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It suffices to recall that in 2005 Italy amended Article 175 of the CPP (Legislative Decree No. 17 of 21/02/2005, confirmed by Act No. 60 of 22/04/2005) to determine the requirements of the remedy of the application for suspension of the time-limit for appeal against sentence (*istanza di rimessione in termini*). Thus it is possible to appeal against judgments rendered *in absentia* at first instance even if the normal deadlines have expired.

Under the new provisions, the time-limit for appeal against a judgment issued in *absentia* is reopened upon request of the accused. There are two exceptions to this rule: where the accused has had "effective knowledge" of the proceedings against him or of the judgment, and when he/she has willfully decided not to appear or to appeal. Moreover, the basic deadline has been extended from ten to thirty days counting from the date upon which the accused is delivered to the Italian authorities.

Furthermore, on 25/11/2008 the European Court, in a case similar to the present one, declared the application inadmissible on the grounds of non-exhaustion of internal remedies (case of *Cat Berro*, application no. 34192/07). The Court noted that the applicant had had the possibility to lodge an application for suspension of the time-limit for appeal against sentence under Article 175 CPP, as amended by Law No. 60 of 2005. In these circumstances, as well as in the light of the Court of Cassation's case law, the European Court considered that "the possible application for suspension of the time-limit for appeal against sentence was not deemed to fail or not to guarantee the applicant, with a sufficient degree of legal certainty, the opportunity to go before a court and defend himself in a new set of proceedings".

Conclusions

The Government considers that the individual measures adopted have fully remedied the consequences for the applicants of the violations of the Convention found by the European Court in these cases that the general measures will prevent similar violations and that Italy has thus complied with its obligations under Article 46, paragraph 1, of the Convention.

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9. DHAHBI C. ITALIA (RICORSO N.17120/09) - BILANCIO D'AZIONE DH- DD (2015) 1017

SECRETARIAT GENERAL
SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITÉ DES MINISTRES



Contact: Clare Ovey
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Date 06/10/2015

DH-DD(2015)1017

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Meeting: 1243 meeting (8-10 December 2015) (DH)
Item reference: Revised action report

Communication from Italy concerning the case of Dhahbi against Italy (Application No. 17120/09)
(French only)

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Réunion: 1243 réunion (8-10 décembre 2015) (DH)
Référence du point: Bilan d'action révisé (05/10/2015)

Communication de l'Italie concernant l'affaire Dhahbi contre Italie (Requête n° 17120/09)

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Rappresentanza permanente d'Italia presso il Consiglio d'Europa
 Ufficio dell'Agente del Governo davanti alla Corte europea dei Diritti dell'Uomo

DHAHBI contre l'Italie (requête 17120/09)
 Déposé le 8 juillet 2014

Bilan d'Action

Description de l'affaire : L'affaire concerne l'impossibilité pour le requérant – travailleur immigré d'origine tunisienne – d'obtenir des services publics italiens le versement d'une allocation de foyer familiale en vertu de l'accord d'association entre l'Union européenne (UE) et la Tunisie (l'Accord euro-méditerranéen).

La Cour a considéré que la nationalité du requérant constituait l'unique critère en vertu duquel ce dernier avait été exclu du bénéfice de cette allocation et que les raisons budgétaires avancées par les autorités pour justifier cette exclusion ne pouvaient pas, à elles seules, justifier une différence de traitement fondée sur la nationalité. Dans ces circonstances, les autorités nationales n'avaient pas ménagé, en l'espèce, un paramètre raisonnable de proportionnalité qui aurait rendu la distinction critiquée conforme aux exigences de l'article 14 de la Convention (violation de l'article 14 combiné avec l'article 8).

L'affaire concerne également l'omission de la Cour de cassation, en 2008, de motiver son refus de poser une question préjudicielle à la Cour de Justice de l'Union Européenne (CJUE) afin de déterminer si, à la lumière de l'Accord euro-méditerranéen, le Règlement CEE n. 4078/71 permettait d'exclure un travailleur tunisien de l'allocation concernée (violation article 6§1).

