



Case of Saadi v. Italy

Application no. 37201/06

Country: Italy

Region: Europe

Year: 2008

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Public safety, Violence

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right to due process/fair trial, Right to family life, Right to liberty and security of person, Right to life

Facts

The applicant was a Tunisian national who was arrested on 9 October 2002 on suspicion of involvement in international terrorism. He was charged with (1) conspiracy to commit acts of violence in States other than Italy with the aim of spreading terror, (2) falsification of a large number of documents such as passports, driving licences and residence permits, (3) receiving stolen goods and (4) attempting to aid and abet the entry into Italian territory of an unknown number of aliens in breach of immigration legislation.

The court of first instance was required to consider the charge of international terrorism, and determined that a conspiracy was terrorist in nature where its aim was to commit violent acts against civilians or persons not actively participating in armed conflict with the intention of spreading terror or obliging a government or international organisation to perform or refrain from performing any act, or where the motive was political, ideological or religious in nature. The court of first instance altered the legal classification of the first offence from international terrorism to criminal conspiracy and found the applicant guilty in respect of to such criminal conspiracy offence, as well as the forgery and receiving offences. Both the applicant and prosecution appealed, with the applicant seeking to be acquitted of all charges, and the prosecution arguing that the constituent elements of the crime of international terrorism were made out, as the existence of a plan to commit an act of violence was sufficient.

In the meantime, on May 11 2005, a military court in Tunisia had sentenced the applicant in his absence to twenty years' imprisonment for membership of a terrorist organisation operating abroad in a time of peace and for incitement to terrorism. The applicant asserted that he had not been made aware of the conviction until the judgment had become final nor had not been sent a copy of the judgment in question.

On 4 August 2006, the applicant was released from imprisonment and it was ordered that he be deported to Tunisia. On 11 August 2006, the applicant requested political asylum, alleging that he had been sentenced in his absence from Tunisia for political reasons and that he feared he would be subjected to torture and political and religious reprisals if he returned. This request was refused by the head of the Milan police on the basis that the applicant was a threat to national security.

The applicant asked the Court to suspend or annul the decision to deport him to Tunisia, and the Court subsequently sought information from the Italian government as to whether the applicant's conviction in Tunisia was final and whether or not it were possible in Tunisian law to obtain a reopening of proceedings. According to the Italian authorities, the judgment was not final as the law in Tunisia would enable Saadi to appeal against a judgment made in his absence. On 5 October 2006, the Court decided to stay the applicant's expulsion until further notice. Once the stay expired, a new deportation order was served on the applicant, which named France as the receiving country, rather than Tunisia. The applicant was then released as it became apparent that it was not possible for him to be deported to France. On the same day the Milan Court issued a precautionary order forbidding the applicant from leaving Italian territory and requiring that he report regularly to the police station. In the meantime, the applicant had applied for a residence permit. This was denied on the basis that it had not been deemed 'in the interests of justice' and that the application required the production of a passport or similar document. The applicant alleged that Tunisian authorities had refused to renew his passport.

The applicant also requested an Italian Regional Administrative Court to set aside the order for his deportation and stay his execution. This court granted the suspension, and it was noted that a stay had also been requested by the European Court of Human Rights.

In mid 2007, the Italian embassy requested diplomatic assurances from Tunisia that the applicant would not be subjected to treatment contrary to Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention") and would not suffer a flagrant denial of justice if he were deported to Tunisia. The Tunisian Minister for Foreign Affairs affirmed that "the Tunisian laws in force guarantee and protect the right of prisoners in Tunisia and secure to them the right to a fair trial."

The case that came before the European Court of Human Rights was whether deportation in such circumstances would amount to a violation of Article 3 of the Convention, prohibiting torture, inhuman or degrading treatment or punishment (non-refoulement obligation).

The Italian government argued that Saadi's deportation to Tunisia by the government would not amount to a violation of Article 3 of the Convention. The government referred to the fact that Tunisia was signatory to a number of international human rights treaties and agreements that guaranteed Saadi's right were to be respected, to the diplomatic assurances it had received from the Tunisian foreign minister, to a lack of sufficient evidence presented by Saadi that he risked being exposed to torture or inhuman or degrading treatment and further cited heightened security concerns post September 11 as a justification for deportation.

The UK joined with Italy in seeking to revisit the principle enumerated by the Court in the case of *Chahal v. UK*, wherein it was stated that, in light of the absolute prohibition of treatment contrary to Article 3 of the Convention, national security interests were not to be considered in evaluating the risk of an individual being subject to treatment contrary to Article 3 in the event of deportation.

Decision and Reasoning

The Court determined that it was not obliged to consider the responsibility of the receiving country, Tunisia, but to adjudicate the responsibility of the State party to the Convention by reason of its having undertaken action which, as a direct consequence, risked exposing the individual to the proscribed ill-treatment set out in Article 3 of the Convention.

