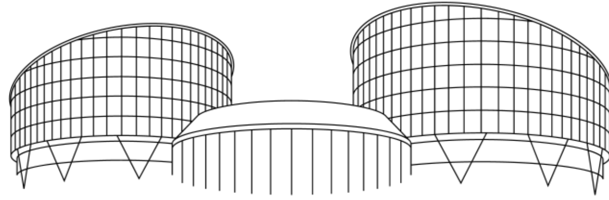

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF CHARAHILI v. TURKEY

(Application no. 46605/07)

JUDGMENT

STRASBOURG

13 April 2010

FINAL

13/07/2010

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

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

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

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Danutė Jočienė,
András Sajó,
Işıl Karakaş,
Nona Tsotsoria, *judges,*
and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 23 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 46605/07) 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 Malek Charahili ("the applicant"), on 25 October 2007.

2. The applicant, who had been granted legal aid, was represented by Mr A. Yılmaz, a lawyer practising in Istanbul. The Turkish Government ("the Government") were represented by their Agent.

3. On 26 October 2007 the acting President of the Chamber to which the case had been allocated decided, in the interests of the parties and 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 further notice.

4. On 1 September 2008 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 1986 and is currently held in the Kırklareli Foreigners' Admission and Accommodation Centre in Turkey.

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

6. In 2003 the applicant left his home country and, via Libya, arrived in Syria, where he received religious training. Six months after his arrival in Syria, the applicant was detained for two months under the Syrian Government's policy of detaining and deporting nationals of North African countries. After his release from detention in Syria, the applicant left that country in March 2005 and arrived in Istanbul. He then went to Hatay, a province in the south of Turkey, where he began working. His identity documents were stolen and subsequently the applicant obtained a false passport.

7. On 15 August 2006 the applicant was arrested by police officers from the anti-terrorist branch of the Hatay police headquarters on suspicion of membership of an international terrorist organisation, namely Al-Qaeda. The search carried out in the apartment he had shared with another person revealed some materials used for manufacturing bombs. During his questioning by the police, in the presence of an interpreter, the applicant stated that he was not a member of Al-Qaeda but of Ennahda, an illegal organisation in Tunisia.

8. On 17 August 2006 the applicant made statements before the Adana public prosecutor and subsequently the Adana Magistrate's Court, which remanded the applicant in custody.

9. On 18 August 2006 the applicant lodged an objection against the detention order, which was dismissed on the same day.

10. On 14 September 2006 the Adana public prosecutor filed a bill of indictment with the Adana Assize Court charging the applicant with membership of Al-Qaeda under Article 314 of the Criminal Code and section 5 of Law no. 3713. In the indictment the public prosecutor noted, *inter alia*, that an arrest warrant had been issued in respect of the applicant in Tunisia for membership of Ennahda and that the applicant had left his country for that reason in 2003.

11. On 25 September 2006 the Adana Assize Court allowed the bill of indictment lodged against the applicant and decided to hold the first hearing on the merits of the case on 9 November 2006.

12. On 9 November 2006 the applicant made statements before the Assize Court. He contended, *inter alia*, that he did not have any connection with Al-Qaeda and that the material found in his apartment did not belong to him but to his flatmate.

13. On 25 January 2007 the applicant's representative requested the first-instance court to order the applicant's continued detention. He submitted in this respect that the applicant had applied to both the Turkish authorities and the United Nations High Commissioner for Refugees (UNHCR) to be granted refugee status and that, if he were released, he might be deported to

Tunisia. The applicant himself also requested that he be kept in detention until the outcome of his application for refugee status. On the same day, the Assize Court ordered the applicant's continued detention, taking into consideration the nature of the offence and the applicant's request.