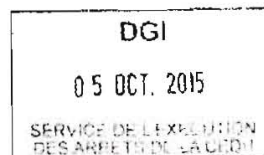
Mesures individuelles

Le montant accordé par la Cour au requérant a été payé le 2 décembre 2014. Les autorités italiennes estiment que les intérêts moratoires ne sont pas dus, car le retard est imputable au requérant.

D'autres mesures individuelles ne sont pas nécessaires, car le montant accordé par la Cour à titre de dommage matériel couvre totalement l'allocation du foyer non perçue au niveau interne. A cet égard il faut souligner que le requérant a demandé une SE pour la période 1999-2004 et que la situation incriminée par la Cour a pris fin avant le prononcé de l'arrêt, vu que le requérant avait obtenu avant cette date la nationalité italienne et il ne rencontrait plus d'obstacle à recevoir cette allocation.

Mesures Générales

L'arrêt a eu la plus grande diffusion sur les sites internet et a été traduit en italien.



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<http://www.giustizia.it/giustizia/it/homepage.wp;jsessionid=770CA0825B4B8EAEDEC0B6B4D9743083.aipAL03>

En ce qui concerne le droit à l'allocation du foyer familial litigieux, les autorités italiennes souhaitent, tout d'abord, attirer l'attention sur le fait que, en 2013, l'article 65 de la loi pertinente (n. 448 de 1995) a été modifié et au présent il envisage l'allocation du foyer familial aux ressortissants italiens et de l'Union européenne ainsi que aux étrangers séjournant sur le territoire italien pour une longue durée. Cette modification est en mesure de remédier à la défaillance de la loi constatée par la CEDH, notamment que cette loi prévoyait l'allocation du foyer litigieux seulement aux ressortissants de l'Union européenne.

La jurisprudence récente de la Cour de Cassation a confirmé le droit des personnes qui se trouvent dans la même situation du requérant à l'allocation du foyer en question (arrêt n. 15220 - juillet 2014). Dans cet arrêt la Cour a pris en compte les constats de la Cour Européenne dans la présente affaire ainsi que le cadre normatif en vigueur qui, suite aux modifications législatives intervenues, envisage l'allocation du foyer litigieux aux étrangers séjournant sur le territoire italien pour une longue durée.

A des fins d'exhaustivité, il est noté que, déjà avant ledit amendement de la loi pertinente, la jurisprudence de la Cour de cassation, (successive à l'arrêt n. 24278/2008, suite auquel le requérant a été victime des violations prononcées par la Cour EDH) était conforme aux principes découlant de la Cour JUE sur l'interprétation extensive de prestations d'assurance sociale découlant du Règlement CEE n.4078/71, remplacé par le règlement CE 883/2004. Notamment, dans l'arrêt n. 17966/11, la Cour de cassation avait effectué, entre temps, un revirement par rapport à la jurisprudence antérieure qui a donné lieu à l'affaire Dhahbi devant la Cour EDH. L'arrêt de la Cour de cassation de septembre 2011 avait, en effet, pris acte de la correcte application de la clause de parité de traitement en matière de sécurité sociale contenue dans les accords Euro-méditerranéens, en soulignant que la prestation cette fois en objet (une pension d'invalidité) bien qu'étant une prestation d'assistance sociale et non de sécurité sociale, n'empêchait pas l'application de cette même clause, car il n'y a pas d'identité entre le concept communautaire de sécurité sociale et celui national.

En ce qui concerne l'obligation de soulever la question préjudicielle d'interprétation à la CJUE, nous observons que dans l'affaire en objet il y avait une jurisprudence claire de la CJUE selon laquelle le requérant avait droit à l'allocation familiale demandée. Néanmoins, si la Cour de cassation s'en doutait, elle, en tant que juge de dernière instance, aurait dû soulever la question préjudicielle d'interprétation à la Cour JCE. Le refus immotivé de le faire a donné lieu à la violation de l'article 6 § 1 de la Convention. Sous cet angle, il s'agit d'un cas isolé, car les questions préjudicielles à la CJUE sont en Italie normalement et fréquemment soulevées, non seulement par les juges de dernière instance qui sont obligés à le faire, mais aussi par les autres juges. Ce principe fait l'objet d'une grande attention dans la formation initiale et permanente des juges, considéré aussi que sa méconnaissance entraîne une responsabilité de l'Etat au sens de l'arrêt de la CJUE *Traghetti del Mediterraneo contre Repubblica Italiana* du 13 juin 2006 dans l'affaire C-173/03.

