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Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners

1.6.2006

NOTICE TO MEMBERS

N° 1

Subject: Summary of proceedings of the meeting of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe held on 11 April 2006 in Strasbourg

DIRECTORATE-GENERAL
FOR INTERNAL POLICIES

Point 6 of the Agenda: Alleged secret detentions in Council of Europe member states
Rapporteur: Mr. Dick Marty, Switzerland, ALDE

1. Statement by the Rapporteur, Mr. Marty. He welcomed the representative of the European Parliament and of the Commission and expressed his appreciation for the close cooperation of the two institutions on the matter.

2. Presentation by Mr. Giorgio Malinverni, member of the Venice Commission, of the Opinion of the Venice Commission on the International legal obligations of Council of Europe member states in respect of secret detention facilities and inter-state transport of prisoners.

During the presentation of Mr. Malinverni, a detailed analysis was given of the questions submitted to the Venice Commission by the Committee.

According to him the major issue which needs to be addressed: is whether the states are "at war", as active allies of the US at "war on terror", in relation with Article V of the NATO Treaty - stating that attack on one Ally shall be considered as an attack against them all. Article V was first invoked on 12 September 2001, following the terrorist attacks against the US. (see points 111-115 of the Venice Commission Report)

Should this be the case, ECHR does provide for derogations in case of emergency (Article 15 of the ECHR).

Article 15 – Derogation in time of emergency¹

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefore. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

On a more detailed point: When talking about "transport of detainees" he touched upon the *definition of "prisoner"* and gave an example of the definition from the Article 5 of the ECHR (a person deprived of liberty, only in cases provided for in the ECHR - who's list is exhaustive)

Regarding the arrests done by foreign agents on a territory of a Member State without the knowledge of this Member State, the responsibility falls on the Member State, according to international law. In such cases the State is expected to protest at diplomatic level.

In view of prof. Malinverni, the Member States of the Council of Europe have an obligation on the one hand to fight terrorism, on the other to protect human rights. At the same time they also have an obligation to investigate acts of foreign agents, certainly *ultra violis* acts of foreign agents on their territory. In principle, international Treaties do safeguard human

rights. They might, however, *limit* or *restrict* them at times (in case of war) but it is impossible to derogate from Article 2 and 3 of the ECHR.

Convention on Civil Aviation of 1944 (Chicago Convention) was also discussed (see points 86-104 of the Venice Commission Report). In this context, differences between civil and state aircrafts were highlighted, as well as use of military bases in the Member States. It was stated that whilst military bases cannot be searched by the host state, diplomatic protests must be used if they are not issued for purposes agreed upon.

3. Exchange of views with Ms. Karin Matusek (WilmerHale LLP), legal representative of six persons transferred extra-judicially in January 2002 from Bosnia and Herzegovina to Guantanamo Bay.

Full transcript of the presentation delivered by Mrs. Matusek is attached.

4. Senator Marty's Report is expected to be adopted by the Committee on Wednesday, 7 June 2006, in Paris.

Statement by Mrs Karin Matussek, Lawyer,

**Meeting of the PACE Committee on Legal Affairs and Human Rights
Strasbourg, 11 April 2006**

Mr Chairman, Members of the Committee,

On behalf of our clients

Belkacem Bensayah
Hadž Boudella
Lakhdar Boumediene
Mohamed Nechle
Saber Lahmar
and Mustafa Ait Idir

we thank the Committee on Legal Affairs and Human Rights for its continuous work to vindicate the rights of all men who are held at the U.S. Naval Base at Guantanamo Bay. An important element of this effort is Mr. Marty's investigation into activities on European soil involving illegal renditions and secret detention centres. We also thank the chairman for inviting us to speak before the Committee today.

The Committee is rightly taking up the case of our clients. Our clients' case is not only one of the best documented cases involving a European country and a Council of Europe Member State in the unlawful apprehension of detainees on European soil and their illegal transfer to Guantanamo Bay.

It is also, to our knowledge, the only case in which a competent judicial body, the Human Rights Chamber of Bosnia and Herzegovina, has adjudicated the merits of a case involving such abduction and transfer, and has applied the European Convention on Human Rights to these facts. The chamber held that such acts violate the highest principles that define us as Europeans.

Unfortunately, the case of our clients also ranks among the list of cases in which a government of a Council of Europe Member State has failed to live up to its obligations under the Convention, and has failed to comply with the orders of a competent human rights court.

Facts

Our clients are sometimes referred to as the "Algerian Six". They are of Algerian descent but became citizens or permanent residents of Bosnia and Herzegovina in the 1990s. In October 2001, at the strong insistence of U.S. officials, Bosnian officials ordered their arrest on suspicion of plotting an attack on the U.S. and British Embassies in Sarajevo.

The case was investigated for a period of three months. However, the prosecution found no evidence that could have justified the further detention of our clients. Accordingly, on January 17, 2002, the Supreme Court of the Federation of Bosnia and Herzegovina ordered their immediate release. Likewise, on the same day, in a case brought by four of our clients, the Human Rights

Chamber for Bosnia and Herzegovina issued a provisional order requiring the Government of Bosnia and Herzegovina to take all necessary steps to prevent the men from being taken out of the country by the use of force. The order was delivered to the Government in the afternoon of the same day.

Instead of being set free, on the evening of January 17, our clients were taken into custody extra-legally by police forces of the Federation of Bosnia and Herzegovina. In the following early morning, they were handed over to U.S. forces stationed in Bosnia.

There was no legal basis to hand them over – as there was no formal extradition request by the United States. There was no legal basis to take our clients into custody – quite the contrary: the orders of the Supreme Court and the Human Rights Chamber required that the six men be released and that “all necessary steps” be taken to prevent their removal from Bosnia. The Bosnian authorities violated both orders.

