24 July 2011 as the date for elections to a Constituent Assembly by direct universal suffrage according to a new electoral code. A specific body called the Higher Authority for Realisation of the Objectives of the Revolution, Political Reform and Democratic Transition was set up to prepare the elections to the Constituent Assembly. Mr Yadh Ben Achour, former Dean of the Tunis Faculty of Legal, Political and Social Sciences, who had resigned from the Constitutional Council in 1992 and was an opponent of the Ben Ali regime, was appointed president of the new body.
20. The Higher Authority, which is composed of 161 members, many of whom are representatives of the political world and civil society, as well as professional lawyers, prepared and submitted to the government in mid-April draft laws on the organisation of the elections and on the electoral commission.
21. In addition, two other independent commissions of inquiry were set up in order to shed light on corruption, the misappropriation of funds by the former regime and abuses committed by the security forces during the events of December 2010-January 2011.
22. On 7 March 2011, the Minister for the Interior announced the dissolution of the State Security Service and the political police.
23. There now seems to be relative, if fragile, political and institutional stability in Tunisia, enabling the provisional authorities to be fairly optimistic about the possibility of preparing the elections. The authorities have, however, let it be known that they may be postponed if all the conditions for a ballot that complies with democratic standards are not met.
24. The fragile nature of the stability was demonstrated by the events of 5 May, which were provoked by statements by the former Tunisian Minister of the Interior, Farhat Rajhi, who announced a 'military *coup d'état*' was being prepared in the event of the Islamists' winning the elections. The government condemned these statements, calling them an attack on public order. The demonstrations that followed this incident turned into a riot, with young Tunisians demanding the resignation of the transitional government and 'a new revolution'. The police had to use teargas and then weapons in order to quell the riot. Several shops and houses were looted. On 7 May, the authorities introduced a curfew in Tunis. Some 600 people were arrested. The curfew was lifted on 18 May 2011."
27. On 21 May 2011, in conclusion of his visit to Tunisia undertaken on invitation of the Government, Juan Mendez, the UN Special Rapporteur on torture and other forms of cruel, inhuman, degrading treatment or punishment, delivered the following statement:
"...
The interim Government has undertaken a series of positive steps, including, considering reforming the State security apparatus and dismantling the so-called political police, initiating security sector reforms, reviewing the national legislation in line with international standards, including *inter alia* removing legal obstacles to reopening the cases of homicide and torture of the past, dismissing a number of high- and mid-ranking officials from the Ministry of Interior and the Ministry of Justice. I am also heartened by the discussions about the establishment of transitional justice mechanisms to address the legacy of past abuses. Encouragingly, the Government has established three advisory commissions.
...
I was told by officials that the practice of torture and ill-treatment has decreased following respective instructions issued by the officials of the security services. This I realised is true as far as the notorious and endemic practice of torture committed during the Ben Ali regime is concerned. However, I have heard credible testimonies regarding beatings of detainees upon arrest or within the first hours of pre-trial detention (*garde a vue)* as well as during interrogation. Such episodes reflect the fact that old habits of police agents are not easily eradicated. Whether they are isolated or more frequent, beatings inflicted as a form of punishment or intimidation reflects complete disrespect for the presumption of innocence and the dignity of persons suspected of crimes. For that reason, every single act of torture is intolerable and elicits the obligation of the State under international law to investigate, prosecute and punish it. I heard testimonies according to which the safeguards during arrest and detention, such as rules governing warrant, compulsory medical examination upon arrest and transfer, notification to the family, access to a lawyer, interrogation in the presence of witnesses, as well as the right against self-incrimination were not respected in practice. Sadly, some of those testimonies were about events that have taken place after the January 14 Revolution.
For example, I learned that in early May the police reacted heavy-handedly to a demonstration by scores of youths. Riot police clashed with protesters and representatives of the media. I heard allegations of arbitrary arrest, and beating, of a group of young people that included more than 20 minors. Together with about 46 adults, they were arbitrarily detained and taken to a detention centre without any access to a lawyer or notification to their families despite clear provisions in the Tunisian law regarding juvenile criminal law and procedure they were set free at 4:00 a.m. in one of the most dangerous areas in Tunis. During about 12 hours of detention they were forced to kneel and remain in uncomfortable positions. I welcome the initiative of the Ministry of Interior to issue a statement apologising to 'journalists and citizens involuntarily assaulted'

and to open an inquiry into these incidents. This goes on to suggest that riot police and law-enforcement bodies engage in ill-treatment and excessive use of force to hold situations under control.

