

European Parliament

**TDIP Temporary Commission
(Temporary commission on the alleged use of European countries by the CIA for
the transport and illegal detention of prisoners)**

-THE PRESIDENT-

Ref.: D(2006)71767

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President of the European Parliament
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Dear Mr. President,

As we approach the end of the work of the temporary commission which I preside, and in agreement with the office and coordinators, I would like to raise before you the problems that we have encountered in the context of our relationship with the Council.

The mandate that the Parliament gave the temporary commission (decision of 18 January 2006) was of a very delicate nature, as it was responsible for ascertaining the truth concerning events that involved the sovereignty of Member States and which raised issues regarding the respect of fundamental rights, as defined in article 6 of the Treaty on the European Union (TEU), and whose violation could lead to the application of article 7 of the same treaty.

It was therefore essential, in order to allow it to fulfil this task as effectively as possible, for the other institutions and Member States to contribute their participation, in accordance with the principle of loyal cooperation found in article 10 of the Treaty that establishes the European community and, in the domains to which the allegations that we had to examine pertain, in the provisions found in articles 21 and 39 of the Treaty of the European Union.

With regards to a large majority of Member States, which, moreover, are all components of the Council, and on the part of this institution as such, this loyal cooperation has absolutely not taken place.

The Finnish Presidency of the Council, which was expressly invited to do so, did not deem it useful to appear before the temporary commission, even though it had taken part in the plenary debate about the interim* (draft, temporary) report on 5 July 2006.

It is true that the Council's General Secretary/High Representative for Common Foreign and Security policy accepted to meet the Commission Office with the rapporteur and coordinators, prior to appearing, immediately afterwards, before the Commission, but he declined the invitation to appear again at the end of our works.

The European Union coordinator for the fight against terrorism, for his part, expressed some hesitation before agreeing to participate in our meeting of 20 April 2006, whereas the Director of the European Police Office simply refused to appear before our commission.

In addition, insofar as the sharing of information and documents is concerned, the Council has gone so far as to conceal or truncate the truth to the European Parliament, which is totally unacceptable.

In fact, while Mr. Solana barely mentioned the contacts between the Council and the American administration, the Austrian ambassador in Washington, representing the Presidency, has, in receiving the commission's delegation on its visit to the United States, very clearly detailed the state of play in the dialogue concerning the practices of the fight against terrorism, which had been engaged between the two shores of the Atlantic. This only confirmed the informations that I had personally received from indirect sources, that is, some official but confidential minutes of meetings between Council working parties or its troika with, among others, the legal services of the American Department of State.

On my return from Washington, I thus wrote to the President of the Council, Mrs. PLASSNIK (letter of 18 May 2006, ref. 202486/D(2006)27584), asking her to confirm the existence of these contacts and, in the event of an affirmative reply, to communicate to the Parliament a full report of their content, without nevertheless revealing that I was already in possession of certain documents dealing with this matter.

A reply to this letter, signed by the Austrian Secretary of State, Hans Winkler, dated 29 June 2006, -and with the heading of the Austrian Republic's Foreign Affairs ministry, not the Council- was received in the Parliament on 27 July, and I therefore did not become aware of this until my return at the end of August.

This correspondance was accompanied by two extracts of minutes for meetings held on 8 February and 3 May between Mr. Bellinger and the members of the Council working parties on international public law (COJUR) and on transatlantic relations, internal Council documents drafted by its General Secretariat.

However, I was asked to maintain their confidentiality, and this was "on explicit request from the American government". While it is unquestionable that the author of a document may determine the degree of publicity that s/he accepts to give it, a third party does not have the prerogative of doing so, all the more so considering that it is not a joint document. In the event, the result of this action was that the Parliament saw its access to an internal Council document limited.

Nonetheless, in order to demonstrate a sense of responsibility, I proceeded, in agreement with the office and coordinators of the commission, to deposit the two extracts with the Confidential Documents Service, together with the three other documents that I had obtained personally, among which the notes taken during the dinner on 7 December 2005 between the American Secretary of State, Mrs. Rice, and the Foreign Affairs ministers of the Member States of the European Union and of NATO are found. It goes without saying that all these documents could be handed to you in the same conditions, if you were to request them.

I have unfortunately had to observe, by comparing these different documents, that what I had been given by Mr. Winkler was only a very partial summary of the discussions that took place and not a detailed account of them, with some elements passing

completely under silence. In truth, it has been a matter of an amputation of essential parts of the minutes of the meetings in question, which is, strictly speaking, inadmissible.

This gave rise to my new letter, dated 23 October 2006 (ref. 314153/D(2006)52692), addressed to the new President of the Council, the Finnish Foreign Affairs minister, Mr. Tuomioja, which particularly appealed to his country's attachment for the principle of transparency.

In his reply dated 29 November and sent from Finland, again without the Council's heading, Mr. Tuomioja confirmed the intensity of the reflection within the Council and of the dialogue with the American administration concerning the practices of the war against terrorism and the underlying legal approach, whilst once again putting forth a requirement of confidentiality on this regard, and declining the invitation to discuss it with the temporary commission. Moreover, he sought to present something that was merely a press statement which was the responsibility of the presidency during the Council for General Affairs on 15 September 2006, following declarations made by President Bush on 6 September recognising the existence of secret detention centres, as a Council position.

Allow me to also reply to the letter that Mr. Solana addressed to you on the past 14 December. To begin with, it is not my responsibility to formulate an appreciation concerning a draft report which, at this stage, is the sole responsibility of the rapporteur. I cannot pre-judge some proposed amendments to the paragraphs that have been singled out for criticism by the High Representative, which will certainly be submitted, and even less the position that will emerge from the vote in the commission and then in the plenary [session]. I notice that Mr. Solana himself underlines that the majority of the governments that were invited, who are effectively the most competent on the matter, have refused to cooperate with our commission, even though they were held to answer the Parliament's requests. I simply regret that the General Secretary of the Council has preferred to reply in writing, rather than accepting an open discussion with our commission. For any useful purpose, I note that the vice-president of the European Commission, Mr. Frattini, did not pose any difficulties to appear before us a second time.

In view of the above, several questions of principle arise which concern the relationship between the European Parliament as a whole (and not just the commission that I preside over) and the Council:

- is it acceptable for the Council to provide some truncated information to the Parliament, while pretending to cooperate fully with it, which is at least hypocritical and demonstrates mistrust towards the Parliament, absolutely contrary to the principle of loyal cooperation?
- can documents produced by an Institution of the Union be subjected to control by a third party, which thus meddles in matters pertaining to its own internal organisation and, in the event, to the relationship between its institutions?
- the experience that my commission underwent reveals the great inadequacy of provisions concerning the exchange of sensitive information between institutions, especially between the Council and Parliament, which should no longer be limited to the European security and defence policy (exchange governed by the interinstitutional

agreement of 20 November 2002), but should cover foreign policy as a whole more extensively, as well as everything that pertains to internal security and security in the space of liberty and justice, while taking into account the specific nature of each of these domains.

- finally, it likewise follows that the competencies and powers of temporary commissions of inquiry (particularly in relation to Member States), a statute that my commission could not possess under the terms of current provisions, while moreover article 7 of the treaty on the European Union authorises the European parliament to initiate procedures that directly affects Member States.

To conclude, I consider that the totality of these issues should be raised at the highest level between the institutions and should be the object of some new negotiations, with the aim of resolving the problems that have been raised.

I would appreciate it if you would make the Conference of Presidents aware of the contents of this letter.

Please accept, Mr. President, the expression of my highest consideration.

Carlos Coelho.

[unofficial translation by Statewatch]