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*Plenary sitting*

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**B8-0580/2016**

4.5.2016

## **MOTION FOR A RESOLUTION**

further to Questions for Oral Answer B8-0367/2016 and B8-0368/2016

pursuant to Rule 128(5) of the Rules of Procedure

on follow-up to the European Parliament resolution of 11 February 20015 on the US Senate report on the use of torture by the CIA (2016/2573(RSP))

**Claude Moraes**

on behalf of the Committee on Civil Liberties, Justice and Home Affairs

**European Parliament resolution on follow-up to the European Parliament resolution of 11 February 20015 on the US Senate report on the use of torture by the CIA (2016/2573(RSP))**

*The European Parliament,*

- having regard to the Treaty on European Union (TEU), 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 and 19 thereof,
- 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 UN Security Council resolution 2178 (2014) of 24 September 2014 on the threats to international peace and security caused by terrorist acts,
- 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-treatment,
- having regard to the European Court of Human Rights judgments in cases *Nasr and Ghali v Italy (Abu Omar)* of February 2016, *Al Nashiri v Poland* and *Husayn (Abu Zubaydah) v Poland* of July 2014, and *El-Masri v the former Yugoslav Republic of Macedonia* of December 2012,
- having regard also to pending and ongoing cases before the European Court of Human Rights (*Abu Zubaydah v Lithuania* and *Al Nashiri v Romania*),
- having regard to the Italian court judgment that convicted and sentenced to prison terms in absentia 22 CIA agents, one air force pilot and two Italian agents over their role in the 2003 kidnapping of the Imam of Milan, Abu Omar,
- having regard to the joint statement of the European Union and its Member States and the United States of America of 15 June 2009 on the closure of the Guantánamo Bay detention facility and future counterterrorism cooperation, based on shared values, international law, and respect for the rule of law and human rights,
- having regard to its resolution of 9 June 2011 on Guantánamo: imminent death penalty

- decision<sup>1</sup>, to its other resolutions on Guantánamo, the most recent being that of 23 May 2013 on hunger strike by prisoners<sup>2</sup>, to its resolution of 8 October 2015 on the death penalty<sup>3</sup> and to the EU Guidelines on the death penalty,
- having regard to its resolution of 6 July 2006 on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners, adopted midway through the work of the Temporary Committee<sup>4</sup>, to its resolution of 14 February 2007 on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners<sup>5</sup>, to its resolution of 11 September 2012 on alleged transportation and illegal detention of prisoners in European countries by the CIA: follow-up of the European Parliament TDIP Committee report<sup>6</sup>, and to its resolution of 10 October 2013 on alleged transportation and illegal detention of prisoners in European countries by the CIA<sup>7</sup>,
  - having regard to the Council conclusions of 5 and 6 June 2014 on fundamental rights and the rule of law and on the Commission’s 2013 report on the application of the Charter of Fundamental Rights of the European Union,
  - having regard to its resolution of 27 February 2014 on the situation of fundamental rights in the European Union (2012)<sup>8</sup>, and to its resolution of 8 September 2015 on the situation of fundamental rights in the European Union (2013-2014)<sup>9</sup>,
  - having regard to the Commission communication of 11 March 2014 entitled ‘A new EU Framework to strengthen the Rule of Law’ (COM(2014)0158),
  - having regard to its resolution of 11 February 2015 on the US Senate report on the use of torture by the CIA<sup>10</sup>,
  - having regard to the Brussels Declaration on ‘Implementation of the European Convention on Human Rights’, adopted in March 2015,
  - having regard to the closed inquiry pursuant to Article 52 of the European Convention on Human Rights (ECHR) considering illegal CIA detentions and transport of detainees suspected of terrorist acts, and to the request of the Secretary-General of the Council of Europe to all States Parties to the ECHR to provide him with information on past or ongoing investigations, relevant cases before domestic courts or other measures taken with regard to the matter of this inquiry by 30 September 2015<sup>11</sup>,
  - having regard to the parliamentary fact-finding mission of its Committee on Civil

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<sup>1</sup> OJ C 380 E, 11.12.2012, p. 132.

<sup>2</sup> OJ C 55, 12.2.2016, p. 123.

