

ECtHR ? Saadi v. Italy, Application No. 37201/06, 28 February 2008

Country of Applicant:

Tunisia

Date of Decision:

28-02-2008

Citation:

Saadi v Italy, Application No. 37201/06 [2008] ECtHR

Court Name:

European Court of Human Rights, Grand Chamber

Keywords:[Assessment of facts and circumstances](#) [1][Effective remedy \(right to\)](#) [2][Non-refoulement](#) [3][Real risk](#) [4][Return](#) [5][Well-founded fear](#) [6][Torture](#) [7]

Relevant Legislative Provisions:International Law > [1951 Refugee Convention](#) [8] > [Art 1](#) [9]

International Law > UN Convention against Torture > Art. 3

International Law > [1951 Refugee Convention](#) [8] > [Art 32](#) [10]International Law > [1951 Refugee Convention](#) [8] > [Art 33](#) [11]

Council of Europe Instruments > ECHR (Frist Protocol)

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [12] > [Article 3](#) [13]

Council of Europe Instruments > ECHR (Fourth Protocol)

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Headnote:

The applicant, a Tunisian national, having served a sentence in Italy on the charge, among others, of criminal conspiracy, faced deportation from Italy to Tunisia, where he risked ill-treatment.

The Court found that the deportation of the applicant to Tunisia would constitute a violation of Article 3 ECHR. The absolute nature of Article 3 meant that the conduct of the applicant was irrelevant for the purposes of Article 3.

Facts:

The applicant, Mr. Saadi, is a Tunisian national who entered Italy between 1996 and 1999.

On 9 October 2002 he was arrested on suspicion of involvement in international terrorism. On 9 May 2005 the Milan Assize Court sentenced him to four years and six months' imprisonment on the charges of criminal conspiracy, forgery of a large number of documents, and receiving stolen goods. The Assize Court also ordered that he was to be deported after serving his sentence.

Both the applicant and the prosecution appealed and the first hearing before the Milan Assize Court of Appeal was set for 10 October 2007.

On 11 May 2005, a military court in Tunis, Tunisia, sentenced the applicant in his absence to twenty years' imprisonment for membership of a terrorist organisation and for incitement to terrorism. The applicant alleged that the judgement was served on his father on 2 July 2005 and that his family and his lawyer were not able to obtain a copy of the judgment.

On 4 August 2006 the applicant, having been imprisoned uninterruptedly since 9 October 2002, was released.

On 8 August 2006 the Minister of the Interior ordered him to be deported to Tunisia as his conduct was disturbing public order and threatening national security. The applicant was taken to a temporary holding centre in Milan and on 11 August 2006 the deportation order was confirmed by the Milan justice of the peace.

On 11 August 2006 the applicant requested political asylum, alleging that he had been sentenced in his absence in Tunisia for political reasons and that he feared he would be subjected to torture and ?political and religious reprisals?. The head of the Milan police authority declared the request inadmissible, on the ground that the applicant was a danger to national security, by a decision of 16 August 2006 which was served on the applicant on 14 September 2006.

On 6 September 2006 the director of the World Organisation against Torture (OMCT) wrote to the Italian Prime Minister to express his concern about the applicant?s situation and the obligations of a State under Article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

On 12 September the applicant requested that the OMCT?s letter and the reports on Tunisia by Amnesty International and the US State Department be passed on to the local refugee status board. On 15 September 2006 the Milan police authority orally informed the applicant that as his asylum request had been refused the documents in question could not be taken into consideration.

On 14 September 2006 the applicant, pleading rule 39, asked the ECtHR to suspend or annul the decision to deport him to Tunisia. The ECtHR decided to apply rule 39 and asked the Government to suspend the expulsion of the applicant until further notice.

Decision & Reasoning:

Rejection by the Court of the arguments of the third-party intervener (the United Kingdom):

- the absolute nature of Article 3 means that there can be no distinction between treatment inflicted by a signatory state and treatment that might be inflicted by another state, and that protection against the latter cannot be weighed against the interests of the community as a whole ? i.e., the conduct of the person is irrelevant.

- the threat that the person poses to the community is not related to the degree of risk of ill-treatment that he may be subjected to on return, and so it would be incorrect to require a higher standard of proof when the person is considered to represent a serious danger to the community. Such an approach would also be incompatible with the absolute nature of Article 3.

Article 3 ECHR

The applicant submitted that the enforcement of his deportation to Tunisia would expose him to the risk of treatment contrary to Article 3.

The Court relied on the reports on Tunisia of Amnesty International, Human Rights Watch and the US State Department, whose reliability it does not doubt. They all describe a disturbing situation and report practices which undoubtedly reach the level of severity required by Article 3.

In addition, the existence of the applicant?s sentence in absence in Tunisia was confirmed by a statement from Amnesty International of 19 June 2007.

Moreover, the Italian government asked the Tunisian authorities for diplomatic assurances that the applicant would not be subjected to treatment contrary to Article 3, which the Tunisian authorities did not provide.

In these circumstances, the Court found that there were substantial grounds for believing that there is a real risk that the applicant would be subjected to treatment contrary to Article 3 if he were to be deported to Tunisia. Therefore the decision to deport the applicant to Tunisia would

breach Article 3 if it were enforced ? the Court accepted the applicant's submission under Article 3.

Article 6 ECHR

The applicant submitted that his expulsion would expose him to the risk of a flagrant denial of justice in Tunisia contrary to Article 6.

