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Meeting: 1179 meeting (24-26 September 2013) (DH)

Item reference: Action report (18/06/2013)

Communication from Italy concerning the Saadi group of cases against Italy (Application No. 37201/06)

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Réunion : 1179 réunion (24-26 septembre 2013) (DH)

Référence du point : Bilan d'action

Communication de l'Italie concernant le groupe d'affaires Saadi contre Italie (requête n° 37201/06)
(**anglais uniquement**).



Rappresentanza permanente d'Italia presso il Consiglio d'Europa
Ufficio dell'Agente del Governo davanti alla Corte europea dei Diritti dell'Uomo



Action Report

SAADI v. ITALY Group of Cases
Application n°37201/06
Judgment of 28 February 2008

10 cases concerning the danger that the applicants might be subject to torture or to degrading or inhuman treatment in their country of origin (Tunisia) if deportation orders against them were to be enforced

Saadi v. Italy, Application No. 37201/06, judgment of 28/02/2008 – Grand Chamber
Abdelhedi v. Italy, Application No. 2638/07, judgment of 24/03/2009, final on 14/09/2009
Ben Salah v. Italy, Application No. 38128/06, judgment of 24/03/2009, final on 14/09/2009
Bouyahia v. Italy, Application No. 46792/06, judgment of 24/03/2009, final on 14/09/2009
C.B.Z v. Italy, Application No. 44006/06, judgment of 24/03/2009, final on 14/09/2009
Darraji v. Italy, Application No. 11549/05, judgment of 24/03/2009, final on 14/09/2009
Hamraoui v. Italy, Application No. 16201/07, judgment of 24/03/2009, final on 14/09/2009
O. v. Italy, Application No. 37257/06, judgment of 24/03/2009, final on 14/09/2009
Soltana v. Italy, Application No. 37336/06, judgment of 24/03/2009, final on 14/09/2009
Sellem v. Italy, Application No. 12584/08, judgment of 05/05/2009, final on 06/11/2009

I. Case Summary

These cases concern the risk that the applicants might be subject to torture or to degrading or inhuman treatment in their country of origin, Tunisia, if deportation orders against them were to be enforced (potential violation of Article 3).

The European Court observed that the danger of terrorism and the difficulties states face in protecting their communities from terrorist violence should not call into question the absolute nature of Article 3. The Court reaffirmed that for a forcible expulsion to be in breach of the Convention it was necessary - and sufficient - for substantial grounds to be shown for believing that there was a risk that the applicants would be subject to ill-treatment in the receiving country. It considered that in the present cases, on the basis of the evidence received, and not rebutted by any of the evidence provided by the Italian government, there were substantial grounds to believe the risk was real. This conclusion was not challenged by the diplomatic assurances provided by the Tunisian government.

II. Individual Measures

The European Court considered that the finding of the violation constituted just satisfaction in respect of non-pecuniary damages suffered by the applicants.

All the expulsion orders at issue against the applicants have been lifted.

Just satisfaction:

In the cases where just satisfaction was granted by the Court, it has been duly paid and proof of payment has been provided. In particular:

- Case of SAADI v. Italy, 8 000 EUR awarded for legal expenses, paid on 26/05/2008;
- Case of C.B.Z. v. Italy, 4 150 EUR awarded for legal expenses, paid on 08/10/2009;
- Case of BOUYAHIA v. Italy, 5 000 EUR awarded for legal expenses, paid on 08/10/2009;
- Case of HAMRAOUI v. Italy, 5 000 EUR awarded for legal expenses, paid on 21/04/2010, in conditions that have not been contested by the applicant;
- Case of SELLEM v. Italy, 6 623 EUR awarded for legal expenses, paid on 10/02/2010, with default interest.

No just satisfaction was awarded in the other cases.

III. General Measures

i) Publication and Dissemination: The European Court's judgments have been published on the website of the Court of Cassation (www.italgiure.giustizia.it), with a translation into Italian of most of them in the Ministry of Justice website: [http://www.giustizia.it/giustizia/it/mg_1_20_1.wp?facetNode_1=1_2\(2009\)&previousPage=mg_1_20&contentId=SDU157948](http://www.giustizia.it/giustizia/it/mg_1_20_1.wp?facetNode_1=1_2(2009)&previousPage=mg_1_20&contentId=SDU157948).