14. On 12 April 2007 the Adana Assize Court ordered the applicant's release pending trial.

15. On 19 February 2008 the Adana Assize Court acquitted the applicant of the charge of membership of Al-Qaeda.

16. Appeal proceedings are currently pending before the Court of Cassation.

B. Administrative proceedings

17. On 19 January 2007 the applicant applied to the Ministry of the Interior requesting asylum.

18. On 16 April 2007 the Ministry of the Interior dismissed this request. According to a document addressed to the Adana public prosecutor's office by the Ministry of Justice on 24 April 2007, the applicant's temporary asylum request was dismissed in view of the offences with which he had been charged and the fact that his presence in Turkey constituted a threat to public safety and public order. It was considered that the applicant had not been sincere in his request but had attempted to use the temporary asylum system in order to avoid deportation to Tunisia.

19. On 25 April 2007 the decision of the Ministry was served on the applicant. In the documents so served, he was told that he could lodge an objection with the Ministry against this decision within two days.

20. On an unspecified date the applicant objected to the decision of 16 April 2007. On 18 May 2007 he was notified that the Ministry had dismissed his objection. The decisions of 25 April and 18 May 2007 were served by a police officer who spoke Arabic.

21. In the meantime, on 3 May 2007 the applicant was recognised as a refugee under the UNHCR's mandate.

22. On 16 October 2007 the applicant was served with a deportation order.

23. On 17 October 2007 the applicant addressed a petition to the Adana police headquarters. He maintained that his request for temporary asylum had been rejected on 18 May 2007 and that he had learned that he would soon be deported to Tunisia. The applicant requested that his deportation be suspended since his lawyer intended to challenge the deportation order before the administrative courts.

24. On the same day the applicant's lawyer lodged an application with the Supreme Administrative Court. He requested the setting-aside of the decision rejecting the applicant's asylum request. The applicant's representative further requested the setting-aside of the deportation order.

25. On 26 October 2007 the applicant's representative filed a petition with the Adana police headquarters and informed the latter of the application he had lodged with the Supreme Administrative Court. He requested the police not to deport the applicant.

26. On 26 October 2007 the Supreme Administrative Court decided that it did not have jurisdiction over the case and transferred the petition to the Ankara Administrative Court.

27. On 14 February 2008 the Ankara Administrative Court requested the Ministry of the Interior to submit a copy of all documents relating to the applicant's case.

28. On 20 March 2008 the Ankara Administrative Court, after receiving the documents concerning the applicant, rejected the application, holding that the applicant had not complied with the time-limit of sixty days stipulated in the Administrative Procedure Act (Law no. 2577). The first-instance court held that the applicant had been notified of the Ministry's decision rejecting his temporary asylum request and ordering his deportation on 18 May 2007, and that the applicant should have challenged this decision by 17 July 2007 at the latest. The court noted that the applicant's petition dated 17 October 2007 to the Adana police headquarters and his application to the Court would not stop the running of the sixty-day time-limit.

29. On 20 June 2008 the applicant's representative lodged an appeal against the decision of 20 March 2008. In his petition, the representative noted that the Ministry's decision rejecting the applicant's objection had not been served on his lawyer, who had found the document dated 25 April 2007 in the criminal case file by chance.

30. On 3 July 2008 the applicant's representative was informed by the president of the Ankara Administrative Court that he had failed to pay the court fees and that he had to pay a total of 161.80 Turkish liras (TRY) by postal order within fifteen days. The representative was warned that if he failed to pay this sum, the applicant would be deemed to have waived his right of appeal.

31. On 11 August 2008 the applicant's representative effected the postal order and paid TRY 162.

32. On 24 October 2008 the Ankara Administrative Court decided that the applicant had waived his right of appeal since his representative had failed to pay the Court fees despite the warning.

33. On 12 January 2009 the applicant' representative appealed against the decision of 24 October 2008, claiming that he had paid the fees. He submitted a copy of the postal order in support of his petition.

34. On 2 February 2009 the Ankara Administrative Court informed the applicant that his representative had failed to pay the Court fees in relation to his appeal dated 12 January 2009.

35. On 4 March 2009 the applicant's lawyer paid TRY 175 in court fees by way of a postal order.

C. The applicant's placement in the Fatih police station

36. Following the decision of the Adana Assize Court of 12 April 2007 to release the applicant pending trial, the applicant was not released but was taken to the foreigners' department at the Adana police headquarters.