Given that the Court held above that the deportation of the applicant to Tunisia would constitute a violation of Article 3, and that it had no reason to doubt that the Government would comply with this judgment, the Court found that there was no need to decide on the hypothetical question of whether there would also be a violation of Article 6 in the event of the deportation of the applicant to Tunisia.

Therefore the Court did not accept the applicant's submission under Article 6.

Article 8 ECHR

The applicant submitted that his expulsion would deprive his partner and his son of his presence and assistance and would thus be contrary to Article 8.

Based on the same reasoning as for Article 6, the Court did not accept the applicant's submission under Article 8.

Article 1 of Protocol No. 7 ECHR

The applicant submitted that his expulsion would be neither ?necessary in the interests of public order? nor ?grounded on reasons of national security?, and so would constitute a violation of Article 1 of Protocol No. 7.

Based on the same reasoning as for Articles 6 and 8, the Court did not accept the applicant's submission under Article 1 of Protocol No. 7.

Outcome:

Application partly successful.

The Court held that enforcement of the applicant's deportation to Tunisia would breach Article 3 ECHR.

The Court further held that it was not necessary to examine whether enforcement of the deportation of the applicant would constitute a violation of Articles 6 and 8 and Article 1 of Protocol No. 7 ECHR.

The Court awarded the applicant EUR 8,000 for costs and expenses and dismissed the applicant's request for damages, on the basis that the Court's finding that his deportation would constitute a breach of Article 3 ECHR constituted sufficient just satisfaction.

Subsequent Proceedings :

On the 12 November 2014 the Committee of Ministers of the Council of Europe found Italy to have fulfilled its obligations under Article 46(2) of the Convention and closed the case.

Observations/Comments:

Articles discussing the case:

- Gianluca Gentili; European Court of Human Rights: An absolute ban on deportation of foreign citizens to countries where torture or ill-treatment is a genuine risk, *International Journal of Constitutional Law*, Volume 8, Issue 2, 1 April 2010, Pages 311-322, <https://academic.oup.com/icon/article/8/2/311/699980> [25]
- Fiona de Londras; Saadi v Italy: European Court of Human Rights Reasserts the Absolute Prohibition on Refoulement in Terrorism Extradition Cases, *American Society of International Law*, Volume 12, Issue 9, 13 May 2008, <https://www.asil.org/insights/volume/12/issue/9/saadi-v-italy-european-c...> [26]

This case summary was written by Emily Claire Procter, GDL student at BPP University.

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ECtHR - Shamayev v Georgia (April 2005) (Application no. 36378/02)

ECtHR - Aydin v Turkey (Application no. 25660/94)

ECtHR - Al-Adsani v United Kingdom [GC], Application No. 35763/97

ECtHR - Al-Moayad v Germany, Application No. 35865/03

ECtHR - Boujlifa v. France, 21 October 1997, § 42, Reports of Judgments and Decisions 1997-VI

ECtHR - Selmouni v. France [GC], Application No. 25803/94

ECtHR - Ramirez Sanchez v. France [GC], Application No. 59450/00

ECtHR - Price v. United Kingdom, Application No. 33394/96

ECtHR - Venkadajalasarma v the Netherlands, Application No. 58510/00

[ECtHR - Salah Sheekh v The Netherlands, Application No. 1948/04](#), [27]

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[ECtHR - Said v. the Netherlands, Application no. 2345/02, 5 July 2005](#) [29]

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[ECtHR - Jabari v. Turkey, Application no. 40035/98, 11 July 2000](#) [30]

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[ECtHR - Vilvarajah and others v. The United Kingdom, Application Nos. 13163/87, 13164/87, 13165/87, 13447/87, 13448/87, 30 October 1991](#) [32]

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[ECtHR - Mamatkulov and Askarov v. Turkey, Application Nos. 46827/99 and 46951/99, 4 February 2005](#) [34]

[ECtHR - Abdulaziz, Cabales and Balkandali v The United Kingdom, Application nos. 9214/80; 9473/81 and 9474/81, 28 May 1985](#) [35]

ECtHR - Perote Pellon v. Spain (no. 45238/99, ECHR 25 July 2002)

ECtHR - Müslim v Turkey (Application no. 53566/99)

Attachment(s):



[Saadi v Italy.pdf](#)[36]

Other sources cited:

- Articles 10 and 16 of the cooperation agreement on crime prevention between Italy and Tunisia, 13 December 2003
- Association agreement between Tunisia, the European Union and its member States, 17 July 1995
- Points IV and XII of the Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism, 11 July 2002
- Amnesty International Report 2006 ? Tunisia, 23 May 2006
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- US Department of State Country Report on Human Rights Practices 2005 ? Tunisia, 8 March 2006

Document from the *Association internationale de soutien aux prisonniers politiques* concerning the case of Hichem Ben Said Ben Frej

Authentic Language:

English

State Party:

Italy

National / Other Legislative Provisions:

Italy ? Article 270 bis of the Criminal Code

Italy ? Article 593 (2) of the Code of Criminal Procedure as amended by Law no. 46 of 20 February 2006

Italy ? Legislative Decree no. 144 of 27 July 2005 (entitled ?urgent measures to combat international terrorism? later converted to statute law in the form of Law no. 155 of 31 July 2005)

Tunisia ? Articles 175

176

180 (as amended by Law no. 2004-43 of 17 April 2000) and 213 of the Tunisian Code of Criminal Procedure

Tunisia ? 2003 Prevention of Terrorism Act

Links:

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[2] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A30

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