Given the lack of effective safeguards during arrest, persons deprived of their liberty are extremely vulnerable to torture and ill-treatment, moreover, given the legacy of abusive treatment by law-enforcement agents in the past, the lack of sufficiently speedy investigations into allegations of torture and ill-treatment, as well as the use of prosecutions affecting public officials, it can not be said that the culture of impunity no longer prevails, even though the current authorities have undoubtedly and sincerely pledged to respect the law. I have received several allegations of being kicked, beaten and burned with cigarettes. Many of these cases were supported by forensic medical evidence.

I learned from the Ministry of Interior that from 1999 to 2009, there were only seven criminal convictions against law-enforcement and prison officials for acts of torture and ill-treatment out of 246 prosecutions initiated. According to Tunisian law, anyone who claims to have been subjected to torture can file a complaint either with officers of the *Police Judiciaire* or the Prosecutor. These mechanisms are inadequate as the complaint is essentially addressed to the same body that is alleged to have perpetrated the ill-treatment. Moreover, under Tunisian legislation, judges are not obliged to exclude any evidence or statements obtained under torture, despite the fact that, as a party to the CAT, Tunisia is internationally obliged to exclude such evidence. This inevitably creates an environment conducive to impunity.

Admissibility of confessions is left to the discretion and appraisal of the judge in accordance with Articles 150 and 152 of the Criminal Procedure Code. I welcome the initiative of the Ministry of Justice to amend the definition of torture contained in the Criminal Code in order to bring it in full conformity with the definition of Article 1 of the CAT and to provide for penalties reflecting the severity of the offense. I also support an initiative to amend the laws to ensure that no statement obtained through torture shall be admitted as evidence in judicial proceedings against the defendant, except in a case presenting torture and to show that the statement was made.

It is my understanding that several agents of security forces attached in the past to the Presidency and to the Ministry of the Interior have not been removed even though they are thought to be at the heart of the serious violations of human rights that took place in the past.

The conditions of prisons and detention centres visited vary from being adequate to unsatisfactory as far as hygienic conditions, availability of medical assistance, access to telephone, and the length of family visits are concerned. Medical centres although available, do not seem to be always and adequately equipped. Dental and psychiatric assistance do not presently exist in the detention centres visited.

As far as the investigation launched into the past allegations of torture and recent abuses are concerned, I welcome the establishment of the fact-finding Commission, while recognising that its function is complementary to judiciary and should be clarified. I heard an explanation about the thorough and comprehensive way in which it has approached its mandate. However, I have learned that the number of prosecutions and initial judicial inquiries related to torture and disproportionate use of force remain low, despite the fact that the Commission's work does not substitute the role of prosecutors and judges. The slow pace of investigation and general lack of clear signals that these cases are seriously considered provokes frustration and anger among victims and general public. It is encouraging to learn that preliminary monetary compensation has been offered to victims and their families of December and January events. It remains unclear how the amount of compensation was defined as adequate and whether any measures are undertaken to provide the victims and their families with rehabilitation services.

I welcome the initiative of the interim Government to release political prisoners and prisoners of conscience; and to grant conditional release on a case by case basis to those convicted for security related offenses. Many, if not most, of these were convicted in unfair trials, so amnesties and pardons are a partial remedy to the violations they have suffered.

I would like to welcome the commitment expressed by all levels of the Government regarding the abhorrence of torture and its determination to eradicate it..."