37. On 12 April 2007 the applicant was transferred to the Fatih police station in Adana.

38. On 12 December 2007 the applicant's representative sent a request to the General Police Headquarters for the applicant to be released from detention. In his request he noted that the applicant was being detained in a small cell and that on 26 October 2007 the European Court of Human Rights had indicated to the Turkish Government that the applicant should not be deported to Tunisia until further notice.

39. The applicant's representative received no reply to his request.

40. Subsequently, on 12 March 2008 he filed a complaint with the Adana public prosecutor's office against the Minister of the Interior, the Adana Governor, the Adana police director, the director of the foreigners' department at the Adana police headquarters and the director of the Fatih police station. He requested the public prosecutor's office to initiate an investigation into the persons concerned, alleging that they had unlawfully deprived the applicant of his liberty and that his detention in a small cell for ten months constituted ill-treatment. The representative noted in his request that there was no legal basis on which to detain the applicant, since asylum seekers were normally given temporary residence permits in Turkey. He further submitted that the ventilation was inadequate in the cell. The applicant was completely isolated and there was no provision for outdoor exercise. Moreover, the applicant did not have access to a doctor. In particular, when he had had a toothache he was denied access to a dentist and had to take the medication that was given to him by police officers.

41. On 16 April 2008 the Adana public prosecutor decided not to bring criminal proceedings against the Minister of the Interior, holding that he had not committed any offence as the applicant was being detained by the police with a view to his deportation.

42. On 23 September 2008 the public prosecutor at the Court of Cassation decided not to process the request from the applicant's lawyer to bring proceedings against the Adana governor.

43. On the same day the applicant's representative wrote to the department responsible for aliens, borders and asylum attached to the General Police Headquarters, to the Adana police headquarters and to the Human Rights Commission of the Turkish Parliament, requesting that his client be released from the Fatih police station.

44. In the meantime, between 1 October 2007 and 3 November 2008 the applicant was examined and prescribed treatment at the Adana hospital on seven occasions. He was examined by an ophthalmologist, a dentist and a general practitioner in relation to his respiratory problems.

45. On 7 November 2008 the applicant was transferred to the Kırklareli Aliens' Admission and Accommodation Centre.

46. On 12 January 2009 the President of the Human Rights Commission of the Turkish Parliament sent a reply to the applicant's representative informing him that the applicant was being detained pending the deportation procedure and that he had been transferred to the Kırklareli Foreigners' Admission and Accommodation Centre.

D. Criminal proceedings brought against the applicant in Tunisia

47. On an unspecified date criminal proceedings were brought against the applicant and twelve other persons in Tunisia on charges of membership of a terrorist organisation, aiding and abetting the organisation and providing financial support to that organisation. According to a document translated from Arabic into Turkish by the applicant, on 12 January 2008 a Tunisian criminal court convicted him of membership of an illegal organisation and sentenced him to five years' imprisonment.

II. RELEVANT LAW AND PRACTICE

A. Domestic law and practice

48. 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).

B. International materials

1. *Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT")*

49. The CPT standards concerning the conditions of detention of foreign nationals (see the CPT standards, document no. CPT/Inf/E (2002) 1- Rev. 2006, page 40) provide, in so far as relevant, as follows:

> "... In certain countries, CPT delegations have found immigration detainees held in police stations for prolonged periods (for weeks and, in certain cases, months), subject to mediocre material conditions of detention, deprived of any form of activity and on occasion obliged to share cells with criminal suspects. Such a situation is indefensible.

> The CPT recognises that, in the very nature of things, immigration detainees may have to spend some time in an ordinary police detention facility. However, conditions in police stations will frequently - if not invariably - be inadequate for prolonged periods of detention. Consequently, the period of time spent by immigration detainees in such establishments should be kept to the absolute minimum."

2. Documents relating to the situation of Ennahda members in Tunisia

50. A description of reports by Amnesty International and Human Rights Watch relating to the situation of Ennahda members can be found in *Saadi v. Italy* [GC] (no. 37201/06, §§ 65-79, ECHR 2008-...).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION IN RELATION TO THE DEPORTATION PROCEEDINGS

51. The applicant complained under Articles 2 and 3 of the Convention that his removal to Tunisia would expose him to a real risk of death or ill-treatment.

