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on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners
(2006/2027(INI))

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

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners (2006/2027(INI))

The European Parliament,

- having regard to its resolution of 15 December 2005 on presumed use of European countries by the CIA for the transportation and illegal detention of prisoners¹,
 - having regard to its decision of 18 January 2006 to set up a temporary committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners²,
 - having regard to Rule 175 of its Rules of Procedure,
 - having regard to the interim report of the Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners (A6-0000/2006),
- A. whereas the main aim of the work of the temporary committee is to establish whether, in the context of the allegations, the action of the European Union and its Member States complies with the founding principles set out in Article 6 of the Treaty on European Union and guarantees, in particular, the protection of fundamental rights as defined, *inter alia*, by the Convention on the Protection of Human Rights and Fundamental Freedoms, adopted by the Council of Europe on 4 November 1950 (hereafter referred to as the 'European Convention on Human Rights'),
- B. whereas in Europe the Charter of Fundamental Rights of the European Union³, proclaimed by the European Parliament, the Council and the Commission at the European Council meeting in Nice on 7 December 2000 and incorporated in Part II of the Treaty establishing a Constitution for Europe, constitutes one of the reference texts not only for the Court of Justice of the European Communities, but also for constitutional courts and other courts in the Member States,
- C. whereas the principle of the inviolability of human dignity appears in the opening clause of this Charter and underlies every other fundamental right, in particular the right to life (Article 2), the prohibition of torture and inhuman or degrading treatment or punishment (Article 4), the right to protection in the event of removal, expulsion or extradition (Article 19) and the right to an effective remedy and to a fair trial (Article 47) and whereas this principle may not be subject to restrictions, even for the purposes of security in times both of peace and of war,
- D. whereas, according to international treaties, and in particular the European Convention on

¹ Texts adopted of that date, P6_TA(2005)0529.

² Texts adopted of that date, P6_TA(2006)0012.

³ OJ C 364, 18.12.2000, p. 1.

Human Rights, the European Union Member States are under an obligation to ensure that any person under their jurisdiction enjoys the fundamental rights granted at international level, including the prohibition of extradition or deportation where there is a risk of torture or cruel treatment,

- E. whereas, in addition to the provisions of the European Convention on Human Rights, the allegations may give rise to liability on the part of the Member States as parties to:
- the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 10 December 1984,
 - the International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly on 16 December 1966,
 - the Chicago Convention of 7 December 1944 on International Civil Aviation, and in particular Article 6 thereof,
- F. whereas the closest possible consultation and cooperation is necessary between the temporary committee and the Council of Europe, the United Nations High Commissioner for Human Rights and the authorities of the Member States, and in particular the national parliaments,
- G. whereas this consultation and cooperation should take account of activities and investigations already carried out, and in particular:
- the final reports of the Swedish Ombudsman¹, the Swedish Parliament's Constitutional Affairs Committee² and the United Nations Committee against Torture³,
 - judicial investigations in progress in various Member States, in particular the conclusions reached in Italy in the investigation by the Deputy Public Prosecutor of Milan⁴ on the abduction of the Egyptian national Abu Omar,
 - parliamentary inquiries in progress or already concluded in various Member States,
 - statements made by the authorities of several Member States, in particular Germany, the United Kingdom, Spain and Ireland, regarding landings of civil aircraft used by the CIA which have taken place on their territories,

¹ Parliamentary Ombudsman, 'A review of the enforcement by the Security Police of a Government decision to expel two Egyptian citizens', reference No 2169-2004 (22 May 2005).

² Swedish Parliament, 'The Swedish Government's handling of matters relating to expulsion to Egypt', Scrutiny report 2005/06-KU2,

http://www.riksdagen.se/templates/R_PageExtended____7639.aspx

³ Decision of the Committee Against Torture, Communication No 233/2003, Mr Ahmed Hussein Kamil Agiza/Sweden (20 May 2005),

<http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/3ef42bcd48fe9d9bc1257020005533ca?Opendocument>

⁴ Milan Court, Sezione Giudice per le indagini preliminari, References numbers 10838/05 R.G.N.R and 1966/05 R.G.GIP.