They have also been widely disseminated to competent authorities (supervisory magistrates and justices of the peace).

ii) Some insights on the domestic case law in compliance with the principles set out by the European Court

- Decisions given by the Court of Cassation: In a decision of 03/05/2010 (No. 10636) the Court of Cassation held that justices of the peace should assess the concrete risks that an irregular immigrant would face in his country of origin before an expulsion order can be executed. Likewise, in appeal proceedings lodged against an expulsion order for international terrorism the Court of Cassation (no. 20514, decision of 28 April 2010):

- referred to the application lodged by Mr. Kneni with the European Court and to the interim measure indicated on 14/04/2010;
- underlined the binding force of interim measures;
- stated that all Italian authorities, including judicial authorities, must respect interim measures (specific reference is made to judges competent for execution of sentences, *magistrati di sorveglianza*);
- made reference to the *Saadi* judgment, to the absolute nature of Article 3 of the Convention and to the current situation in Tunisia (examples of torture and ill-treatment reported by international organisations and the US State Department);
- stated that the consequence of the *Saadi* judgment is that all Italian authorities should comply with Article 3 of the Convention and, in particular, that all the judicial authorities should identify and take appropriate preventive measures other than expulsion where the

person to be expelled is considered to be socially dangerous. Judicial authorities should base their decisions on the specific situation of the person concerned. This obligation should be observed until the human rights situation, as described in the judgment of the European Court, improves in Tunisia and until concrete and reliable evidence is brought before domestic courts;

- quashed the decision of the Court of Appeal.

- *Decision of the Prefect of Benevento in another case in which the European Court issued an interim measure*

In the case of *Mostafa v Italy* (Application No. 42382/08), the Prefect of Benevento ordered the stay of execution of an expulsion order until the proceedings before the European Court are concluded: the latter had indicated an interim measure on 12/01/2009. In this case, the applicant had been convicted of terrorism and the expulsion order against him came into effect while he was serving his sentence. Consequently, on 30/01/2009 the Court of Milan ordered that the applicant is subject to the preventive measure of police surveillance and compulsory residence in Milan for 3 years. On 10/07/2012, the European Court decided to strike the case out of its list.

- *The Drissi Case – Working Center:* In a similar case in which the European Court indicated an interim measure under Rule 39, an Italian court decided to apply an alternative measure to expulsion by way of placing the applicant in a working centre (*casa di lavoro*; the case of Drissi, application no. 44448/08).

iii) *Circular of the Ministry of Justice:* On 27/05/2010 the Ministry of Justice sent to all Italian courts of appeal - and through them, to the Justices of the Peace - a circular stressing the obligation to respect interim measures under Rule 39. The circular referred to the well-established case-law of the European Court and to domestic judicial practice and explained the consequences of failure to comply with interim measures: Courts of appeal are expected to observe the requirements of the Convention and adopt all necessary measures to prevent non-compliance. As far as administrative expulsions (i.e. expulsions ordered by the Ministry of Interior as in the case of Ben Khemais or by the Prefect) are concerned, the circular letter indicated that Italy intended to comply with interim measures through a more effective judicial control in the process of validating such orders before expulsion can be carried out. In this respect, justices of the peace are not only expected to assess whether formal requirements are met in a given case but also whether there are “impediments” to expulsion, such as the risk of a violation of rights under Article 3 of the Convention in the country of destination (reference is made to Court of Cassation Decision No. 10636 of 03/05/2010, see below).

Furthermore, it is worth recalling the findings and conclusions of the European Court in the case of *Al Hanchi v. Bosnia* (application no. 48205/09, judgment of 15 November 2011, final on 4 June 2012). Among other things, the Court stated that “*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 [...] 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". (§§ 43, 44 of the judgment Al Hanchi). Therefore, **as recognised by the Court, in case of deportation to Tunisia, there is no real risk of (the applicant being subject to) ill-treatment** (§45 of the judgment Al Hanchi).

More recently, in June and July 2012, the Court delivered inadmissibility decisions in three cases (Ben Slimen v. Italy, application no. 38435/10; Kneni v. Italy, application no. 20046/10 and Belaj Meftah v. Italy, application no. 43211/10 and other applications) concerning the risk of expulsion to Tunisia, in which it referred to the situation in Tunisia following the recent change of regime. The Court noted that since it delivered the Al Hanchi judgment, democratic elections, which took place on 23 October 2011, resulted in the election of a Constituent Assembly in which the main Islamist party, legalised on 1st March 2011, became the most represented party. In view of the above, the Court considered that there were no more substantial grounds to believe that the applicants would face a real risk of being subjected to treatment contrary to Article 3 because of the suspicions of terrorism weighting on them, if expelled to Tunisia.

Therefore, thanks to the awareness raised among the competent authorities by the publication/dissemination of the judgment and by the detailed Circular of the Ministry of Justice – leading to domestic case law and administrative decisions coherent with the principles of the Convention as developed by the European Court (see above) – in similar situations the Italian authorities are now fully complying with the principles set out by the European Court in judgments at issue.

Reference is also made to the general measures in the group of cases *Ben Khemais v Italy* (Application no. 246/07).

Conclusion

The government considers that no further individual and general measure are required in this case and that Italy has thus complied with its obligations under Article 46, paragraph 1, of the Convention.