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Nous souhaitons, en fin, attirer l'attention sur la réforme de la loi sur la responsabilité (indirecte) des magistrats (loi 18/2015) entrée en vigueur en mars 2015. Cette loi prévoit (article 3-bis) qu'il soit possible demander une indemnisation en cas de non-respect de l'obligation de soulever la question préjudicielle d'interprétation à la CJUE.

Pour les raisons exposées, le Gouvernement estime qu'aucune autre mesure n'est nécessaire au sens de l'art. 46 § 1 de la Convention et **demande la clôture de l'examen de l'affaire.**

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10. BEN KHEMAIS E ALTRI C. ITALIA (RICORSO N. 246/07) - BILANCIO D'AZIONE RIVISTO
DH- DD (2015) 1070**Résolution CM/ResDH(2015)108**
Exécution de l'arrêt de la Cour européenne des droits de l'homme
KollcaKu contre Italie

Requête n°	Affaire	Arrêt du	Définitif le
25701/03	KOLLECAKU	08/02/2007	08/05/2007

(adoptée par le Comité des Ministres le 8 juillet 2015,
lors de la 1233e réunion des Délégués des Ministres)

Le Comité des Ministres, en vertu de l'article 46, paragraphe 2, de la Convention de sauvegarde des droits de l'homme et des libertés fondamentales, qui prévoit que le Comité surveille l'exécution des arrêts définitifs de la Cour européenne des droits de l'homme (ci-après nommées « la Convention » et « la Cour »),

Vu l'arrêt définitif transmis par la Cour au Comité dans cette affaire et les violations constatées ;

Rappelant l'obligation de l'Etat défendeur, en vertu de l'article 46, paragraphe 1, de la Convention, de se conformer aux arrêts définitifs dans les litiges auxquels il est partie et que cette obligation implique, outre le paiement de la satisfaction équitable octroyée par la Cour, l'adoption par les autorités de l'Etat défendeur, si nécessaire :

- de mesures individuelles pour mettre fin aux violations constatées et en effacer les conséquences, dans la mesure du possible par *restitutio in integrum* ; et
- de mesures générales permettant de prévenir des violations semblables ;

Ayant invité le gouvernement de l'Etat défendeur à informer le Comité des mesures prises pour se conformer à l'obligation susmentionnée ;

Ayant examiné le bilan d'action fourni par le gouvernement indiquant les mesures adoptées afin d'exécuter l'arrêt, y compris les informations fournies en ce qui concerne le paiement de la satisfaction équitable octroyée par la Cour (voir document DH-DD(2015)545) ;

S'étant assuré que toutes les mesures requises par l'article 46, paragraphe 1, ont été adoptées,


DECLARE qu'il a rempli ses fonctions en vertu de l'article 46, paragraphe 2, de la Convention dans cette affaire et

DECIDE d'en clore l'examen.

Documents liés**Réunions**

- 1233e réunion des Délégués des Ministres / 8 juillet 2015

Documents connexes

- CM/Del/Dec(2015)1233/H46-1F / 10 juillet 2015 

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SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
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Date: 14/10/2015

DH-DD(2015)1070

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Meeting: 1243 meeting (8-10 December 2015) (DH)

Item reference: Revised action report (12/10/2015)

Communication from Italy concerning the Ben Khemais group of cases against Italy (Application No. 246/07)

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Réunion: 1243 réunion (8-10 décembre 2015) (DH)

Référence du point: Bilan d'action révisé

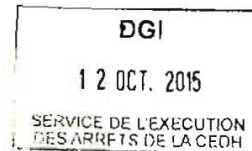
Communication de l'Italie concernant le groupe d'affaires Ben Khemais contre l'Italie (Requête n° 246/07)
(anglais uniquement)

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Rappresentanza permanente d'Italia presso il Consiglio d'Europa
 Ufficio dell'Agente del Governo davanti alla Corte europea dei Diritti dell'Uomo