28. On 26 May 2011, at the conclusion of his official follow-up visit to Tunisia, the United Nations Special Rapporteur on human rights and counter-terrorism, Martin Scheinin, gave the following statement:

"...

Since my last visit to Tunisia in early 2010, the world has witnessed how the negation of human rights by oppressive regimes, including under the pretext of countering terrorism, can bring together a critical mass of people from very different walks of life to pursue their aspirations for a free and democratic society and a Government that respects human rights. Tunisia has become a symbol of this lesson.

My mandate focuses on the protection of human rights while countering terrorism. In this context I have seen initial steps that indicate a break with Tunisia's past. I was pleased to hear that many of my interlocutors confirm that the abusive anti-terrorism law of 2003 has not been used since the events of 14 January, including against the Tunisian people that demanded change. However, in Al Mornaguia Prison I learned that individual judges sometimes still order persons detained under the 2003 law. This now mostly dormant law did not do what it was supposed to do. It did not provide more security to the Tunisian people, but was used as a tool of oppression against any form of political or other dissent. The Transitional Government has acknowledged this by adopting an amnesty law covering those who were convicted or held under this law. In order to provide the Tunisian people with the security

they deserve, I offer the assistance of my mandate to replace the 2003 law with a proper legislative framework which regulates Tunisia's anti-terrorism efforts in line with international conventions and protocols on countering terrorism, while fully respecting human rights and fundamental freedoms. The global threat of terrorism is real and can only be responded to through properly targeted and lawful measures, instead of using the notion of terrorism to suppress dissent.

In my previous report I expressed grave concern about the activities of various entities of the security apparatus, and the secrecy and impunity in which they operated. My report singled out the Directorate for State Security as a crucial entity that was responsible for activities of torture and arbitrary and even secret detention. I commend therefore the abolishment of this entity by the Transitional Government. However, in my previous report I also highlighted the lack of publicly available information on several security organs of the Tunisian State. This secrecy was an important element that contributed to the shield of impunity under which these actors could operate. All security organs' functions and powers must be regulated by publicly available laws. Such transparency avoids not only the creation of myths about what these agencies do, but also ensures accountability of these agencies if they commit illegal acts. In this context I have noted statements that the 'political police' in Tunisia has been abolished. Such a 'police' did not exist in the law, but it was used as term by the public, and now also by officials, to describe those elements in the security organs related to the Ministry of the Interior that were responsible for cracking down on political and human rights activists and other dissent.

Changes in the way Tunisia's security organs operate should not be limited to slogans, but should result in concrete measures. The first steps have been taken to establish accountability for those who attacked the demonstrators in January of this year. I welcome this positive development, but want to stress that in order to look truly forward towards a new Tunisia, it has to come to terms with dark remnants of its past. During my first visit in 2010 the existence of secret facilities in the premises of the Ministry of the Interior was flatly denied. This time officials at the Ministry of the Interior agreed to show me the former secret detention facilities. However, some officials still denied the use of Ministry offices as interrogation and torture rooms. I learned that until now 60 security officials have been arrested, 7 persons in the highest ranks prosecuted, and 42 officials forced to retire, or went into retirement voluntarily. Tunisia should continue to investigate *ex officio* allegations of torture and illegal detention, often committed under the pretext of the fight against terrorism. Investigating, prosecuting and trying those responsible for the crimes in question can also help rebuilding trust between the population and the security forces in the country.

While I commend Tunisia's decision to ratify the International Convention against Disappearances, the Optional Protocols to the Convention against Torture and the Covenant on Civil and Political Rights, and the Rome Statute of the International Criminal Court, I must emphasise that these promises turn into real rights only when implemented by depositing the international instrument of accession. Further, I call for rapid measures to strengthen the independence of the judiciary which as of today has not lived up to its task to secure compliance with the law, including human rights. I was also disappointed to learn that the most important safeguard against abuse in police custody, effective access to a lawyer of one's own choice from the moment of arrest, including presence in every interrogation, is not yet in place.