The Court finds it more appropriate to examine the applicant's complaint from the standpoint of Article 3 of the Convention alone (see *Abdolkhani and Karimnia*, cited above, § 62; *NA. v. the United Kingdom*, no. 25904/07, § 95, 17 July 2008; *Said v. the Netherlands*, no. 2345/02, § 37, ECHR 2005-VI).

A. Admissibility

52. 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

53. 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 entered Turkey illegally and had omitted to request asylum for several years. Moreover, he was accused of being a member of the terrorist organisations Ennahda and Al-Quada. They maintained that the Ministry of the Interior had decided on the

applicant's request taking into consideration the requirements of Article 3 of the Convention, the provisions of the 1951 Convention relating to the Status of Refugees and the UNHCR's decision to recognise the applicant as a refugee. The Government concluded that the applicant's removal to Tunisia would not expose him to any risk.

54. The applicant contended that he had been convicted *in absentia* and sentenced to imprisonment in Tunisia for membership of Ennahda, which was not an armed group. He maintained that the reports by international non-governmental organisations showed that terrorist suspects were subjected to widespread torture and ill-treatment.

55. The Court observes that the applicant claimed that he was a member of Ennahda and submitted a document according to which he had been convicted of membership of a terrorist organisation in Tunisia and sentenced to five years' imprisonment. The Court further observes that the Government did not challenge the veracity of these allegations. Moreover, when the applicant was accused of being a member of Al-Qaeda in Turkey, the Adana public prosecutor noted that an arrest warrant had been issued against the applicant in Tunisia as he was suspected of membership of Ennahda. The Court therefore finds no reason to doubt that the applicant was a member of Ennahda in Tunisia.

56. In this connection the Court recalls 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 above-mentioned *Saadi* judgment in the present case.

57. Furthermore, the Government failed to submit any document to the Court demonstrating that the applicant had been interviewed in relation to his temporary asylum request or that the national authorities had indeed examined his request taking into account the requirements of Article 3 of the Convention, as claimed. In addition, the applicant's case was not subjected to judicial review since the Ankara Administrative Court dismissed his application as time-barred, although the applicant had been served with a deportation order on 17 October 2007. The Court is unable to ascertain whether the Ministry of the Interior failed to submit that document for inclusion in the file of the case before the Ankara Administrative Court, or whether the latter did not take into account the fact that the applicant had actually been served with a deportation order when the application was lodged. Moreover, his lawyer's appeal requests were dismissed on the ground that he had failed to pay the court fees, although he had done so. In sum, not only did the administrative authorities fail to interview the applicant, but the latter was also deprived of the right to an examination by

the judicial authorities of the merits of his claim that he was at risk in Tunisia.

58. The only document relating to the examination of the applicant's temporary asylum request is the letter dated 24 April 2007 sent by the Ministry of Justice to the Adana public prosecutor's office. According to that document, the applicant's temporary asylum request was rejected by the administrative authorities on the grounds that he had been charged with terrorist-related crimes and that he posed a threat to public safety and public order (paragraph 18 above). In this connection 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).

59. Besides, the Court must give due weight to the UNHCR's conclusions as to the applicant's claim regarding the risk which he would face if he were to be removed to Tunisia (see *Jabari v. Turkey*, no. 40035/98, § 41, ECHR 2000-VIII; *N.A. v. the United Kingdom*, cited above, § 122; *Abdolkhani and Karimnia*, cited above, § 82). In this connection the Court observes that, unlike the Turkish authorities, the UNHCR interviewed the applicant and tested the credibility of his fears and the veracity of his account of circumstances in his country of origin. Following this interview, it found that the applicant risked being subjected to ill-treatment in his country of origin.

60. The Court finds in these circumstances that the evidence submitted by the parties, together with the material obtained *proprio motu*, is sufficient for it to conclude that that there is a real risk of the applicant being subjected to treatment contrary to Article 3 of the Convention if he were to be removed to Tunisia. The Court also notes in this connection that the Government have not put forward any argument or document capable of casting doubt on the applicant's allegations concerning the risks he might face in his country of origin (see *Abdolkhani and Karimnia*, cited above, § 90).

