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DRAFT REPORT

on alleged transportation and illegal detention of prisoners in European countries by the CIA: follow-up of the European Parliament TDIP Committee report
(2012/2033(INI))

Committee on Civil Liberties, Justice and Home Affairs

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(*) Associated committee – Rule 50 of the Rules of Procedure

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on alleged transportation and illegal detention of prisoners in European countries by the CIA: follow-up of the European Parliament TDIP Committee report (2012/2033(INI))

The European Parliament,

- having regard to the Treaty on European Union, in particular Articles 2, 3, 4, 6, 7 and 21 thereof,
- having regard to the Charter of Fundamental Rights of the European Union, in particular Articles 1, 2, 3, 4, 18, 19,
- having regard to the European Convention on Human Rights and the protocols thereto,
- having regard to the relevant UN human rights instruments, in particular the International Covenant on Civil and Political Rights of 16 December 1966, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 and the relevant protocols thereto, and the International Convention for the Protection of All Persons from Enforced Disappearance of 20 December 2006,
- having regard to Article 5 of the North Atlantic Treaty of 1949,
- having regard to Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment¹,
- having regard to the Stockholm Programme - An Open and Secure Europe Serving and Protecting Citizens², and the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions of 20 April 2010 on ‘Delivering an area of freedom, security and justice for Europe’s citizens: Action Plan Implementing the Stockholm Programme’ (COM(2010)0171),
- having regard to the Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment,
- having regard to the Declaration of Brussels, of the 6th Conference of the Parliamentary Committees for the Oversight of Intelligence and Security Services of the European Union Member States, of 1 October 2010,
- having regard to the UN joint study on global practices in relation to secret detention in the context of countering terrorism, by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin; the Special Rapporteur on torture and other cruel, inhuman or degrading

¹ OJ L 200, 30.7.2005, p.1.

² OJ C 115, 4.5.2010, p. 1.

treatment or punishment, Manfred Nowak; the Working Group on arbitrary detention, represented by its Vice-Chair, Shaheen Sardar Ali; and the Working Group on enforced or involuntary disappearances, represented by its Chair, Jeremy Sarkin¹,

- having regard to the UN Human Rights Council report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, focusing on commissions of inquiry in response to patterns or practices of torture or other forms of ill-treatment²,
- having regard to the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, entitled ‘Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight’³,
- having regard to the contributions from the Council of Europe, in particular the work of the former Commissioner for Human Rights, Thomas Hammarberg, and of the European Committee for the Prevention of Torture, as well as to the relevant resolutions of the Parliamentary Assembly of the Council of Europe, in particular those entitled ‘Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states’⁴, and ‘Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report’⁵, and the report of the Parliamentary Assembly’s Committee on Legal Affairs and Human Rights, entitled ‘Abuse of state secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations’⁶,
- having regard to the European Court of Human Rights applications *Al – Nashiri v. Poland* and *Abu Zubaydah v. Lithuania*,
- having regard to its resolution of 25 November 2009 on the Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen – Stockholm programme⁷,
- having regard to its resolutions of 14 February 2007⁸ and 19 February 2009⁹ on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners,
- having regard to its resolutions on Guantánamo, in particular those of 9 June 2011 on Guantánamo: imminent death penalty decision¹⁰, of 4 February 2009 on the return and

¹ A/HRC/13/42, 19.2.2010.

² A/HRC/19/61, 18.1.2012.

³ A/HRC/14/46, 17.5.2010.

⁴ Resolution 1507 (2006).

⁵ Resolution 1562 (2007).

⁶ Doc. 12714, 16.9.2011.

⁷ OJ C 285 E, 21.10.2010, p.12.

⁸ OJ C 287 E, 29.11.2007, p. 309.

⁹ OJ C 76 E, 25.3.2010, p. 51.

¹⁰ Texts adopted, P7_TA(2011)0271.

resettlement of the Guantánamo detention facility inmates¹ and of 13 June 2006 on the situation of prisoners at Guantánamo², and its recommendation of 10 March 2004 to the Council on the Guantánamo detainees' right to a fair trial³,