<sup>3</sup> Texts adopted, P8\_TA(2015)0348.

<sup>4</sup> OJ C 303 E, 13.12.2006, p. 833.

<sup>5</sup> OJ C 287 E, 29.11.2007, p. 309.

<sup>6</sup> OJ C 353 E, 3.12.2013, p. 1.

<sup>7</sup> Texts adopted, P7\_TA(2013)0418.

<sup>8</sup> Texts adopted, P7\_TA(2014)0173.

<sup>9</sup> Texts adopted, P8\_TA(2015)0286.

<sup>10</sup> Texts adopted, P8\_TA(2015)0031.

<sup>11</sup> <http://website-pace.net/documents/19838/2008330/AS-JUR-INF-2016-06-EN.pdf/f9280767-bf73-44a1-8541-03204e2dfae3>

Liberties, Justice and Home Affairs to Bucharest, Romania of 24 and 25 September 2015, and to the corresponding mission report,

- having regard to the public hearing held by its Committee on Civil Liberties, Justice and Home Affairs on 13 October 2015 on ‘Investigation of alleged transportation and illegal detention of prisoners in European countries by the CIA’,
  - having regard to the publication of the 2015 study for its Committee on Civil Liberties, Justice and Home Affairs entitled ‘A quest for accountability? EU and Member State inquiries into the CIA Rendition and Secret Detention Programme’,
  - having regard to the open letter of 11 January 2016 from human rights experts from the United Nations and the Organisation for Security and Cooperation in Europe to the Government of the United States of America on the occasion of the 14th anniversary of the opening of the Guantánamo Bay detention facility,
  - having regard to recent resolutions adopted, and reports published, by the Inter-American Commission on Human Rights in relation to the human rights of detainees at Guantánamo, including their access to medical care, to the 2015 report of the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe (OSCE-ODIHR), and to the decisions of the UN Working Group on Arbitrary Detention,
  - having regard to the questions to the Council and to the Commission on follow-up to the European Parliament resolution of 11 February 2015 on the US Senate report on the use of torture by the CIA (O-000038/2016 – B8-0367/2016 and O-000039/2016 – B8-0368/2016),
  - having regard to the motion for a resolution of the Committee on Civil Liberties, Justice and Home Affairs,
  - having regard to Rules 128(5) and 123(2) of its Rules of Procedure,
- A. whereas the EU is founded on the principles of democracy, the rule of law, human rights and fundamental freedoms, respect for human dignity and international law, not only in its internal policies but also in its external dimension; whereas the EU’s commitment to human rights, as reinforced by the entry into force of the EU Charter of Fundamental Rights and the process of accession to the European Convention on Human Rights, must be reflected in all policy areas in order to make the EU’s human rights policy effective;
- B. whereas, with the emphasis on the ‘War against Terrorism’, the balance between the various powers of the state has shifted dangerously in favour of broadening powers for governments, to the detriment of parliaments and judiciaries, and has given rise to an unprecedented level of invocation of state secrecy, which prevents public inquiries into alleged abuses of human rights;
- C. whereas Parliament has repeatedly called for the fight against terrorism to respect the rule of law, human dignity, human rights and fundamental freedoms, including in the context of international cooperation in this field, on the basis of the EU Treaties, the

European Convention on Human Rights, national constitutions and fundamental rights legislation;