61. 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.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

62. The applicant complained under Article 5 of the Convention that his detention without a legal basis, despite the order of the Adana Assize Court for his release pending trial and his acquittal, had been unlawful.

A. Admissibility

63. 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

64. The Government submitted that the applicant's detention was based on section 23 of Law no. 5683 and section 4 of Law no. 5682 and that he was being held pending deportation proceedings in accordance with Article 5 § 1 (f) of the Convention.

65. The applicant submitted that his detention did not have a sufficient legal basis in domestic law.

66. 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 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 had been subjected was not "lawful" for the purposes of Article 5 of the Convention.

67. The Court has examined the present case and finds no particular circumstances which would require it to depart from its findings in the aforementioned *Abdolkhani and Karimnia* judgment.

There has therefore been a violation of Article 5 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN CONNECTION WITH THE APPLICANT'S DETENTION

68. The applicant complained under Article 3 of the Convention that he had been detained in the Fatih police station for almost twenty months in poor conditions and that the medical assistance provided for him during his detention had been insufficient.

A. Medical assistance

69. The Government submitted that the applicant had been provided with the appropriate medical assistance for his state of health. In support of their claim, the Government submitted a number of documents demonstrating that the applicant had been examined by doctors.

70. The Court observes that between 1 October 2007 and 3 November 2008 the applicant underwent a number of medical examinations while he was being held in the Fatih police station and received medical treatment. In

particular, he was examined by a general practitioner in relation to respiratory problems. He was also examined by an ophthalmologist and a dentist. On each occasion, he was prescribed medication or treatment (see paragraph 44 above).

71. Given that the authorities ensured that the applicant received sufficiently detailed medical examinations and that he was provided with appropriate treatment, the Court concludes that he did have access to adequate medical assistance. It therefore concludes 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.

B. Conditions of detention

1. Admissibility

72. 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.

2. Merits

73. The Government submitted that the applicant had not been detained in the Fatih police station as alleged but had been kept in the guesthouse which was located in the basement of that station. In the basement there were six rooms that were never locked and a common area where the foreign nationals could watch television. There was hot water twenty-four hours a day and a public telephone. The rooms had air conditioning and the detainees could go out and play football in the yard of the police station. The Government further noted that the room in which the applicant had been kept measured 20.58 square metres.

74. The applicant submitted that he had been detained at the Fatih police station for nineteen months and twenty-six days. The room where he was held was dirty and had serious ventilation problems as it was in the basement of the building. He further maintained that the room was twelve square metres and was designed to accommodate ten persons. However, sometimes twenty-five persons were held there at the same time, meaning that two or three persons had to share single beds. The applicant claimed that he had been able to go out into the yard of the police station only twice.

75. The Court reiterates that, under Article 3 of the Convention, the State must ensure that a person is detained in conditions which are compatible with respect for his or her human dignity, that the manner and method of the execution of the measure do not subject the detainee to distress or hardship of an intensity exceeding the unavoidable level of

suffering inherent in detention and that the individual's health and well-being are adequately secured. When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions and the duration of the detention (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II, and *Kalashnikov v. Russia*, no. 47095/99, § 102, ECHR 2002-VI).

76. In the present case, the Court observes at the outset that the applicant was detained in the basement of a police station between 12 April 2007 and 7 November 2008, that is, for almost twenty months, before being transferred to Kırklareli Foreigners' Admission and Accommodation Centre. The Court further observes that the Government claimed that the basement of Fatih police station was not an ordinary police detention facility but a "guesthouse", a place designated for the detention of foreign nationals. However, the respondent Government did not submit any documentary evidence in support of their submissions regarding the living conditions there and thus failed to substantiate the alleged difference between the basement of the police station and the rest of the building. The Court therefore accepts that the applicant was detained for almost twenty months in an ordinary police detention centre designed to hold persons in police custody for a maximum period of four days in accordance with the Code of Criminal Procedure.

