

Human Rights Watch

Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

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Italy should immediately halt all efforts to expel Essid Sami Ben Khemais to Tunisia, because of its established record of torture, Human Rights Watch said today. At the time of writing on June 3, 2008, Ben Khemais, a Tunisian national facing terrorism charges in Italy, was being held at Fiumicino airport outside Rome and could be put on a plane to Tunis at any time.

Interior Minister Roberto Maroni ordered Ben Khemaiss expulsion on May 31 despite a 2007 request by the European Court of Human Rights to suspend the expulsion until it had had time to examine Ben Khemaiss claim that he faced the risk of torture or prohibited ill-treatment upon return to Tunisia. Interim measures from the European court, such as the request to suspend this expulsion, are fully binding on Italy, and Italys disregard of such interim measures would constitute a violation of the European Convention on Human Rights. The European court sent a letter to the Italian government on June 2 to remind it of its obligations.

Torture is a widespread problem in Tunisia, Human Rights Watch said, and persons detained on terrorism charges are at particular risk.

Italys attempt to expel Ben Khemais, knowing hes at risk of torture in Tunisia, shows contempt for the man and the law, said Judith Sunderland, Europe researcher for Human Rights Watch. Flouting Europes highest human rights court is not likely to make Italy safer.

Italys move to expel Ben Khemais comes only a few months after the Grand Chamber of the European Court reaffirmed the absolute prohibition on sending individuals to countries where they risk torture or ill-treatment, in a case involving Italys efforts to expel another Tunisian to his country of origin.

Ben Khemais was scheduled to appear in criminal court on June 3 for a preliminary hearing on terrorism charges, and would likely have been released because he had already been held for the maximum amount of time in pretrial detention allowed by Italian law for the charges against him. But his lawyers told Human Rights Watch that instead of taking Ben Khemais to court, Italian officials took him to Fiumicino airport. Ben Khemais had been convicted in February 2002 of membership in a terrorist organization and sentenced to six-and-a-half years in prison. Indicted on new terrorism charges in 2005, he was remanded into pretrial detention in June 2007 on the eve of his scheduled release for time served. In view of the defendants forced absence, the judge postponed the June 3 hearing until November 2008.

Ben Khemais has apparently been convicted in Tunisia several times in absentia on terrorism charges and would face at least 10 years in prison were the convictions confirmed.

European governments increasingly rely on national security removals as a tool in the fight against terrorism. Administrative expulsions generally provide for fewer procedural guarantees than prosecutions. In 2005, Italy adopted a new expedited procedure for national security expulsions that explicitly precludes the right to remain in Italy while appealing an expulsion, even when the individual claims the risk of torture or ill-treatment upon removal. Since 2006, the European Court of Human Rights has blocked efforts by Italy to expel a number of Tunisians, in addition to Ben Khemais, under this expedited procedure.

International law, including the European Convention on Human Rights, prohibits sending anyone to a country where they face a risk of being tortured or subjected to ill-treatment. This is the principle of nonrefoulement, which is absolute and applies to everyone, regardless of their alleged crimes.

Italy has the right to expel those who pose a genuine threat to national security, Sunderland said. But it cant just hand suspects over to countries that torture. Italy has other options: prosecuting him for his crimes, releasing him and keeping a close watch, or finding a third country to take him.

On February 28, the European Court of Human Rights unanimously reaffirmed the absolute prohibition on deporting people to countries where they are at risk of torture or ill-treatment. The Grand Chamber ruled that Italys efforts to deport Nassim Saadi, a Tunisian national residing lawfully in Italy, would violate article 3 of the European Convention on Human Rights. Article 3 prohibits torture and ill-treatment, and is understood to encompass the absolute prohibition of refoulement.

After the Saadi ruling, the European Court of Human Rights informed the Italian government that it would decide a handful of similar cases pending before the court, including that of Ben Khemais, in a manner consistent with the Saadi judgment, and recommended that Italy seek friendly settlements in those cases. Human Rights Watch said, to its knowledge, the current efforts to expel Sami Ben Khemais constitute Italys only response to date.

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