*Action Report*

BEN KHEMAIS GROUP

Case of BEN KHEMAIS v. ITALY**Application n°246/07***Final on 6 July 2009***Case of TRABELSI v. ITALY****Application n°50163/08***Final on 13 July 2010***Case of TOUMI v. ITALY****Application n°25716/09***Final on 28 November 2011***Case of MANNAI v. ITALY****Application n°9961/10***Final 27 June 2012***Case Summary**

These cases concern the expulsion of the applicants, Mr. Ben Khemais, Mr. Trabelsi, Mr. Toumi and Mr. Mannai, to Tunisia, on 3 June 2008, on 3 December 2008, on 2 August 2009 and on 1 Mai 2010 respectively, following ministerial/prefectural decrees, despite the European Court's interim measures, by virtue of Rule 39, indicating to the Italian government that it was desirable in the interests of the parties and the proper conduct of the proceedings before the Court not to expel the applicants to Tunisia until the Court had had an opportunity to examine the application further.

Following the expulsions, the Italian authorities sought assurances from the Tunisian authorities that the applicants would not be subjected to ill-treatment. The Tunisian authorities gave assurances that the applicants would not be subject to ill-treatment, would receive medical treatment and would be allowed to see their lawyers and relatives. However, it was stated in the letter that the applicants could not be allowed to see the lawyer who had represented them before the European Court.

The European Court, referring to its judgment in the case of *Saadi v Italy*, reiterated that international reports mentioned numerous and regular cases of torture and ill-treatment meted out in Tunisia to person found guilty of terrorism. The Court held that these assurances could not have been considered to secure effective protection against the serious risk of ill-treatment incurred by the applicants. The Court also reiterated in this respect the principle affirmed by the Parliamentary Assembly in its Resolution 1433(2005), according to which diplomatic assurances could not be relied on unless the absence of a risk of ill-treatment was firmly established. In light

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of these considerations, the Court found that the applicant's expulsion to Tunisia amounted to a violation of Article 3.

As to the applicants' effective exercise of their right to individual application, the Court noted that the Italian government, before expelling the applicants, had not requested the lifting of the interim measure adopted under Rule 39 and had proceeded to expel them without even obtaining diplomatic assurances. Consequently, the applicants had not been able to advance all the arguments relevant to their defense and the judgment of the Court was liable to be deprived of all useful effect. The fact that the applicants had been removed from Italy's jurisdiction presented a serious obstacle that could prevent the Italian government from complying with the obligation to protect the applicants' rights and erase the consequences of the violations in accordance with Article 46 of the Convention (violation of Article 34).

Developments following the judgments

On 20 August 2009 the Chairperson of the Committee of Legal Affairs and Human Rights of the Parliamentary Assembly, addressed Written Question No. 571 to the Committee of Ministers. The Committee of Ministers was asked to indicate the steps it had taken with respect to repetitive non-compliance with Rule 39 and the measures it intended to take to ensure that Italy complies with such interim measures. The Committee of Ministers replied to the written question quoting the decision adopted in case of Ben Khemais at its 1078th meeting (March 2010).

The Secretary General of the Council of Europe issued a public statement on 19/05/2010 in which he strongly regretted the repeated expulsions by Italy. The Secretary General underlined that it was essential that measures taken by the Court, which are recognised as legally binding for all parties to the European Convention on Human Rights, were respected by all member states and that failure to do so risked undermining the system of human rights which is fundamental for the protection of all European citizens.

At the 1086th meeting (June 2010), the Committee of Ministers adopted Interim Resolution CM/ResDH(2010)83 in which it deplored that the Italian authorities, despite their commitment to complying with interim measures expressed at the 1078th meeting in March 2010, had expelled another applicant, Mr. Mannai, to Tunisia on 1/05/2010, in breach of an interim measure indicated by the Court. The Committee firmly recalled the obligation of the Italian authorities to respect interim measures indicated by the Court and urged them to take all necessary steps to adopt sufficient and effective measures to prevent similar violations in the future.

After the Mannai case the full compliance with interim measure by virtue of Rule 39 has been always granted from Italy

II. Individual Measures

The expulsion orders were called off in respect of all the applicants and none of them has applied for a residence permit in Italy.