These are the preliminary findings of my follow-up mission. A full report will be presented to the United Nations Human Rights Council in 2012..."

The law

I. Alleged violation of Article 3 of the Convention

29. The applicant alleged that his deportation to Tunisia would expose him to the risk of treatment contrary to Article 3, which reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

30. The Government maintained that the application should be rejected as premature as the case was still pending before the Constitutional Court.

31. The applicant replied that an appeal to the Constitutional Court was not an effective domestic remedy for the purposes of Article 35 § 1 of the Convention as it lacked automatic suspensive effect. He referred to *Čonka v. Belgium*, no. 51564/99, ECHR 2002-I; *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, ECHR 2007-II; and *Abdolkhani and Karimnia v. Turkey*, no. 30471/08, ECHR 2009-....

32. The Court reiterates that, although the prohibition of torture or inhuman or degrading treatment or punishment contained in Article 3 of the Convention is absolute, applicants invoking that Article are not for that reason dispensed as a matter of course from exhausting domestic remedies that are available and effective (see *Bahaddar v. the Netherlands*, 19 February 1998, § 45, *Reports of Judgments and Decisions* 1998-I, and *Jabari v. Turkey* (dec.), no. 40035/98, 28 October 1999). It would not only run counter to the subsidiary character of the Convention but also undermine the very purpose of the rule set out in Article 35 § 1 if the Contracting States were to be denied the opportunity to put matters right through their own legal system. That being said, in view of the importance which the Court attaches to Article 3 of the Convention and the irreversible nature of the damage which may result if the risk of ill-treatment materialises, the effectiveness of a remedy for the purposes of Article 35 § 1 imperatively requires that the person concerned should have access to a remedy with automatic suspensive effect (see *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 293, 21 January 2011, and the cases cited therein).

