

European Parliament resolution on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners

- 1. Rapporteur:** Giovanni Claudio Fava (PSE/IT)
- 2. EP reference number:** A6-0020/2007 / P6-TA-PROV(2007)0032
- 3. Date of adoption of the Resolution:** 14 February 2007
- 4. Subject:** Alleged use of European countries by the CIA for the transportation and illegal detention of prisoners
- 5. Background to the resolution:**

Following allegations concerning secret detention centres and illegal transfers of prisoners carried out in Europe by the CIA, Parliament decided on 18 January 2006 to set up a temporary committee.

Its remit was to collect and analyse information to find out the truth behind the allegations and in particular to determine whether the CIA had carried out “extraordinary renditions”, illegal detentions, or acts of torture or inhuman treatment on EU territory, whether such actions were in violation of the principles of Article 6 TEU and of international treaties, whether any Member States or candidate countries had been involved in such practices, and whether citizens of Member States or candidate countries had been detained and held incommunicado.

The remit also required the Temporary Committee to make any recommendations on the matter to the plenary, notably concerning the political, legal and administrative conclusions to be drawn at European level and possible consequences for EU relations with third countries.

On the basis of the report by Mr Fava, adopted on 23 January 2007, the European Parliament adopted its resolution on 14 February by 382 votes in favour, 256 against and 74 abstentions.

In parallel with the work of the Temporary Committee, the Council of Europe is carrying out two enquiries: one by Mr Marty, on behalf of the Parliamentary Assembly of the Council of Europe, the other by Mr Davis, Secretary-General of the Council of Europe, exercising the powers conferred on him by the European Convention on Human Rights.

6. Analysis of the text and of Parliament’s requests:

A) Main positions taken by Parliament:

First of all, Parliament criticised the Council and the Member States for the way in which they cooperated with the Temporary Committee. However, it welcomed the cooperation of the Commission.

On the facts of the case, Parliament recalled that “renditions” were “an extra-judicial practice which contravenes established international human rights standards” (point 36). It condemned “the condoning and concealing of the practice, on several occasions, by the secret services

and governmental authorities of certain European countries” (point 39) and confirmed that it was “unlikely that certain European governments were unaware of the extraordinary rendition activities taking place in their territory” (point 48).

Parliament went on to list the facts concerning Member States (Italy, UK, Germany, Sweden, Austria, Spain, Portugal, Ireland, Greece, Cyprus, Denmark, Belgium, Poland and Romania) and other European States (Turkey, Bosnia and Herzegovina, FYROM).

The facts examined by Parliament were primarily concerned with “renditions”; the resolution also contained information regarding secret detention centres, but the EP was less definite on this subject than on that of renditions. Thus, regarding the allegations against Poland, Parliament concluded that “in the light of the above circumstantial evidence, it is not possible to acknowledge or deny that secret detention centres were based in Poland” (point 180).

B) Principal actions called for:

Recommendations for Member States

The resolution was addressed primarily to the Member States, calling on them to carry out detailed investigations and compensate the victims (points 187, 188 and 192).

Parliament also called on the Member States to ensure better monitoring of the activities of the secret services, including action at EU level (points 202-206).

The Member States were also urged to ensure that the relevant instruments dealing with air traffic were properly implemented so that the movements of “state aircraft” were subject to the necessary authorisation (point 207).

Parliament also called on the Member States to expedite the entry into force of the EU-US agreements on extradition and mutual assistance in criminal matters, and to ratify the new UN Convention on Enforced Disappearance and the additional Protocol to the UN Convention Against Torture (points 213, 214 and 217). They were also urged to guarantee the effective fulfilment of their international obligations under the UN Convention against Torture (point 215).

Recommendations to the Commission or the Council

Assessment of anti-terrorist legislation First of all, the Commission was urged “*to undertake an evaluation of all anti-terrorist legislation in the Member States and of both formal and informal arrangements between Member State and third-country intelligence services, from a human rights perspective, to review legislation which international or European human rights bodies consider could lead to a breach of human rights and to present proposals for actions in order to avoid any repetition of the matters under the remit of the Temporary Committee*” (point 193).

