

Press release issued by the Registrar

**GRAND CHAMBER JUDGMENT**  
**SAADI v. ITALY**

The European Court of Human Rights has today delivered at a public hearing its Grand Chamber judgment<sup>1</sup> in the case of *Saadi v. Italy* (application no. 37201/06).

The Court held unanimously that if the decision to deport the applicant to Tunisia were to be enforced, there would be a **violation of Article 3** of the European Convention on Human Rights (prohibition of torture and inhuman or degrading treatment).

Under Article 41 of the Convention (just satisfaction), the Court held unanimously that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant, and awarded him 8,000 euros (EUR) for costs and expenses. (The judgment is available in English and French.)

**1. Principal facts**

The applicant, Nassim Saadi, is a Tunisian national who was born in 1974 and lives in Milan (Italy). He is the father of an eight-year-old child whose mother is an Italian national.

The application concerns the possible deportation of the applicant to Tunisia, where he claims to have been sentenced in 2005, in his absence, to 20 years' imprisonment for membership of a terrorist organisation acting abroad in peacetime and for incitement to terrorism.

In December 2001 the applicant was issued with an Italian residence permit, valid until October 2002, "for family reasons".

In October 2002 Mr Saadi, who was suspected, among other things, of international terrorism, was arrested and placed in pre-trial detention. He was accused of conspiracy to commit acts of violence (including attacks with explosive devices) in States other than Italy with the intention of arousing widespread terror; he was also accused of falsifying documents and receiving stolen goods.

On 9 May 2005 Milan Assize Court reclassified the offence of international terrorism, amending it to criminal conspiracy. It found Mr Saadi guilty of that offence and of forgery and receiving, and sentenced him to four years and six months' imprisonment. It acquitted the applicant of aiding and abetting clandestine immigration. Both the prosecution and the applicant appealed. On the date of the adoption of the Grand Chamber's judgment the proceedings were pending in the Italian courts.

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<sup>1</sup> Grand Chamber judgments are final (Article 44 of the Convention).

On 11 May 2005 a military court in Tunis sentenced the applicant in his absence to 20 years' imprisonment for membership of a terrorist organisation acting abroad in peacetime and for incitement to terrorism.

Mr Saadi was released on 4 August 2006. On 8 August 2006, however, the Minister of the Interior ordered him to be deported to Tunisia, applying the provisions of the Law of 27 July 2005 on "urgent measures to combat international terrorism". The Minister observed that "it was apparent from the documents in the file" that the applicant had played an "active role" in an organisation responsible for providing logistical and financial support to persons belonging to fundamentalist Islamist cells in Italy and abroad. The applicant was therefore placed in the Milan temporary holding centre pending his deportation.

Mr Saadi made a request for political asylum, which was rejected on 14 September 2006. On the same day he lodged an application with the European Court of Human Rights. Under Rule 39 of the Rules of Court (interim measures), the Court asked the Italian Government to stay the applicant's expulsion until further notice.

The maximum time allowed for the applicant's detention with a view to expulsion expired on 7 October 2006 and he was released on that date. However, on 6 October 2006 a new deportation order had been issued against him to France (the country from which he had arrived in Italy), with the result that he was immediately taken back to the Milan temporary holding centre. The applicant applied for a residence permit and requested refugee status, without success.

On 3 November 2006 the applicant was released, as fresh information made it clear that it would not be possible to deport him to France.

On 29 May 2007 the Italian embassy in Tunis asked the Tunisian Government to provide a copy of the alleged judgment convicting the applicant in Tunisia, as well as diplomatic assurances that, if the applicant were to be deported to Tunisia, he would not be subjected to treatment contrary to Article 3 of the European Convention on Human Rights, that he would have the right to have the proceedings reopened and that he would receive a fair trial. In reply, the Tunisian Minister of Foreign Affairs twice sent a note verbale to the Italian Embassy in July 2007 stating that he "accepted the transfer to Tunisia of Tunisians imprisoned abroad once their identity had been confirmed", that Tunisian legislation guaranteed prisoners' rights and that Tunisia had acceded to "the relevant international treaties and conventions".

## **2. Procedure and composition of the Court**

The application was lodged with the European Court of Human Rights on 14 September 2006.

On 29 March 2007 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber, under Article 30<sup>1</sup> of the Convention.

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<sup>1</sup> Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

The President granted leave to the United Kingdom Government to intervene in the proceedings as a third party.