- having regard to its resolution of 15 December 2010 on the situation of fundamental rights in the European Union (2009) – effective implementation after the entry into force of the Treaty of Lisbon⁴,
- having regard to its resolution of 14 December 2011 on the EU counter-terrorism policy: main achievement and future challenges⁵,
- having regard to the speech given by Jacques Barrot, Vice President of the European Commission, in Strasbourg on 17 September 2008⁶,
- having regard to the statements made by the Commission on the need for the Member States concerned to conduct investigations into allegations of involvement in the CIA rendition and secret detention programme, and to the documents, including four letters sent to Poland, four to Romania and two to Lithuania between 2007 and 2010, communicated to the rapporteur by the Commission,
- having regard to the letter of 29 November 2005 from the EU Presidency to US Secretary of State Condoleezza Rice, requesting any 'clarification the US can give about these reports [alleged detention or transportation of terrorists suspects in or through EU Member States] in the hope that this will allay parliamentary and public concerns',
- having regard to the 2748th/2749th meeting of the General Affairs and External Relations Council of 15 September 2006, debating the item 'Fight against terrorism – Secret detention facilities',
- having regard to the EU statement of 7 March 2011 at the 16th sessions of the Human Rights Council regarding the aforementioned UN joint study on secret detention,
- having regard to the article 'Counter-terrorism and human rights', by Villy Sovndal, Gilles de Kerchove and Ben Emmerson, published in the European Voice issue of 19 March 2012,
- having regard to US Secretary of State Condoleezza Rice's reply of 5 December 2005 to the EU Presidency's letter of 29 November 2005, stating that '[...] rendition is a vital tool in combating terrorism. Its use is not unique to the United States, or to the current administration', denying allegations of direct US involvement in torture and emphasising that the 'purpose' of rendition was not that the person rendered be tortured',
- having regard to former US President George W. Bush's acknowledgement, in his speech

¹ OJ C 67 E, 18.3.2010, p. 91.

² OJ C 300 E, 9.12.2006, p. 136.

³ OJ C 102 E, 28.4.2004, p. 521.

⁴ Texts adopted, P7_TA(2010)0483.

⁵ Texts adopted, P7_TA(2011)0577.

⁶ SPEECH/08/716, 'Une politique visant à assurer l'effectivité des droits fondamentaux sur le terrain'.

from the East Room of the White House of 6 September 2006, of the existence of a CIA-led programme of rendition and secret detention, including overseas operations,

- having regard to George W. Bush’s memoirs, which were published on 9 November 2010,
 - having regard to the unclassified version released in August 2009 of CIA Inspector General John Helgerson’s 2004 report into the CIA’s Bush-era interrogation operations,
 - having regard to the International Committee of the Red Cross 2007 report on the treatment of 14 high-value detainees in CIA custody, which became publicly accessible in 2009,
 - having regard to the ongoing national inquiries into Member States’ involvement in the CIA rendition and secret detention programme conducted in Poland, Denmark, Finland, the United Kingdom and Spain, and to the national inquiries into Member States’ involvement in the CIA rendition and secret detention programme that have already been conducted *inter alia* in Lithuania, Romania, Poland, Germany, Sweden, the United Kingdom, Denmark, Italy and Spain,
 - having regard to the hearings of its Committee on Civil Liberties, Justice and Home Affairs (LIBE) held on 27 March 2012 and of its Subcommittee on Human Rights held on 12 April 2012, the LIBE delegation visit to Lithuania of 25-27 April 2012 and all the written and oral contributions received by the rapporteur,
 - having regard to Rules 48 and 50 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Foreign Affairs (A7-0000/2012),
- A. whereas Parliament has condemned the US-led CIA rendition and secret detention programme involving multiple human rights violations, including unlawful and arbitrary detention, torture and other ill-treatment, violations of the *non-refoulement* principle and enforced disappearance; whereas its Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (‘Temporary Committee’) has documented the use of European airspace and territory by the CIA and whereas Parliament has since repeated its demand for full investigations into the collaboration of national governments and agencies with the CIA programme;
- B. whereas the purpose of this resolution is to ‘follow up politically the proceedings of the Temporary Committee and to monitor the developments, and in particular, in the event that no appropriate action has been taken by the Council and/or the Commission, to determine whether there is a clear risk of a serious breach of the principles and values on which the European Union is based, and to recommend to it any resolution, taking as a basis Articles 6 and 7 of the Treaty on European Union, which may prove necessary in this context’¹;
- C. whereas a proper accountability process is essential in order to preserve citizens’ trust in

¹ Paragraph 232 of its resolution of 14.2.2007, P6_TA(2007)0032.

the democratic institutions of the EU, effectively protect and promote human rights in the EU's internal and external policies, and ensure legitimate and effective security policies based on the rule of law;

- D. whereas the Council admitted on 15 September 2006 that 'the existence of secret detention facilities where detained persons are kept in a legal vacuum is not in conformity with international humanitarian law and international criminal law', but has so far failed to recognise and condemn the involvement of Member States in the CIA programme, even though the use of European airspace and territory by the CIA has been acknowledged by political and judicial authorities of Member States;
- E. whereas there are enduring human rights violations due to the CIA programme, as evidenced in particular by the ongoing administrative detention in Guantánamo Bay of Mr Abu Zubaydah and Mr Al Nashiri, who have been granted victim status in the Polish criminal investigation into CIA secret prisons;
- F. whereas research by the UN, the Council of Europe and civil society has brought to light new concrete information on the location of CIA secret detention sites in Europe, rendition flights through European airspace and persons transported or detained;
- G. whereas the 2011 Council of Europe report states that the data obtained from the Polish agencies in 2009 and 2010 'provide definite proof' that seven CIA-associated aircraft landed in Poland; whereas a 'black site' was identified in Romania by journalists on the basis of information provided by former CIA employees in the Romanian national registry office for classified information¹; whereas former Libyan dissidents have started legal proceedings against the UK for the direct involvement of MI6 in their own and their family members' rendition, secret detention and torture;
- H. whereas research and court findings on the logistics involved in covering up these illegal operations, including dummy flight plans and the use of private aviation companies to conduct CIA renditions, has further revealed the systematic nature and the extent of European involvement in the CIA programme;
- I. whereas the EU has developed internal security and counter-terrorism policies based on police and judicial cooperation and the promotion of intelligence sharing; whereas these policies should be grounded in respect for fundamental rights and the rule of law;

