

Italy repeatedly ignores ECtHR orders to suspend expulsions to Tunisia

Following the latest expulsion by Italy of a Tunisian citizen on 2 August 2009 concerning whom the European Court of Human Rights (ECtHR) had issued a binding interim measure for him not to be repatriated and for the measure to be suspended while his application was pending before the Strasbourg court, Herta Däubler-Gmelin (Germany) and Christos Pourgourides (Cyprus), respectively the Chair of the Council of Europe Parliamentary Assembly (PACE) Legal Affairs Committee and the rapporteur on the implementation of Strasbourg Court judgments, issued a highly critical statement:

"It is totally unacceptable to ignore binding interim measures ordered by the European Court of Human Rights (ECHR). It is disgraceful, for a mature democracy like Italy, to have sent Ali Toumi back to Tunisia last Sunday, a case in which there exists an imminent risk of irreparable damage to the applicant... Such action is in blatant contravention of the Strasbourg Court's clearly established case-law. This is the fourth case in which, since 2005, the Italian authorities have taken measures in flagrant disregard of the Court's orders".

They went on to add that: *"This intolerable behaviour must be condemned by the Council of Europe without delay. Our Legal Affairs Committee will need to be seized of this matter".*

The expulsion of Ali Toumi followed the issuing of an interim measure under Rule 39 of its rules of procedure in order to allow the court to decide on his appeal against the expulsion in which he argues that he runs the risk of being subjected to torture or ill-treatment in his home country. Italy was informed of this measure on 18 May 2009, and it was reiterated on 24 July. Toumi had served a four-year sentence after being found guilty of membership in a terrorist organisation involved in recruiting volunteers to be sent to Iraq, and was arrested after his return to Tunisia. Instructions for the suspension of repatriations issued under article 39 of the Court's rules of procedure have come to represent the only viable means of judicial appeal, other than an asylum application, which was rejected in this case, in order to prevent "expulsion" orders for national security reasons from being enacted by resorting to the ECtHR's jurisdiction, and they are binding measures. This was the fourth instance in which Italy disregarded instructions by the ECtHR to suspend deportations to Tunisia while the case was pending before the Court, contravening the "absolute" prohibition of torture, inhuman or degrading treatment that is a cornerstone of the European fundamental human rights structure. Interior minister Roberto Maroni (Lega Nord), denied that it is a matter of Italy contravening the ECtHR's decisions, and his reasoning is noteworthy:

"We respect the European Court's decisions, and I stress decisions. However, when I receive a fax from an official that says that it is necessary to suspend the expulsion while awaiting the Court's decision, I prefer to continue and expel an alleged terrorist. We cannot await the slowness of the Court, whose decisions we are nonetheless willing to receive. However, while awaiting their arrival, we apply our law. We have done so now and will continue to do it."

Thus, in spite of the interim measures being binding and a key procedural instrument to ensure an effective appeal under article 3 of the ECHR (risk of torture) to be filed before the ECtHR when such expulsions are decreed and imminent prior to them being carried out, this breach of compliance is justified by dismissing the court's order as a mere "fax from an official" (as opposed to a measure adopted by the Court), disregarding the Court's rules for these cases.

In April 2009, reporting on his visit to Italy on 13-15 January 2009, Council of Europe human rights commissioner Thomas Hammarberg expressed his "strong opposition" to "forced returns, even if they occur under cover of diplomatic assurances, to countries with long-standing, proven records of torture". He went on to detail two cases from 2008 in which suspension measures issued to Italy by the ECtHR under Rule 39 while appeals from Tunisian citizens were pending before it were disregarded. In June 2008, Essid Sami Ben Khemais was expelled in spite of a Rule 39 stay of deportation measure transmitted to the Italian authorities. In relation to this case, on 24 February 2009 Italy was found guilty by the ECtHR of breaching articles 3 (prohibition of torture) and 34 (individual right to submit an application to the Court) of the ECHR. There were aggravating circumstances such as the failure by Italy to request that the measure be withdrawn (thus they overtly ignored the instructions) or to receive diplomatic assurances from Tunisia as regards the deportee's treatment on arrival prior to his repatriation. A further deportation, that of Mourad Trabelsi (see Statewatch news online, December 2008), took place on 13 December 2008, disregarding a request under Rule 39 that the deportation be suspended while assessment of his submission before the court was pending. While refusing his asylum application, the Italian territorial commission for the recognition of refugee status had asked for Trabelsi to be issued a residence permit on humanitarian grounds due to the risk that he may be subjected to torture or ill-treatment on his return to Tunisia. A decision by the judge supervising Trabelsi's release (*magistrato di sorveglianza*) in Pavia on 3 December 2008 regarding his expulsion dismissed the ECtHR's order issued under rule 39 as "not precluding the subject's expulsion" as a security measure.

Hammarberg also referred back to a previous case of non-compliance with an article 39 stay of deportation order involving a Roma woman from Bosnia Herzegovina repatriated in September 2005, who was later issued a visa allowing her to return to Italy. He also highlighted cases in which expulsions to Tunisia had resulted in individuals reportedly being subjected to torture and ill-treatment (Loubiri Habib, deported in August 2006, and Cherif Foued Ben Fitouri, in January 2007). In his conclusions, Hammarberg stressed that there are "credible reports that attest to the existence of a pattern of torture and ill-treatment of detainees in Tunisia especially those arrested in connection with security related offences, including those forcibly returned from abroad". As for seeking diplomatic assurances from the country to which they are being expelled, they "should never be relied on", as the practice has an inherent weakness, namely, "that where there is a need for such assurances, there is clearly an acknowledged, real risk of torture and ill-treatment". The Italian government's response to the report notes that Italy has complied with Rule 39 orders for stays of expulsion in a vast majority of cases

(all but three of 29 between 2005 and 2008, until this latest case), adding that, in the case of Essid Sami Ben Khemais, diplomatic assurances were received after the expulsion, and that the deportee had been seen by his family and Tunisian lawyer and did not allege having been subjected to torture or ill-treatment [citing the ECtHR judgement in the *Khemais vs. Italy* case]. Nonetheless, the cited judgement also reiterated its conclusion in the *Saadi vs. Italy* case of 28 February 2008 that

“international reports mentioned numerous and regular cases of torture and ill-treatment meted out in Tunisia to persons suspected or found guilty of terrorism and that visits by the International Committee of the Red Cross to Tunisian prisons could not exclude the risk of subjection to treatment contrary to Article 3”.

Moreover, in “virtually all cases” no investigations were carried out and perpetrators were not brought to justice, his representative before the Court [an independent foreign lawyer] was unable to visit his client, and nor was the Italian ambassador. In spite of the visit by family members and his Tunisian lawyer, and the absence of allegations of torture or ill-treatment, this “showed that the applicant had not suffered ill-treatment in the weeks following his deportation”, but “it did not in any way predict the applicant’s future fate”.

Sources

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Previous Statewatch coverage:

Allowing someone to live or letting them die. Italy contravenes European Court of Human Rights instructions by deporting Tunisian, by Gabriella Petti, December 2008 [in-depth article on the Trabelsi case, including relevant documents]

<http://www.statewatch.org/news/2008/dec/12italy-tunisia.htm>

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