The Bosnian authorities shackled the men, placed hoods over their faces, and transported them by police vehicles to the Americans. By order of the Commander-in-Chief of the U.S. forces in Europe, our clients were detained at “Eagle Base,” the U.S. military base at Tuzla.

While still on Bosnian soil, the six men were kept shackled in painful positions. They were forced to wear goggles to prevent them from seeing, headphone-like covers over their ears to make it impossible for them to hear, and face masks making it impossible to be understood and very difficult to breathe. They were subsequently transported to the U.S. Naval Base at Guantanamo Bay.

The Americans used several European air bases in the course of the transportation. We have information that the U.S. military dedicated at least two aircraft to the transportation of our clients. At least one aircraft originated from the U.S. base in Ramstein, Germany. It flew to Tuzla to take in our clients.

The six men were then transported to the U.S. Air Force Base at Incirlik, Turkey. From Turkey, they were flown to Guantanamo Bay.

Human Rights Chamber of Bosnia and Herzegovina holdings

These events are perhaps the only incidents of their kind ever to be reviewed by a competent judicial body applying the European Convention on Human Rights.

The Human Rights Chamber of Bosnia and Herzegovina was instituted by the Dayton Agreement to adjudicate cases applying the Convention. The Chamber held in October 2002 and in April 2003 that the Governments of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina violated the European Convention on Human Rights as well as the laws of Bosnia and Herzegovina.

The Human Rights Chamber also ordered specific acts to be taken to remedy these violations. The Chamber ordered Bosnia and Herzegovina “to use diplomatic channels in order to protect the basic rights” of the men. In its April decision regarding Mr. Ait Idir, the Chamber specifically ordered the Government “to take all possible steps to obtain the release of the applicant and his return to Bosnia and Herzegovina.”

The Bosnian Government's Acknowledgement of Its Obligations

The Bosnian Government has repeatedly recognized that the abduction of the six men and the complicity in their removal from Bosnia was unlawful and must be remedied.

In April 2004, the Commission for Human Rights, Immigration, Refugees and Asylum of the Parliament of Bosnia and Herzegovina formally accepted the conclusions and measures ordered by the Human Rights Chamber. The Commission requested all relevant institutions of Bosnia urgently to implement the Chamber's decision and to initiate a procedure with the United States for the return of the men to Bosnia. The Commission's report was adopted by the full House of Representatives of the Parliament in May 2004.

In July 2004, Amir Pilav of the Bosnian Ministry of Justice visited Guantanamo Bay. He met with four of the six men. Mr. Pilav wrote a report to the Ministry of Justice and, at the request of the Council of Ministers, later added an annex that contained detailed recommendations for actions to be taken. These recommendations were endorsed by Bosnia's Minister of Justice, Slobodan Kovac, and adopted by the Bosnian Council of Ministers as the official policy of the Government.

Recommendation 9 stated that it was necessary to start negotiations with the United States Government for the return of the detainees to Bosnia. In March 2005, the Minister of Justice confirmed that the Bosnian Government had sent a formal letter to the United States Government requesting the return of the six men.

In April 2005, the Parliamentary Assembly of the Council of Europe passed Resolution 1433, which called on all member states of the Council of Europe, including Bosnia, to "enhance their diplomatic and consular efforts to protect the rights and ensure the release of any of their citizens, nationals or former residents currently detained at Guantánamo, whether legally obliged to do so or not."

On June 21, 2005, Bosnian Prime Minister Adnan Terzić appeared before the Parliamentary Assembly of the Council of Europe. As some of you may remember, during that session, Mr. Kevin McNamara, then a British Member of PACE, pointed out the fact that six Bosnian citizens and former residents remained prisoners at Guantanamo. Mr. McNamara asked what efforts Bosnia was taking to secure their return. In response, Prime Minister Terzić acknowledged the importance of the issue and its relevance as an indicator of the progress of democracy in Bosnia and Herzegovina. He also stated his willingness to determine the best course to secure the eventual release of the six in accordance with the Parliamentary Assembly's resolution.

Nothing has happened since then.

Despite the repeated statements and resolutions promising to take action to negotiate the return of the six men, we are not aware of a single concrete step taken by the Bosnian Government since February 2005.

This is particularly surprising given Prime Minister Terzić's statement before the Parliamentary Assembly in June 2005. Before your Assembly, the Prime Minister said that Resolution 1433 "in relation to human rights had been of help in suggesting to the Bosnia and Herzegovina Government how best to act in the interests of its citizens." Despite these promising statements, neither Prime Minister Terzić nor his Government appears to have done anything to carry out its commitments to the Assembly or its obligations under domestic and international law.

Conclusions

Members of the Committee:

The six Bosnian citizens and former residents imprisoned at Guantanamo Bay owe their fate, in part, to the complicity of their own Government in their abduction and its failure to take concrete steps to secure their return.

The Prime Minister's statements before the Parliamentary Assembly demonstrate the recognition that this case is a matter of human rights and legal obligations. Despite these promising words, the Government of Bosnia and Herzegovina appears intent on leaving these six men to be forgotten in a foreign prison.

We therefore urge you, the members of the Committee, to continue investigating this pressing matter and to recommend that the full Assembly take whatever steps are available to it to ensure that the six men are returned to their homes and families in Bosnia.

This is a European matter. This spring session of the Parliamentary Assembly is dedicated to the special relation between the Council of Europe and the European Union. Bosnia and Herzegovina as a potential candidate country for accession to the European Union should not merely pay lip service to its obligations under the principles that constitute the core of the European ideal.

We owe this first and foremost to the six men who are facing their fifth year of unlawful detention at Guantanamo Bay. As Europeans, we also owe this to ourselves. We stand ready to assist you in any way we can.

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