The Court emphasized the absolute prohibition on torture, inhuman and degrading treatment and then undertook to determine whether the applicant faced a "real risk" of such treatment if deported. It held that the existence of the risk must be assessed primarily with reference to those facts that were known or ought to have been known by Italy at the time of the proceedings before the Court.

The Court considered the meaning of "ill-treatment" under Article 3 of the Convention, finding that a minimum level of severity had to be reached before treatment would fall within this definition. It held that this was a relative assessment, dependent on factors such as the duration of treatment, its physical and mental effects, and in some cases, the sex, age and state of health of the victim. In regard to the definition of "inhuman" or "degrading", the Court set out that the suffering or humiliation involved must go "beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment." In order for a particular form of ill-treatment to be regarded as torture, the Court held that the "special stigma" of torture was to attach only to deliberate inhuman treatment causing very serious and cruel suffering.

The Court did not accept the United Kingdom's argument that a distinction must be drawn between treatment inflicted directly by a signatory State and treatment that might be inflicted by authorities of another State; it determined that protection from this latter form of treatment should be weighed against the interests of the community of a signatory State as a whole. In doing so, the Court reaffirmed the principle in *Chahal*, that it is not possible to weigh the risk of ill-treatment against national security or community interests in order to determine whether the responsibility of a State is engaged under Article 3 of the Convention, even where such treatment is inflicted by another State. The assessments of the risk of harm faced by a person subject to expulsion and the danger they pose to the community were assessments to be conducted independently, and could not be balanced against one another.

The Court also affirmed that the UK's argument that, where an applicant presents a threat to national security, stronger evidence must be adduced to prove that there is a risk of ill-treatment, was contrary to the absolutist nature of the protection afforded by Article 3 of the Convention.

Along with other indications of torture abuses, the Court referred to several human rights reports which outlined a "disturbing" situation in Tunisia, wherein a large number of unfair trials had taken place, resulting in lengthy prison sentences for persons facing terrorism charges. In light of the findings of these reports and the circumstances particular to the applicant, the Court found that there were substantial grounds for believing

that the applicant faced a real risk of treatment contrary to Article 3 of the Convention if deported to Tunisia. The diplomatic assurances received by Italy in the circumstances were found not sufficient to exclude a breach of Article 3 of the Convention.

The applicant had further alleged that Italy would be in violation of Article 6, providing for the right to a fair trial; Article 8, which guaranteed respect for private and family life; and Article 1 of Protocol 7 which pertained to the rights of aliens facing expulsion. The Court found that it was not necessary to adjudicate these matters, as it believed that the government of Italy would not deport the applicant given its finding in relation to Article 3 of the Convention.

One judge concurred with the decision, additionally noting the difficulty of conducting "probabilistic assessment of future events." This judge thus emphasized that "there is simply no quid pro quo between "serious threat to the community" on the one hand, and "the degree of risk of ill-treatment that the person may be subject to on return" on the other.

Two other judges also concurred, emphasizing that "States are not allowed to combat international terrorism at all costs. . . Upholding human rights in the fight against terrorism is first and foremost a matter of upholding our values, even with regard to those who may seek to destroy them."

Decision Excerpts

"The Court notes first of all that States face immense difficulties in modern times in protecting their communities from terrorist violence (see *Chahal*, cited above, ¶ 79, and *Shamayev and Others*, cited above, ¶ 335). It cannot therefore underestimate the scale of the danger of terrorism today and the threat it presents to the community. That must not, however, call into question the absolute nature of Article 3.

Accordingly, the Court cannot accept the argument of the United Kingdom Government, supported by the Government, that a distinction must be drawn under Article 3 between treatment inflicted directly by a signatory State and treatment that might be inflicted by the authorities of another State, and that protection against this latter form of ill-treatment should be weighed against the interests of the community as a whole (see paragraphs 120 and 122 above). Since protection against the treatment prohibited by Article 3 is absolute, that provision imposes an obligation not to extradite or expel any person who, in the receiving country, would run the real risk of being subjected to such treatment." Paragraphs 137-138.

"The Court considers that the argument based on the balancing of the risk of harm if the person is sent back against the dangerousness he or she represents to the community if not sent back is misconceived. The concepts of "risk" and "dangerousness" in this context do not lend themselves to a balancing test because they are notions that can only be assessed independently of each other. Either the evidence adduced before the Court reveals that there is a substantial risk if the person is sent back or it does not. The prospect that he may pose a serious threat to the community if not returned does not reduce in any way the degree of risk of ill-treatment that the person may be subject to on return. For that reason it would be incorrect to require a higher standard of proof, as submitted by the intervener, where the person is considered to represent a serious danger to the community, since assessment of the level of risk is independent of such a test." Paragraph 139