The Government considers that no further individual measures are needed in these cases as the European Court found in several inadmissibility decisions that following the 2011 democratic transition in Tunisia, there was no longer a risk of treatment contrary to Article 3 in case of expulsion to this country (see decision *Ignaoua v. United Kingdom of 10 July 2012* and *Al-Hanchi v. Bosnia and Herzegovina* of 15 November 2011).

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Payment of just satisfaction:

Ben Khemais: Just satisfaction in the amount of € 16.118,19 was paid on 22 September 2009

Trabelsi: Just satisfaction in the amount of € 22.486,19 was paid on 26/04/2011. The delay was caused By lack of prompt information necessary for the payment.

Toumi: The total amount of € 23.179.160 was paid on 7/02/2012.

Mannai: Just satisfaction in the amount of € 21.500.00 was paid on 29 August 2012.

III General Measures***i) Some insights on the domestic case law in compliance with the principles set out by the European Court***

- **Decisions given by the Court of Cassation:** In a decision of **03/05/2010** (No. 10636) the Court of Cassation held that justices of the peace should assess the concrete risks that an irregular immigrant would face in his country of origin before an expulsion order can be executed. Likewise, in appeal proceedings lodged against an expulsion order for international terrorism the Court of Cassation (no. 20514, decision of 28 April 2010):

- referred to the application lodged by Mr. Kneni with the European Court and to the interim measure indicated on 14/04/2010;
- underlined the binding force of interim measures;
- stated that all Italian authorities, including judicial authorities, must respect interim measures (specific reference is made to judges competent for execution of sentences, *magistrati di sorveglianza*);
- made reference to the *Saadi* judgment, to the absolute nature of Article 3 of the Convention and to the current situation in Tunisia (examples of torture and ill-treatment reported by international organizations and the US State Department);
- stated that the consequence of the *Saadi* judgment is that all Italian authorities should comply with Article 3 of the Convention and, in particular, that all the judicial authorities should identify and take appropriate preventive measures other than expulsion where the person to be expelled is considered to be socially dangerous. Judicial authorities should base their decisions on the specific situation of the person concerned. This obligation should be observed until the human rights situation, as described in the judgment of the European Court, improves in Tunisia and until concrete and reliable evidence is brought before domestic courts;
- quashed the decision of the Court of Appeal.

- Decision of the Prefect of Benevento in another case in which the European Court issued an interim measure

In the case of *Mostafa v Italy* (Application No. 42382/08), the Prefect of Benevento ordered the stay of execution of an expulsion order until the proceedings before the European Court are concluded: the latter had indicated an interim measure on 12/01/2009. In this case, the applicant had been convicted of terrorism and the expulsion order against him came into effect while he was serving his sentence. Consequently, on 30/01/2009, the Court of Milan ordered that the applicant is subject to the preventive measure of police surveillance and compulsory residence in Milan for 3 years. On 10/07/2012, the European Court decided to strike the case out of its list.

- **The Drissi Case – Working Center:** In a similar case in which the European Court indicated an interim measure under Rule 39, an Italian court (the judge supervising the execution of sentences

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of Nuoro¹) decided to apply an alternative measure to expulsion by way of placing the applicant in a working centre (*casa di lavoro*; the case of Drissi, application no. 44448/08).

- **Circular of the Ministry of Justice:** On 27/05/2010 the Ministry of Justice sent to all Italian courts of appeal - and through them, to the Justices of the Peace - a circular stressing the obligation to respect interim measures under Rule 39. The circular referred to the well-established case-law of the European Court and to domestic judicial practice and explained the consequences of failure to comply with interim measures: Courts of appeal are expected to observe the requirements of the Convention and adopt all necessary measures to prevent non-compliance in the future. As far as administrative expulsions (i.e. expulsions ordered by the Ministry of Interior as in the case of Ben Khemais or by the Prefect in the case of Toumi) are concerned, the circular letter indicated that Italy intended to comply with interim measures through a more effective judicial control in the process of validating such orders before expulsion can be carried out. In this respect, justices of the peace are not only expected to assess whether formal requirements are met in a given case but also whether there are “impediments” to expulsion, such as the risk of a violation of rights under Article 3 of the Convention in the country of destination (reference is made to Court of Cassation Decision No. 10636 of 03/05/2010, see below). Furthermore, it is worth recalling the findings and conclusions of the European Court in the **case of Al Hanchi v. Bosnia and Herzegovina** (application no. 48205/09, judgment of 15 November 2011, final on 4 June 2012). Among other things, the Court stated that “*As noted by the Parliamentary Assembly of the Council of Europe and UN Special Rapporteurs, the process of democratic transition in Tunisia is in progress and steps have already been taken to dismantle the oppressive structures of the former regime and put in place elements of a democratic system [...] It should also be emphasised that on 29 June 2011 Tunisia acceded to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, setting up a preventive system of regular visits to places of detention, as well as to the Optional Protocol to the International Covenant on Civil and Political Rights, recognising the competence of the Human Rights Committee to consider individual cases. This shows the determination of the Tunisian authorities to once and for all eradicate the culture of violence and impunity which prevailed during the former regime*”. (§§ 43, 44 of the judgment Al Hanchi). Therefore, **as recognised by the Court, in case of deportation to Tunisia, there is no real risk of (the applicant being subject to) ill-treatment (§45 of the judgment Al Hanchi).**

