

# AMNESTY INTERNATIONAL

## PRESS RELEASE

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### **European Court of Human Rights: Ban on torture is absolute and universal**

Amnesty International, the AIRE Centre, The International Commission of JURISTS, Interights and REDRESS are warning that, in a hearing today, the Grand Chamber of the European Court of Human Rights is being asked to reconsider the absolute ban on torture and other ill-treatment.

Weakening the universally accepted absolute ban on torture and other ill-treatment, would not only be wrong, it would endanger us all, by undermining one of the basic values on which the European system is built.

In the case being considered *Saadi v Italy*, Nassim Saadi claims, among other things, that the order to deport him from Italy to Tunisia, under the Pisanu law, violates the Italian Government's obligations under the European Convention on Human Rights to prohibit and protect against torture and other ill-treatment, because returning him to Tunisia would expose him to a real risk of torture or other ill-treatment. The government of the United Kingdom, along with a handful of others, have intervened in the case to support the deportation despite the risk of torture and other ill-treatment. The government of the United Kingdom (UK) is asking the European Court of Human Rights to change its case law which is currently consistent with the universally recognized absolute ban against torture and other ill-treatment. The UK is arguing that the prohibition on torture and ill-treatment should not be absolute for foreign nationals whom a state considers represent a threat to national security and whom it seeks to deport.

At present, human rights law is clear. The absolute prohibition of torture and other ill-treatment means that states are obliged to ensure that their representatives do not engage in torture and other ill-treatment, no matter the circumstances. They must bring to justice those responsible for these acts and ensure redress to the victims. The prohibition also means that states may not expose people to risks of torture or other ill-treatment in other countries. Thus they cannot lawfully send someone to any place where they face a real risk of torture or other ill-treatment. These rules hold true, no matter the circumstances, including where the person concerned is suspected of involvement in terrorism.

The prohibition of torture and other ill-treatment is absolute for good reason. Torture is a grave violation of personal dignity and bodily integrity. Its effect is also corrosive on the rule of law and the moral authority of the state itself. For these and other reasons, the practice of torture has been repeatedly condemned by international and national courts. Its absolute prohibition has attained the highest status of international law, it is fundamental, peremptory and intransgressible.

The international community has made repeated legal commitments and public declarations that the measures taken by states to protect us all from terrorism must be consistent with international law, including the absolute ban on torture and other ill-treatment. However, the media, reports of human rights organizations, and the reports of UN and Council of Europe expert-bodies have been replete with examples of measures taken by states that seek to circumvent the absolute prohibition. The sending of people to places where they risk torture or other ill-treatment on the basis of a "diplomatic assurance", as Italy seeks to do in the *Saadi* case, is just one example of this phenomenon that is of particular concern in Europe. A "diplomatic assurance" is an unenforceable "gentleman's agreement" with the receiving state that it will make an exception to the 'normal practice' of torturing detainees by protecting the individual concerned from such treatment.

**Background:**

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The case of *Saadi v Italy* is being considered by the Grand Chamber of the European Court of Human Rights on 11 July 2007. In this case Nassim Saadi is claiming, among other things, that the order to deport him from Italy to Tunisia, under the Pisanu law, violates the Italian Government's obligations under the European Convention on Human Rights.

Nassim Saadi, a Tunisian national residing lawfully in Italy, was convicted in May 2005 and sentenced to a term of imprisonment of four years and six months for criminal conspiracy and forgery. In the same trial he was found not guilty of association with international terrorism. Appeals by both Nassim Saadi and the prosecutor remain pending in the Italian courts.

However, in August 2006, while the appeal was pending, the Minister of Interior ordered Nassim Saadi's deportation to Tunisia under the Pisanu law. Under this law, a person suspected by the authorities of involvement in terrorism-related activities may be deported on the order of the Minister of the Interior or a Prefect, without having been charged or tried. Appeals of such deportation orders are non-suspensive. The *Saadi* case is one of a number of cases pending which challenge the application of this law, whose constitutionality is currently under review in Italy.

Among other things, in his case before the European Court of Human Rights, Nassim Saadi claims that he faces a real risk of torture or other ill-treatment and other human rights violations in Tunisia, and thus can not lawfully be returned there. Our organizations have reports that people who have been returned to Tunisia from abroad including from Italy, have been held in incommunicado detention and that they have been subjected to torture or other forms of ill-treatment during their detention. Another Tunisian man, expelled from Italy to Tunisia under the Pisanu Law in early 2007, has reportedly been subject to ill-treatment in detention there.

In May 2005, Nassim Saadi was also convicted and sentenced to 20 years' imprisonment, in his absence, by a military court in Tunisia for membership of a terrorist organization operating abroad and for incitement to terrorism, reportedly based on his alleged conduct in Italy. Although he would be likely to be re-tried if returned to Tunisia, such a trial would take place in the military court. The research of our organizations indicates that trials in military courts in Tunisia violate international standards of fairness. The presiding judge is the only civilian hearing the case and there is restricted access to such trials, which are held on military compounds. The European Court of Human Rights has already held in other circumstances that trials of this kind breach the right to a fair trial. Civilians tried in such courts in Tunisia have reported violations of their right to a defence, ranging from not having been informed of their right to a lawyer, to restrictions placed on their lawyer's access to the case file and basic information such as the dates on which the hearings will take place. Appeals are considered only by the Military Court of Cassation, there is no review by a civilian court.

The *Saadi v Italy* case is one of a series of three cases pending in the European Court of Human Rights in which the United Kingdom and a handful of other European governments are seeking to change the Court's case law on the absolute prohibition of sending a person to a place where they face a real risk of torture and other ill-treatment, in favour of a test which would balance the risk to the individual against the risk to national security.

Another case in which the government of the United Kingdom has made this argument to the Court is in the case of *Ramzy v the Netherlands*, also pending in the European Court of Human Rights. The Court has yet to hold hearings in the *Ramzy* case. However, the Court granted the request of the United Kingdom to address the Court during the hearing of the *Saadi* case and to include its submissions which had been previously filed in the *Ramzy* case in the *Saadi v Italy* case file. The Court did not however agree to include in the *Saadi* case, the counter-balancing written submissions filed by three groups of NGOs, including those filed by Amnesty International, the AIRE Centre, the International Commission of Jurists, INTERIGHTS and Redress, which are part of the case file in *Ramzy*- which is a matter of regret for the organizations.

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