33. In the present case, it is obvious that an appeal to the Constitutional Court does not have automatic suspensive effect. While the Court is mindful of the fact that the Constitutional Court may stay deportation, as an interim measure, an application for interim measures is not of itself suspensive. In addition, the Constitutional Court is not required to decide such applications before the actual deportation of the person concerned, as evidenced in this case (the applicant lodged an application for interim measures with the Constitutional Court on 3 December 2009, his deportation was scheduled for 10 December 2009 and the Constitutional Court decided that application on 12 January 2010). Accordingly, where an applicant seeks to prevent his or her removal from Bosnia and Herzegovina to a territory where he or she allegedly faces a risk of ill-treatment contrary to Article 3, an appeal to the Constitutional Court cannot be considered to be an effective remedy in preventing removal before a final decision of that court. The Government's objection must therefore be dismissed.
34. The Court notes that this complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits
35. In his application and his observations of July 2010, the applicant claimed that he would be treated in Tunisia as an Islamist and a suspected terrorist because of his association with the foreign mujahedin in Bosnia and Herzegovina, the fact that he had been declared a threat to national security in Bosnia and Herzegovina and his long beard. He submitted that Islamists and suspected terrorists were, as a group, systematically exposed to serious violations of fundamental human rights, including ill-treatment, in Tunisia. He relied on reports of the United States Department of State, Human Rights Watch and Amnesty International on Tunisia which were along the lines of those referred to in paragraph 25 above. He also submitted the statement by Mr Anouar Kousri mentioned in paragraph 12 above and a statement by a French human-rights activist, Ms Luiza Toscane, claiming that all Tunisian citizens who had fought in the 1992-95 war in Bosnia and Herzegovina had been arrested and some of them tortured immediately upon their return to Tunisia. It specifically named the cases of Mr Bouhouche, Mr Selmi, Mr Hajjam, Mr Ferchichi and Mr Mouelhi. Lastly, the applicant argued that his case was surely known to Tunisian authorities since they had been notified of his deportation and most likely of the fact that he was regarded as a threat to national security in Bosnia and Herzegovina. His name had appeared in many media reports, some of them linking the applicant to terrorist groups.
36. In their observations of May and September 2010, the Government stated that the applicant's allegations were vague, unsubstantiated and on occasion contradictory. While accepting that suspected and, even more so, convicted terrorists faced a real risk of being subjected to ill-treatment in Tunisia, the Government submitted that the applicant had failed to establish that he would indeed be treated as one. The present case should therefore be distinguished from the cases of *Sellem v. Italy*, no. 12584/08, 5 May 2009, and *Saadi v. Italy*, cited above, which concerned convicted terrorists. The Government argued that the domestic authorities had rigorously examined the applicant's case: they had taken into account relevant reports and had assessed the secret evidence against the applicant. The Government also confirmed that the Tunisian authorities had been notified on 26 November 2009 of the plan to deport the applicant in the near future.
37. In his further observations of March 2011, the applicant argued that owing to political instability, the unchanged anti-terrorism law, the ingrained culture of violence and impunity within the security forces and the judiciary directed at Islamists, and the dire prison conditions, a real risk of ill-treatment remained for Islamists who were deported to Tunisia, despite the recent changes in that country.
38. In their further observations of March 2011, the Government stated that the situation in Tunisia had radically improved since the recent change of regime and that the applicant no longer faced any risk of being subjected to ill-treatment in that country.
39. It is the Court's settled case-law that as a matter of well-established international law and subject to its treaty obligations, including those arising from the Convention, a Contracting State has the right to control the entry, residence and expulsion of aliens (see, among many other authorities, *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII). The right to asylum is also not contained in either the Convention or its Protocols (*Salah Sheekh v. the Netherlands*, no. 1948/04, § 135, 11 January 2007). Expulsion by a Contracting State may, however, give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if expelled, faces a real risk of being subjected to ill-treatment. In such a case, Article 3 implies an obligation not to expel the person in question to that country (see *Saadi v. Italy*, cited above, § 125). Given that the prohibition of torture or inhuman or degrading treatment or punishment is absolute, the conduct of applicants, however undesirable or dangerous, cannot be taken into account (ibid., §§ 127 and 138).
40. The assessment of the existence of a real risk must be rigorous (see *Chahal v. the United Kingdom*, 15 November 1996, § 96, *Reports* 1996-V). As a rule, it is for applicants to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, they would be exposed to a real risk of being subjected to treatment contrary to Article 3 (*N. v. Finland*, no. 38885/02, § 167, 26 July 2005). Where such evidence is adduced, it is for the Government to dispel any doubts about it. The Court will take as its basis all the material placed before it or, if necessary material obtained *proprio motu*. It will do so, particularly when

an applicant – or a third party within the meaning of Article 36 of the Convention – provides reasoned grounds which cast doubt on the accuracy of the information relied on by the respondent Government. The Court must be satisfied that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources such as, for instance, other Contracting or non-Contracting States, agencies of the United Nations and reputable non-governmental organisations (*NA. v. the United Kingdom*, no. 25904/07, § 119, 17 July 2008).

41. If an applicant has not yet been deported when the Court examines the case, the relevant time will be that of the proceedings before the Court (*Saadi v. Italy*, cited above, § 133). A full and *ex nunc* assessment is called for as the situation in a country of destination may change in the course of time. While the historical position is of interest in so far as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive and it is hence necessary to take into account information that has come to light after the final decision taken by domestic authorities (see *Salah Sheekh*, cited above, § 136).

42. Accordingly, in the present case the Court must examine whether the applicant, if deported to Tunisia, would face a real risk of being subjected to treatment contrary to Article 3, despite the recent changes in that country.

43. As noted by the Parliamentary Assembly of the Council of Europe and UN Special Rapporteurs, the process of democratic transition in Tunisia is in progress and steps have already been taken to dismantle the oppressive structures of the former regime and put in place elements of a democratic system: notably, security forces widely accused of human-rights abuses during the former regime, including the State Security Service, were dissolved; an amnesty was granted to all political prisoners, including those who had been held under the controversial anti-terrorism law; and a number of high- and mid-ranking officials from the Ministry of Interior and the Ministry of Justice were dismissed and/or prosecuted for past abuses (see paragraphs 26-28 above).