More recently, in June and July 2012, the Court delivered inadmissibility decisions in three cases (Ben Slimen v. Italy, application no. 38435/10; Kneni v. Italy, application no. 20046/10 and Belaj Meftah v. Italy, application no. 43211/10 and other applications) concerning the risk of expulsion to Tunisia, in which it referred to the situation in Tunisia following the recent change of regime. The Court noted that since it delivered the Al Hanchi judgment, democratic elections, which took place on 23 October 2011, resulted in the election of a Constituent Assembly in which the main Islamist party, legalised on 1st March 2011, became the most represented party. In view of the above, the Court considered that there were no more substantial grounds to believe that the applicants would face a real risk of being subjected to treatment contrary to Article 3 because of the suspicions of terrorism weighting on them, if expelled to Tunisia.

Therefore, thanks to the awareness raised among the competent authorities by the publication/dissemination of the judgment and by the detailed Circular of the Ministry of Justice – leading to domestic case law and administrative decisions coherent with the principles of the Convention as developed by the European Court (see above) – in similar

¹ The case of Drissi concerned a judicial expulsion.

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situations the Italian authorities are now fully complying with the principles set out by the European Court in judgments at issue.

ii) Publication and Dissemination: The European Court's judgments have been published on the website of the Court of Cassation (www.italgiure.giustizia.it), with a translation into Italian of most of them in the Ministry of Justice website: [http://www.giustizia.it/giustizia/it/mq_1_20_1_wp?facetNode_1=1_2\(2009\)&previousPage=mg_1_20&contentId=SDU157948](http://www.giustizia.it/giustizia/it/mq_1_20_1_wp?facetNode_1=1_2(2009)&previousPage=mg_1_20&contentId=SDU157948)

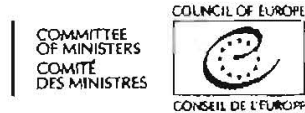
They have also been widely disseminated to competent authorities (supervisory magistrates and justices of the peace).

Conclusion

The Government considers that no further individual and general measure are required in these cases and that Italy has thus complied with its obligations under Article 46, paragraph 1, of the Convention.

PARTE SECONDA - DOCUMENTI

11. MARTURANA C. ITALIA (RICORSO N. 63154/00) - RISOLUZIONE CM/RESDH(2015) 69



Resolution CM/ResDH(2015)69
Execution of the judgment of the European Court of Human Rights
Marturana against Italy

Application No.	Case	Judgment of	Final on
63154/00	MARTURANA	04/03/2008	04/08/2008

(Adopted by the Committee of Ministers on 12 May 2015
at the 1227th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 48, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that the Committee supervises the execution of final judgments of the European Court of Human Rights (hereinafter "the Convention" and "the Court"),

Having regard to the final judgment transmitted by the Court to the Committee in this case and to the violations established;

Recalling the respondent State's obligation, under Article 48, paragraph 1, of the Convention, to abide by all final judgments in cases to which it has been a party and that this obligation entails, over and above the payment of any sums awarded by the Court, the adoption by the authorities of the respondent State, where required:

- of individual measures to put an end to violations established and erase their consequences so as to achieve as far as possible *restitutio in integrum*, and
- of general measures preventing similar violations;

Having invited the government of the respondent State to inform the Committee of the measures taken to comply with the above-mentioned obligation;

Having examined the action report provided by the government indicating the measures adopted in order to give effect to the judgment including the information provided regarding the payment of the just satisfaction awarded by the Court (see document DH-DD(2015)213);

Having satisfied itself that all the measures required by Article 48, paragraph 1, have been adopted,

DECLARES that it has exercised its functions under Article 48, paragraph 2, of the Convention in this case and

DECIDES to close the examination thereof.