Air traffic A number of requests were then made to the Commission regarding air traffic:

- [Parliament]

“210. Calls on the Commission to adopt adequate legislative proposals on transport safety, as provided for in Article 71 EC Treaty, taking into account the recommendations included in this resolution;

“211. Recalls the Community competence in the field of transport, and notably transport security; asks the Commission, therefore, to take immediate action to ensure that the recommendations made by the Secretary-General of the Council of Europe as well as by Parliament are implemented;

212. Calls on the Commission to consider adopting rules on the use, monitoring and management of European airspace, on the use of EU airports and on the monitoring of non-commercial aviation.”

Administrative recommendation In a request to the Council and the Commission, the Resolution called for the strengthening of the counter-terrorism services as part of a redefinition of tasks which would also give Parliament and the Court of Justice a more important role (point 222).

Articles 6 and 7 In its final conclusions, Parliament *“recalls the principles and values on which the European Union is based, as provided in Article 6 of the Treaty on European Union, and calls on the EU institutions to meet their responsibilities in relation to Article 7 of the Treaty on European Union and all other relevant provisions of the Treaties, and to take all appropriate measures in the light of the conclusions of the work of the Temporary Committee, the facts revealed in the course of the Temporary Committee's investigation and any other facts that may emerge in the future; expects the Council to put pressure on all the governments concerned to give full and through information to the Council and the Commission and, where necessary to start hearings and commission an independent investigation without delay”* (point 228).

7. Response to these requests and outlook regarding the action that the Commission has taken or intends to take:

A) General comments

The Commission points out that, while it is vital to combat terrorism effectively using every available legal instrument, all anti-terrorism measures must respect fundamental rights and international humanitarian law.

The Commission welcomes the substantial efforts of the European Parliament and has always supported such action within the framework of its powers. In particular, the Commission has on various occasions called upon the Member States to cooperate with Parliament.

The Commission regards the practice of “rendition” as totally contrary to fundamental rights as guaranteed by the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union.

Like Parliament, the Commission feels that it is essential for the Member States concerned to conduct investigations, whatever they may uncover. This is a positive obligation deriving from the European Convention on Human Rights. A number of countries have launched judicial or parliamentary investigations and the Commission hopes that these will run their course and make it possible to ensure, if necessary, that victims receive fair compensation for the harm they have suffered.

The Commission will carry out an overall assessment of the situation in the light of the findings of these national investigations.

The Commission also intends to ensure that all action taken in the EU context will be closely coordinated with action taken under the aegis of the Council of Europe to avoid any risk of duplication.

B) Action requested by Parliament

The Commission points out that the activities of the secret services are a sensitive matter and are primarily the responsibility of the Member States. EU jurisdiction leaves little scope for action in this context. However, cooperation between intelligence services, which is an essential part of the fight against terrorism, must be conducted in a way which respects fundamental rights and the rule of law.

As regards the air traffic aspects, Parliament's resolution contains a number of recommendations to which the Commission will give careful consideration. The Commission has launched an internal study to see what contribution could be made in terms of the policies relating to this question, especially in the field of civil aviation. The Commission has recently published a discussion paper on general aviation in the European Community. This document, as part of a comprehensive analysis of the problems raised by non-commercial civil aviation, raises the question of clarifying the definition of State aircraft. When it has completed its consultations on the basis of this document, the Commission may draft a communication.

The Commission has taken note of Parliament's wish to carry out an assessment of the legal framework applicable to the fight against terrorism with regard to the protection of fundamental rights. The Commission feels that the points which could indeed be the subject of an evaluation should be identified, taking into account the results of the assessment carried out by the Secretary-General of the Council of Europe on the basis of Article 52 of the European Convention on Human Rights and any action which the Council of Europe might take in that regard.

The Commission also considers that the development and implementation of EU policies on police and judicial cooperation should take into account the lessons drawn from the facts described by Parliament in its resolution and will act accordingly, in particular when conducting the systematic and rigorous monitoring of its legislative proposals in accordance with its Communication on respect for fundamental rights of 27 April 2005 (COM(2005) 172 final).

As regards the international legal framework, the Commission will do all it can to encourage the Member States to complete the procedures for ratifying the 2003 EU/US Agreements on extradition and mutual assistance in criminal matters. The Commission also points out that it agrees with the European Parliament that Article 12 of the EU/US extradition agreement applies only to extraditions covered by that agreement and may not in any way be interpreted as legitimising the practice of "extraordinary rendition". The Commission also attaches great importance to other international instruments for the protection of fundamental rights, in particular the new UN Convention for the Protection of All Persons from Enforced Disappearance which could close a number of loopholes in our own legal systems.