44. While it is true that cases of ill-treatment are still reported, those are sporadic incidents (see paragraph 27 above); there is no indication, let alone proof, that Islamists, as a group, have been systematically targeted after the change of regime. On the contrary, all the main media have reported that Mr Rachid Ghannouchi, a leader of the principal Tunisian Islamist movement (Ennahda), was able to return to Tunisia after twenty or so years in exile and that on 1 March 2011 the movement in question was allowed to register as a political party. It should also be emphasised that on 29 June 2011 Tunisia acceded to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, setting up a preventive system of regular visits to places of detention, as well as to the Optional Protocol to the International Covenant on Civil and Political Rights, recognising the competence of the Human Rights Committee to consider individual cases. This shows the determination of the Tunisian authorities to once and for all eradicate the culture of violence and impunity which prevailed during the former regime.

45. Having regard to the foregoing, the Court considers that there is no real risk that the applicant, if deported to Tunisia, would be subjected to ill-treatment. Therefore, his deportation to Tunisia would not violate Article 3 of the Convention.

II. Alleged violation of Article 5 § 1 of the Convention

46. The applicant also contested the lawfulness of his detention pending deportation on account of its duration. He relied in that regard on Article 5 § 1 of the Convention, the relevant part of which reads as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

47. The Government contested that argument.

48. The Court reiterates that Article 5 § 1 (f) of the Convention does not demand that the detention of a person against whom action is being taken with a view to deportation be reasonably considered necessary, for example to prevent his committing an offence or fleeing. In this respect Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c). All that is required under this provision is that deportation proceedings are in progress and prosecuted with due diligence (see *Chahal*, cited above, §§ 112-13, and *Saadi v. the United Kingdom* [GC], no. 13229/03, § 72, ECHR 2008-...).

49. Turning to the present case, the period under consideration started on 24 April 2009 when the applicant was placed in an immigration centre with a view to deportation. In a period of less than eight months, the domestic authorities then issued a deportation order, examined the applicant's asylum claim at two levels of jurisdiction and issued removal directions. The Court does not consider this period to be excessive. Although the applicant has remained in custody until the present day, the period since 10 December 2009 must be distinguished because during this time the Government have refrained from deporting the applicant in compliance with the request made by the Court under Rule 39 of the Rules of Court (see *Chahal*, cited above, § 114). The Court reiterates in that regard that the Contracting States are obliged under Article 34 of the Convention to comply with interim measures indicated under Rule 39 (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, §§ 99-129, ECHR 2005-I).

50. That being said, the implementation of an interim measure following an indication by the Court to

a State Party that it would be desirable not to return an individual to a particular country does not in itself have any bearing on whether the deprivation of liberty to which that individual may be subject complies with Article 5 § 1 (see *Gebremedhin*, cited above, § 74). In other words, the domestic authorities must still act in strict compliance with domestic law (ibid., § 75). The Court notes that it has been established by the domestic authorities that the present applicant constitutes a threat to national security (see paragraph 11 above). His detention has accordingly been authorised and is indeed mandatory pursuant to section 99(2)(b) of the Aliens Act 2008 (see paragraph 22 above). Furthermore, the initial detention period has been extended on a monthly basis, as envisaged by domestic law.

51. Having regard to the above, the Court concludes that the deportation proceedings, although temporarily suspended pursuant to the request made by the Court, have nevertheless been in progress and in strict compliance with domestic law (compare *S.P. v. Belgium* (dec.), no. 12572/08, 14 June 2011; contrast *Ryabikin v. Russia*, no. 8320/04, § 132, 19 June 2008, and *Abdolkhani and Karimnia v. Turkey*, no. 30471/08, § 134, ECHR 2009-...). Since there is no indication that the authorities have acted in bad faith, that the applicant has been detained in unsuitable conditions or that his detention has been arbitrary for any other reason (see *Saadi v. the United Kingdom*, cited above, §§ 67-74), this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. Alleged violation of Article 6 § 1 of the Convention

52. The applicant further complained of the unfairness of the deportation proceedings. He relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..."