PARTE SECONDA - DOCUMENTI

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITÉ DES MINISTRESCOMMITTEE
OF MINISTERS
COMITÉ
DES MINISTRESContact: Anna Austin
Tel: 03 88 41 22 29

Date: 18/02/2015

DH-DD(2015)213

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Meeting: 1222 meeting (10-12 March 2015) (DH)

Item reference: Action report (17/02/2015)

Communication from Italy concerning the case of Marturana against Italy (Application No. 63154/00)

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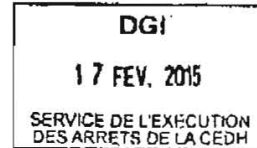
Réunion: 1222 réunion (10-12 mars 2015) (DH)

Référence du point: Bilan d'action

Communication de l'Italie concernant l'affaire Marturana contre l'Italie (Requête n° 63154/00)
(anglais uniquement)

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Rappresentanza permanente d'Italia presso il Consiglio d'Europa
Ufficio dell'Agente del Governo davanti alla Corte europea dei Diritti dell'Uomo

*Action Report***Case MARTURANA v. ITALY****Application n° 63154/00***Final on 4 June 2008***I - Case summary**

In the case at hand the Court found a violation of Article 5, § 4 of the Convention (due to the failure, by the Italian courts, to give speedy decisions on the lawfulness of applicant's detention on remand and its prolongation) and a violation of Articles 8 and 13 of the Convention (due to the arbitrary monitoring of the applicant's correspondence while he was imprisoned and the lack of effective domestic remedies to challenge this monitoring).

II - Individual measures

The applicant's detention on remand ended in 2001 and the European Court granted him 4.000 EUR in respect of the non-pecuniary damage suffered and 4.000 EUR in respect of costs and expenses. The just satisfaction was paid on 17 October 2008 (the global sum of 8.896 EUR was awarded).

Thus, no other individual measure appears necessary.

III - General measures

The Government recalls that the issues raised by this case were examined by the Committee of Ministers in the framework of the *Rapacciuolo*, (Final Resolution CM/ResDH(2008)50) and *Calogero Diana*, (Final Resolution CM/ResDH(2005)55) groups of cases.

The Government considers it sufficient to highlight the following.

As for the violation of article 5, § 4 of the Convention, domestic law seems to satisfy the requirements of the Convention (see Article 309 and following of the Criminal Procedure Code, laying down a tight time-limits in this respect).

As regards the correct application of the law and of the European Convention, the President of the Court of Cassation had written to all Presidents of Section recalling the need to keep control of procedural deadlines applicable to remand decisions.

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Eventually, the Court's judgment and an abstract in Italian language have been published on the internet site of the Court of Cassation (which is accessible to judges, prosecutors and lawyers).

As for the violation of Articles 8 and 13 of the Convention, the Italian Government engaged in legislative and regulatory reforms to prevent new violations similar to those found by the Court in this case.

As recalled by Final Resolution CM/ResDH(2005)55 in the case of Calogero Diana, the reforms included the introduction into the legislation of clear grounds for imposing monitoring or restriction of prisoners' correspondence and of time-limits for such measures; legislative confirmation that correspondence with the Convention organs is exempt from monitoring; administrative measures to ensure effective implementation of the new legislative provisions; the extension of judicial review to cover the monitoring or restriction of prisoners' correspondence.

IV – Conclusions

The Government considers that all measures taken have fully remedied, as for the applicant, the consequences arising from the violation of the Convention found by the European Court in the case at hand.

The Italian Government also considers that general measures adopted will prevent new, similar violations.

The Italian Government is therefore of the opinion to have fully complied with its obligations under Article 46, paragraph 1, of the Convention, and asks to close the monitoring of the case.