General

1. Considers that Member States have so far not properly fulfilled their positive obligation under international law to investigate serious human rights violations connected with the CIA programme and afford full redress to victims;
2. Believes that the failure of Member States to assume their responsibility to conduct inquiries that are fully compatible with their international obligations undermines mutual trust in fundamental rights protection, and thus becomes the responsibility of the EU as a whole;

¹ *Inside Romania's secret CIA prison*, The Independent, 9.12.11.

3. Reiterates that the failure of Member States and the EU to reveal the truth about European involvement in the CIA programme contravenes the principle of sincere and loyal cooperation enshrined in Article 4(3) of the TEU;

Accountability process in the Member States

4. Expresses concerns regarding the obstacles encountered by national investigations into Member States' involvement in the CIA programme, as documented in detail by the 2011 Council of Europe report on abuse of state secrecy and national security;
5. Urges Member States to establish the truth on their involvement in the CIA programme and meet their obligation to investigate human rights violations by conducting independent and effective inquiries, taking into account all the new evidence that has come to light;
6. Urges Romania to meet its legal obligation to launch an independent and effective inquiry into CIA secret detention on its territory;
7. Welcomes the criminal investigation into secret detention launched in Poland and calls on the Polish authorities to conduct a rigorous inquiry, with due transparency, allowing for effective participation of victims and their lawyers;
8. Notes the criminal investigation launched in the UK on renditions to Libya and welcomes the decision to continue the wider inquiry into the UK's responsibility in the CIA programme once the investigation has been concluded; calls on the UK to conduct this inquiry with due transparency, allowing effective participation of victims and civil society;
9. Calls on Member States, such as Finland, Denmark and Portugal, to disclose all the necessary information on all suspect planes associated with the CIA and their territory;

Response of EU institutions

11. Expects the Council to finally issue a declaration acknowledging and apologising for Member States' involvement in the CIA programme;
12. Calls on the Council to give its full support to the truth-finding and accountability processes in the Member States by formally addressing the issue at JHA meetings, sharing all information, providing assistance to inquiries and, in particular, acceding to requests for access to documents;
13. Calls on the Council to hold hearings with relevant EU security agencies, in particular Europol, Eurojust and the EU Counter-terrorism Coordinator, to clarify their knowledge of Member States' involvement in the CIA programme and the EU's response; calls also on the Council to put forward safeguards to guarantee respect for human rights in intelligence sharing, and a strict delimitation of roles between intelligence and law enforcement activities, and to report to Parliament within a year;
14. Calls on the Commission to investigate whether EU provisions, in particular on asylum

and judicial cooperation, have been breached by collaboration with the CIA programme;

15. Notes the Commission's initiatives in response to the Parliament's recommendations; regrets, however, that they have not been part of a wider agenda and strategy to ensure accountability for human rights violations committed in the context of the CIA programme;
16. Calls on the Commission to adopt within a year a framework, including reporting requirements for Member States, to monitor and support national accountability processes, including guidelines on human-rights-compliant inquiries, based on the standards developed at Council of Europe and UN levels;
17. Calls on the Commission, in light of the institutional deficiencies revealed in the context of the CIA programme, to adopt within a year a communication reviewing the mechanism set out in Article 7 of the TEU; considers that the reform should be aimed at strengthening the EU's capacity to prevent and redress human rights violations at EU level when Member States are unable to meet their obligations at national level and should provide for the strengthening of Parliament's role and a greater degree of independence as regards conditions for its activation;
19. Undertakes to devote its next Joint Parliamentary Meeting with national parliaments to reviewing the role of parliaments in ensuring accountability for human rights violations in the context of the CIA programme, and to promoting stronger cooperation and regular exchange between national oversight bodies in charge of scrutinising intelligence services, in the presence of the relevant national authorities, EU institutions and agencies;
20. Is determined to continue fulfilling the mandate given to it by the Temporary Committee, pursuant to Articles 2, 6 and 7 of the TEU, and instructs its Committee on Civil Liberties, Justice and Home Affairs, together with the Subcommittee of Human Rights, to address Parliament in plenary on the matter a year after the adoption of this resolution;
21. Instructs its President to forward this resolution to the Council, the Commission and the national parliaments.