- H. whereas, in the same way, special importance must be attached to the interim report by the Secretary-General of the Council of Europe¹ drawn up as part of the inquiry conducted under Article 52 of the European Convention on Human Rights and the statements made by the Secretary-General at the press conference on 12 April 2006 in response to the detailed replies provided by the Member States of the Council of Europe², including the European Union Member States; whereas the Secretary-General has stated that it is clear that rendition flights have taken place, that ‘virtually none of our Member States have proper legislative and administrative measures to effectively protect individuals against violations of human rights committed by agents of friendly foreign security services operating on their territory’ and that he has received ‘official acknowledgement of ‘handing over’ individuals to foreign officials through procedures which ignore the standards and safeguards required by the European Convention on Human Rights and other legal instruments of the Council of Europe’³,
- I. whereas corroborating indications have emerged from this initial phase of the temporary committee's work, in particular:
- from the hearings held on 13 and 23 February, 6, 13, 21 and 23 March and 20 and 25 April 2006 with lawyers, journalists, representatives of non-governmental organisations, alleged victims of extraordinary renditions and representatives of the public authorities of the Member States,
 - from written contributions from guest speakers and official and other documents to which the temporary committee has had access to date,
- J. whereas the work carried out to date by the temporary committee confirms the validity of Parliament's decision of 18 January 2006 to set up the committee, but have also shown the need to carry out further checks and gather additional information, and whereas it must therefore be allowed to continue its work so that it can fully carry out the mandate conferred on it,
- K. whereas paragraph 3 of its decision of 18 January 2006 stipulates that the temporary committee is to present an interim report to Parliament, with detailed proposals on how it will continue its work,

On the information obtained to date by the temporary committee

1. Endorses the conclusions of the Secretary-General of the Council of Europe following the inquiry conducted under Article 52 of the European Convention on Human Rights;

¹ Report by the Secretary-General on the use of his powers under Article 52 of the European Convention on Human Rights, in the light of reports suggesting that individuals, notably persons suspected of involvement in acts of terrorism, may have been arrested and detained, or transported while deprived of their liberty, by or at the instigation of foreign agencies,

<https://wcd.coe.int/ViewDoc.jsp?Ref=SG/Inf%282006%295&Sector=secPrivateOffice&Language=lanEnglish&Ver=original&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>.

² <http://www.coe.int/T/E/Com/Files/Events/2006-cia/annexes.asp>.

³ Notes for the press conference given by Terry Davis, Secretary-General of the Council of Europe, on Wednesday 12 April 2006,

http://www.coe.int/T/E/Com/Files/PA-Sessions/April-2006/20060412_Speaking-notes_sg.asp.

2. Notes also, in this context, Opinion No 363/2005 delivered by the European Commission for Democracy through Law (Venice Commission)¹ to the Parliamentary Assembly of the Council of Europe, and in particular the following points:
 - active and passive cooperation by a Council of Europe member state in imposing and executing secret detentions engages its responsibility under the European Convention on Human Rights,
 - a Council of Europe member state's responsibility is engaged also in the case where its agents (police, security forces, etc.) cooperate with the foreign authorities or do not prevent an arrest or unacknowledged detention without government knowledge, acting *ultra vires*;
3. Regrets that the rules governing the activities of secret services seem inadequate in several Member States of the Union, which means that more effective controls must be set up, in particular as regards the activities of foreign secret services on their territory, and considers that urgent legislative measures should be taken at national and EU level;

On the arrests, abductions, extraordinary renditions and secret detentions carried out by the CIA or other third-country security services

4. Is concerned that, according to the information which has already emerged in the Member States, the Council of Europe and the work of the temporary committee, serious and inadmissible violations of fundamental human rights have, since 11 September 2001 and as part of the essential action to combat terrorism, taken place on several occasions, in particular with reference to the European Convention on Human Rights, the United Nations Convention against Torture and the Charter of Fundamental Rights of the European Union;
5. Deplores the fact that the CIA has on several occasions been clearly responsible for the illegal abduction and detention of alleged terrorists on the territory of Member States and for extraordinary renditions and that, in a number of cases, this has concerned European nationals;
6. Condemns the practice of extraordinary renditions, which is aimed at ensuring that suspects are not brought before a court but are handed over to the governments of third countries in order to be interrogated or held in places under the control of the United States; considers the practices of certain governments consisting in limiting their responsibilities by asking for diplomatic assurances to be inadequate, this method having proved ineffective and failing to provide the level of protection required by the European Convention on Human Rights;
7. Deplores the fact that, as all the work of the temporary committee to date indicates, the CIA has used aircraft hired by fictitious airlines or regular companies to secretly abduct, detain and transfer persons suspected of terrorism in order to hand them over to other countries (including Egypt, Jordan, Syria and Afghanistan), which frequently use torture

¹ http://www.venice.coe.int/docs/2006/CDL-AD%282006%29009-e.asp#_Toc130704767.

during interrogations, as has also been recognised by the US Government itself¹.