A hearing took place in public in the Human Rights Building, Strasbourg, on 11 July 2007.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Jean-Paul **Costa** (French), *President*,  
Christos **Rozakis** (Greek),  
Nicolas **Bratza** (British),  
Boštjan M. **Zupančič** (Slovenian),  
Peer **Lorenzen** (Danish),  
Françoise **Tulkens** (Belgian),  
Loukis **Loucaides** (Cypriot)  
Corneliu **Bîrsan** (Romanian),  
Nina **Vajić** (Croatian),  
Vladimiro **Zagrebelky** (Italian),  
Alvina **Gyulumyan** (Armenian),  
Khanlar **Hajiyev** (Azerbaijani),  
Dean **Spielmann** (Luxemburger),  
Egbert **Myjer** (Dutch),  
Sverre Erik **Jebens** (Norwegian),  
Ineta **Ziemele** (Latvian),  
Isabelle **Berro-Lefèvre** (Monegasque), *judges*,

and also Vincent **Berger**, *Jurisconsult*.

### 3. Summary of the judgment<sup>1</sup>

#### Complaints

The applicant alleged that enforcement of his deportation to Tunisia would expose him to the risk of being subjected to torture or inhuman and degrading treatment contrary to Article 3 of the Convention (prohibition of torture and inhuman or degrading treatment). Relying on Article 6 (right to a fair trial), he further complained of a flagrant denial of justice he had allegedly suffered in Tunisia on account of being convicted in his absence and by a military court. Under Article 8 (right to respect for private and family life), he alleged that his deportation to Tunisia would deprive his partner and his son of his presence and support. Lastly, relying on Article 1 of Protocol No. 7 (procedural safeguards relating to expulsion of aliens), he complained that his expulsion was neither necessary to protect public order nor grounded on reasons of national security.

#### Decision of the Court

##### Article 3

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<sup>1</sup> This summary by the Registry does not bind the Court.

The Court observed that it could not underestimate the danger of terrorism and noted that States were facing considerable difficulties in protecting their communities from terrorist violence. However, that should not call into question the absolute nature of Article 3.

Contrary to the argument of the United Kingdom as third-party intervener, supported by the Italian Government, the Court considered that it was not possible to weigh the risk that a person might be subjected to ill-treatment against his dangerousness to the community if not sent back. The prospect that he might pose a serious threat to the community did not diminish in any way the risk that he might suffer harm if deported.

As regards the arguments that such a risk had to be established by solid evidence where an individual was a threat to national security, the Court observed that such an approach was not compatible with the absolute nature of Article 3. It amounted to asserting that, in the absence of evidence meeting a higher standard, protection of national security justified accepting more readily a risk of ill-treatment for the individual. The Court reaffirmed that for a forcible expulsion to be in breach of the Convention it was necessary – and sufficient – for substantial grounds to have been shown for believing that there was a risk that the applicant would be subjected to ill-treatment in the receiving country.

The Court referred to reports by Amnesty International and Human Rights Watch which described a disturbing situation in Tunisia and which were corroborated by a report from the US State Department. These reports mentioned numerous and regular cases of torture inflicted on persons accused under the 2003 Prevention of Terrorism Act. The practices reported – said to be often inflicted on persons in police custody – included hanging from the ceiling, threats of rape, administration of electric shocks, immersion of the head in water, beatings and cigarette burns. It was reported that allegations of torture and ill-treatment were not investigated by the competent Tunisian authorities, that they refused to follow up complaints and that they regularly used confessions obtained under duress to secure convictions. The Court did not doubt the reliability of those reports and noted that the Italian Government had not adduced any evidence capable of rebutting such assertions.

The Court noted that in Italy Mr Saadi had been accused of international terrorism and that his conviction in Tunisia had been confirmed by an Amnesty International statement in June 2007. The applicant therefore belonged to the group at risk of ill-treatment. That being so, the Court considered that there were substantial grounds for believing that there was a real risk that the applicant would be subjected to treatment contrary to Article 3 if he were to be deported to Tunisia.

The Court further noted that the Tunisian authorities had not provided the diplomatic assurances requested by the Italian Government in May 2007. Referring to the notes verbales from the Tunisian Ministry of Foreign Affairs, the Court emphasised that the existence of domestic laws and accession to treaties were not sufficient to ensure adequate protection against the risk of ill-treatment where, as in the applicant's case, reliable sources had reported practices manifestly contrary to the principles of the Convention. Furthermore, even if the Tunisian authorities had given the diplomatic assurances, that would not have absolved the Court from the obligation to examine whether such assurances provided a sufficient guarantee that the applicant would be protected against the risk of treatment.

Consequently, the Court found that the decision to deport Mr Saadi to Tunisia would breach Article 3 if it were enforced.

Article 6, Article 8 and Article 1 of Protocol No. 7

Recalling its finding concerning Article 3 and having no reason to doubt that the Italian Government would comply with its Grand Chamber judgment, the Court considered that it was not necessary to decide the question whether, in the event of expulsion to Tunisia, there would also be violations of Article 6, Article 8 and Article 1 of Protocol No. 7.

Judge Zupančič expressed a concurring opinion, as did Judge Myjer, joined by Judge Zagrebelsky. The texts are annexed to the judgment.

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The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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*The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.*