77. In this connection the Court notes that the European Committee for the Prevention of Torture (CPT) has emphasised that, although immigration detainees may have to spend some time in ordinary police detention facilities, given that the conditions in such places may generally be inadequate for prolonged periods of detention, the period of time spent by immigration detainees in such establishments should be kept to the absolute minimum. While the Court cannot verify the veracity of all the applicant's allegations regarding the conditions of detention at the Fatih police station, it is certain that he was kept in the basement of the station. Therefore and having regard, in particular, to the inordinate length of time for which he was detained at the Fatih police station, the Court considers that the conditions of detention in the basement of the police station amounted to degrading treatment contrary to Article 3.

78. Accordingly, there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

79. The applicant complained under Article 5 of the Convention that he had not been provided with an interpreter when taken into police custody on 15 August 2006. He further complained under Article 6 of the Convention that he had not had the assistance of an interpreter throughout the proceedings brought against him. The applicant maintained under Articles 6 and 13 of the Convention that neither the criminal proceedings brought

against him nor the administrative proceedings before the Supreme Administrative Court had been concluded within a reasonable time. Relying on Article 8 of the Convention, the applicant contended that his remand in custody and his detention with a view to deportation constituted an unjustified interference with his right to respect for his private and family life. Finally, he submitted that the proceedings concerning the deportation order issued against him had been in violation of Article 1 of Protocol No. 7.

80. Having regard to the facts of the case, the submissions of the parties and its finding of violations of Articles 3 and 5 § 1 of the Convention, the Court considers that it has examined the main legal questions raised in the present application. It concludes therefore that there is no need to give a separate ruling on the applicant's remaining complaints under the Convention (see, for example, *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007; *Çelik v. Turkey (no. 1)*, no. 39324/02, § 44, 20 January 2009; *Juhnke v. Turkey*, no. 52515/99, § 99, 13 May 2008; *Getiren v. Turkey*, no. 10301/03, § 132, 22 July 2008; *Mehmet Eren v. Turkey*, no. 32347/02, § 59, 14 October 2008).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. 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

82. The applicant claimed 64,000 euros (EUR) in respect of non-pecuniary damage. He further claimed EUR 16,625 in respect of pecuniary damage for loss of income during the time spent in detention.

83. The Government contested these claims.

84. 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 26,000 for non-pecuniary damage.

85. 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

86. The applicant also claimed EUR 10,829 for the costs and expenses incurred before the domestic courts and for those incurred before the Court. In support of his claim, the applicant submitted invoices showing the payment of court fees at the national level, telephone bills, a copy of a plane ticket from Istanbul to Adana and an invoice showing the amount paid by the applicant to the lawyer who had represented him at the national level. He also submitted that his lawyer had spent a total of 21 days and 9 hours on the case, and submitted to the Court a time sheet in support of that request.

87. The Government contested this claim, noting that only costs actually incurred could be reimbursed.

88. 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 were 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 3,500 to cover costs under all heads, less the EUR 850 which the applicant received in legal aid from the Council of Europe (see paragraph 2 above).

C. Default interest

89. 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 2 and 3 of the Convention (in relation to the deportation proceedings and to the applicant's detention), as well as the complaint under Article 5 § 1 of the Convention, admissible and the complaint under Article 3 in relation to the alleged lack of medical assistance inadmissible;

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

3. *Holds* that no separate issue arises under Article 2 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention at the Fatih police station and in the Kırklareli Foreigners' Admission and Accommodation Centre;

5. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's detention at the Fatih police station;

6. *Holds* that there is no need to examine separately the applicant's other complaints under Articles 5, 6, 8 and 13 of the Convention and Article 1 of Protocol No. 7;

7. *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 from 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 at the rate applicable at the date of settlement:
      (i) EUR 26,000 (twenty-six thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
      (ii) EUR 3,500 (three thousand five hundred euros) in respect of costs and expenses, less the EUR 850 (eight hundred and fifty euros) granted by way of legal aid, 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;

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

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

Françoise Elens-Passos	Françoise Tulkens
Deputy Registrar	President