53. The Court reiterates that decisions concerning the entry, stay and deportation of aliens do not involve the determination of an applicant's civil rights or obligations or of a criminal charge against him for the purposes of Article 6 § 1 (see *Maaouia v. France* [GC], no. 39652/98, §§ 36-40, ECHR 2000-X). This complaint is accordingly incompatible *ratione materiae* and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. Alleged violation of Article 8 of the Convention

54. The applicant further complained that the decision to expel him and to prohibit his re entry for five years amounted to a breach of his right to respect for his family life. He relied on Article 8 of the Convention, which provides:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

55. The Court observes that this complaint was not included in the initial application, but was raised in the applicant's observations of July 2010 (in his initial application, the applicant raised a complaint under Article 8 of the Convention only with regard to his detention pending deportation). It was thus not raised early enough to allow an exchange of observations between the parties (see *Melnik v. Ukraine*, no. 72286/01, §§ 61-63, 28 March 2006; *Maznyak v. Ukraine*, no. 27640/02, § 22, 31 January 2008; *Kuncheva v. Bulgaria*, no. 9161/02, § 18, 3 July 2008; *Lisev v. Bulgaria*, no. 30380/03, § 33, 26 February 2009; and *Tsonyo Tsonev v. Bulgaria*, no. 33726/03, § 24, 1 October 2009). Nevertheless, the Court does not have to decide whether it is appropriate to take this matter up separately at this stage as the complaint is in any event inadmissible for the following reasons.

56. The Court has earlier established that an appeal to the Constitutional Court of Bosnia and Herzegovina is, in principle, an effective remedy for the purposes of Article 35 § 1 of the Convention (*Mirazović v. Bosnia and Herzegovina* (dec.), no. 13628/03, 16 May 2006, and *Alibašić v. Bosnia and Herzegovina* (dec.), no. 18478/08, 29 March 2011). Since this complaint is still pending before that court and the Convention does not require that an applicant complaining about his or her deportation under Article 8 should have access to a remedy with automatic suspensive effect (in contrast to such complaints under Article 3, see paragraphs 32-33 above), the complaint is premature. It must therefore be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

V. Other alleged violations of the Convention

57. Lastly, the Court has examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's jurisdiction, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

VI. Rule 39 of the Rules of Court

58. In accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber

rejects any request to refer under Article 43 of the Convention.
59. The Court considers that the indication made to the Government under Rule 39 (see paragraphs 4-6 above) must continue in force until the present judgment becomes final or until the Panel of the Grand Chamber of the Court accepts any request by one or both of the parties to refer the case to the Grand Chamber under Article 43 of the Convention.

For these reasons, the Court unanimously
1. Declares the complaint under Article 3 of the Convention admissible and the remainder of the application inadmissible;
2. Holds that there would be no violation of Article 3 of the Convention in the event of the applicant's deportation to Tunisia;
3. Decides to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to expel the applicant until such time as the present judgment becomes final or further order.
(… ; *red*.).