On the possibility that Member States have, through their actions or by omission, been involved or complicit in the arrests, abductions, extraordinary renditions and secret detentions

8. Considers it implausible, on the basis of the testimonies and documents received to date, that certain European governments were not aware of the extraordinary rendition activities taking place on their territory and in their airspace or airports; considers it also implausible, in view of the findings of the judicial enquiries, testimonies and documents examined, that the abduction of the Egyptian national Abu Omar by CIA agents in Milan on 17 February 2003 was organised and carried out without prior notice being given to the Italian government authorities or security services;
9. Deplores the fact that the Swedish authorities turned back the Egyptian nationals Mohammed Al Zary and Ahmed Agiza and handed them over to CIA agents for transfer to Egypt, while being perfectly aware of the risks of torture and cruel, inhuman or degrading treatment facing these persons;
10. Deplores the extraordinary rendition of six Algerian nationals or residents by the Bosnian authorities to CIA agents in the absence of judicial guarantees and despite a formal decision to the contrary by the human rights chamber for Bosnia-Herzegovina;

On the use of torture

11. Stresses that the prohibition of torture, as the latter term is defined in Article 1 of the United Nations Convention against Torture, is absolute and allows no exceptions whether in times of war or threat of war, domestic political instability or any other emergency; recalls that cases of incommunicado detention, abduction or extraordinary rendition must also be considered violations of fundamental rights under international law and are therefore to be condemned as acts involving the use of torture or inhuman and degrading treatment;
12. Recalls that information extracted under torture may under no circumstances be considered as valid evidence, as laid down in the United Nations Convention against Torture, and considers also that confessions obtained through torture have very rarely contributed effectively to the prevention and combating of terrorism, as testified, among others, by the former British Ambassador to Uzbekistan, Craig Murray, in a hearing before the temporary committee;
13. Urges the Member States strictly to comply with Article 3 of the United Nations Convention against Torture, in particular the principle of 'non-refoulement' according to which 'no state party shall expel, return ('refouler') or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture'; calls also on the United States to review its interpretation of the principle of 'non-refoulement', as set out in Article 3 of the Convention;

¹ See US Department of State country reports on human rights practices (2003).

On the use of European airspace and European airports by the security services of third countries

14. Believes that it can be stated that the Chicago Convention has been breached on several occasions during hundreds of flights carried out by the CIA using the airspace and airports of Member States without complying with the obligation to obtain authorisation, as laid down by Article 3 of this Convention in relation to state flights;
15. Regrets that no Member State has adopted procedures aimed at verifying whether civilian aircraft are being used for purposes incompatible with internationally established human rights standards;
16. Considers European legislation on the use of national airspace and the airports of Member States to be totally inadequate; stresses the need to establish new national, European and international standards; calls on the Commission immediately to put forward a directive aimed at harmonising national laws;

On the future work of the temporary committee

17. Notes the need to continue the work of the temporary committee and further examine the relevant events in order to ascertain whether there has been a violation of Article 6 of the Treaty on European Union by one or more Member States; stresses also that the investigations should be extended to events and countries which have not been explicitly mentioned in this resolution;
18. Decides therefore that the temporary committee will continue its work for the remainder of its established twelve-month term, without prejudice to the provisions of Rule 175 of its Rules of Procedure on the possibility of extending the term;
19. Considers that the preparatory legislative work at European Union and Council of Europe level should be initiated as soon as possible in order to provide adequate legal protection for persons within the jurisdiction of Member States and to ensure effective parliamentary scrutiny of intelligence services at national and European level;
20. Considers that the temporary committee should also, on completion of its work, suggest the principles to be adopted, in particular:
 - as regards new rules on the exchange of information between intelligence services,
 - as regards agreements with third countries and international organisations on combating terrorism;
21. Calls on its Bureau to take the necessary measures to enable the temporary committee, in view of the very specific nature of its powers, to fully carry out the mandate conferred on it by granting any appropriate derogation from Parliament's internal rules until completion of its work, in particular with regard to:
 - the number of experts invited to hearings of the temporary committee and entitled to reimbursement of their expenses,

- the number of visits and members authorised in the context of official delegations of the temporary committee,
 - the drafting of verbatim reports of hearings conducted by the temporary committee;
22. Welcomes the work done by the Council of Europe and the cooperation established between the Council of Europe and the temporary committee;
 23. Calls on the Council and each of its members, and in particular its Presidency, to lend their full and unconditional support to the work of the temporary committee, in accordance with the principle of loyal cooperation as defined by the Treaties and the decisions of the Court of Justice of the European Communities;
 24. Encourages the Commission to give its backing to the temporary committee in all the steps it is required to take;
 25. Recalls the vital importance of working in full cooperation with the parliaments of the Member States, acceding countries, applicant countries and associated countries, in particular with those which have undertaken work on the same subject;
 26. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States and acceding countries, applicant countries and associated countries, the Council of Europe and the Government and both Houses of the United States Congress.