Noot
1. Ondanks het feit dat nog een beroepsprocedure loopt bij het Grondwettelijk Hof is Al Hanchi ontvankelijk in zijn klacht. Duidelijk is dat de procedure voor het Grondwettelijk Hof geen 'automatic suspensive effect' heeft. Het Grondwettelijk Hof kan op het beroep beslissen nadat Al Hanchi reeds zou zijn uitgezet, en derhalve geldt dit beroep niet als een effectief rechtsmiddel (zie para. 33). Zie voor een uitgebreid overzicht over deze problematiek het artikel van Clara Burbano Herrera and Yves Haeck, 'Staying the Return of Aliens from Europe through Interim Measures: The Case-law of the European Commission and the European Court of Human Rights', European Journal of Migration and Law 13 (2011) p. 31-51.
2. Deze uitspraak van het Europese Hof voor de Rechten van de Mens is van belang voor beantwoording van de vraag wanneer het mogelijk is vast te stellen dat een omwenteling in een land – waar eerder personen zoals in casu El Hanchi, een Islamist, niet naar mochten worden teruggestuurd – zodanig is dat bij terugzending een mogelijke artikel 3 EVRM-schending niet langer in het geding is (vgl. bijvoorbeeld over de eerdere situatie in Tunesië EHRM 28 februari 2008, EHRC 2008/59, m.nt. Woltjer).
3. Het Hof geeft aan dat het verleden in Tunesië slechts van belang is voor zover het licht werpt op de *ex nunc*-inschatting van het risico (zie para. 41). Voor het EHRM is de nieuwe mensenrechtensituatie relevant. Daarover verschenen, zo blijkt uit de uitspraak, drie rapporten: één van de Parlementaire Assemblee van de Raad van Europa, één van de VN-rapporteur inzake foltering en één van de VN-rapporteur inzake mensenrechten en terrorismebestrijding. De drie rapporten zijn enkele maanden na het afzetten van president Ben Ali opgesteld (mei/juni 2011). Met name van belang lijken de concrete maatregelen die reeds door Tunesië zijn genomen. Het Hof noemt onder andere het opheffen van de gevreesde veiligheidsdienst, amnestie voor alle politieke gevangenen, het inzetten van het justitiële apparaat tegen voormalige ambtsdragers, acceptatie van de islamitische beweging Ennahda als politieke partij en de toetreding tot de facultatieve protocollen bij het Anti-Folterverdrag en het IVBPR. Het Hof concludeert dat niet langer aanwijzingen bestaan dat islamitische radicalen als groep systematisch worden blootgesteld aan mishandeling en dat het nieuwe bewind kennelijk vastbesloten is om een definitief einde te maken aan de cultuur van geweld en straffeloosheid.
4. Den Heijer verwijst in zijn noot bij deze uitspraak (te vinden in EHRC 2012/26, onder punt 4) ook nog naar de mogelijkheid die het Hof had kunnen aangrijpen om een enkel woord ten principale te wijden aan het fenomeen regimewisseling in het kader van uitzettingszaken waarin artikel 3 EVRM een rol speelt. Ten aanzien van het intrekken van een asielstatus vanwege gewijzigde omstandigheden in het land van herkomst is vereist dat de wijziging voldoende *ingrijpend* en van *niet-voorbijgaande aard* is (artikel 11 lid 2 en 16 lid 2 van de Definitierichtlijn 2004/83/EG, in Nederland omgezet in artikel 3.37e VV). Hoewel het in deze zaak niet gaat om intrekking maar om eerste verlening, betoogt Den Heijer dat deze standaard ook op deze aanvraag van toepassing zou zijn. Deze eisen zijn verder uitgewerkt in niet-bindende richtlijnen van de UNHCR (UNHCR Guidelines on International Protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees, 10 februari 2003, HCR/GIP/03/03). Daarin zegt UNHCR bijvoorbeeld over de eis van blijvendheid: "Developments which would appear to evidence significant and profound changes should be given time to consolidate before any decision on cessation is made." Indien echter sprake is van een vreedzame omwenteling met vrije verkiezingen en een nieuwe regering die zich daadwerkelijk committeert aan respect voor mensenrechten dan kan het duurzame karakter relatief snel worden aangenomen, aldus UNHCR.
Deze lijn heeft het Hof ook gevolgd door relatief snel aan te nemen dat door het nemen van een aantal concrete maatregelen de democratische overgang in Tunesië in volle gang is en Al Hanchi geen reëel risico op mishandeling zal lopen.
5. Deze uitspraak is ook te vinden in de JV 2012/5.

Karin Zwaan