- D. whereas Parliament has strongly condemned the US-led Central Intelligence Agency (CIA) rendition and secret detention programme involving multiple human rights violations, including unlawful and arbitrary detention, abduction, torture and other inhumane or degrading treatment, violation of the non-refoulement principle and enforced disappearance through the use of European airspace and territory by the CIA, as an outcome of the work of its Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners;
- E. whereas accountability for those acts is essential in order to protect and promote human rights effectively in the internal and external policies of the EU, and to ensure legitimate and effective security policies based on the rule of law;
- F. whereas Parliament has repeatedly called for full investigations into the involvement of EU Member States in the CIA's secret detention and extraordinary rendition programme;
- G. whereas 9 December 2015 marked the one-year anniversary of the release of the US Senate Select Committee on Intelligence (SSCI) study of the CIA's Detention and Interrogation Programme and its use of various forms of torture on detainees between 2001 and 2006; whereas the study revealed new facts which reinforced allegations that a number of EU Member States, their authorities and officials and agents of their security and intelligence services had been complicit in the CIA's secret detention and extraordinary rendition programme, sometimes through corrupt means based on the provision of substantial amounts of money by the CIA in exchange for their cooperation; whereas the study did not lead to any kind of accountability in the USA for the CIA rendition and secret detention programmes; whereas the USA has regrettably failed to cooperate with European investigations into European complicity in the CIA programmes, and whereas no perpetrators have been held to account so far;
- H. whereas Mark Martins, Chief Prosecutor of Military Commissions at Guantánamo Bay, has stated that the events set out in the Summary of the SSCI study on the CIA's Detention and Interrogation Programme did in fact occur;
- I. whereas extensive new analysis has been conducted using the information contained in the SSCI Summary, confirming previous investigations in relation to the involvement of a range of countries – including EU Member States – and identifying new avenues for investigation;
- J. whereas the previous European Parliament, in its resolution of 10 October 2013, called on the current Parliament to continue to fulfil and implement the mandate given by the Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners, and consequently to ensure that its recommendations were followed up, to examine new elements that might emerge and to make full use of, and develop, its rights of inquiry;
- K. whereas the recent resolutions adopted, and reports published, by the Inter-American Commission on Human Rights in relation to the human rights of detainees at

Guantánamo raise concerns that at least some detainees are not receiving adequate medical care or rehabilitation; whereas the 2015 OSCE-ODIHR report similarly expresses concerns in relation to human rights protection at Guantánamo, including the denial of fair trial rights, and whereas the decisions of the UN Working Group on Arbitrary Detention state that various Guantánamo detainees are being detained arbitrarily;

- L. whereas US President Barack Obama committed to closing the Guantánamo Bay detention facility by January 2010; whereas on 15 June 2009 the EU and its Member States and the USA signed a joint statement on the closure of the Guantánamo Bay detention facility and future counterterrorism cooperation, based on shared values, international law and respect for the rule of law and human rights; whereas on 23 February 2016 President Obama sent Congress a plan to close once and for all the military prison at Guantánamo Bay; whereas the assistance of EU Member States in resettling some of the prisoners has been limited;
- M. whereas none of the Member States implicated have conducted full and effective investigations with a view to bringing perpetrators of crimes under international and domestic law to justice, or to ensuring accountability in the aftermath of the release of the US Senate study;
- N. whereas it is regrettable that the members of the fact-finding mission to Bucharest of Parliament's Committee on Civil Liberties, Justice and Home Affairs were not able to visit the National Registry Office for Classified Information (ORNISS) building, reported to have been used as a secret CIA detention site;
- O. whereas Parliament's resolution of 11 February 2015 on the US Senate report on the use of torture by the CIA instructed its Committee on Civil Liberties, Justice and Home Affairs, with the association of the Committee on Foreign Affairs, and in particular the Subcommittee on Human Rights, to resume its inquiry into alleged transportation and illegal detention of prisoners in European countries by the CIA and to report to plenary within a year;
  - 1. Underlines the unique importance and the strategic nature of the transatlantic relationship at a time of rising global instability; takes the view that this relationship, which is based on common interests as well as shared values, needs to be further strengthened on the basis of respect for multilateralism, the rule of law and negotiated conflict resolution;
  - 2. Reiterates its strong condemnation of the use of enhanced interrogation techniques, which are prohibited under international law and which breach, inter alia, the rights to liberty, security, humane treatment, freedom from torture, presumption of innocence, fair trial, legal counsel and equal protection under the law;
  - 3. Expresses, one year after the release of the US Senate study, its serious concerns about the apathy shown by Member States and EU institutions with regard to recognising the multiple fundamental rights violations and torture which took place on European soil between 2001 and 2006, investigating them and bringing those complicit and responsible to justice;

4. Welcomes the judgment of the European Court of Human Rights of 23 February 2016 in the case of *Nasr and Ghali v Italy* (44883/09), which found that the Italian authorities had been aware of the torture perpetrated against Egyptian imam Abu Omar, and had clearly made use of the principle of ‘state secrecy’ to ensure that those responsible were granted de facto impunity; calls on the Italian executive to waive the ‘state secrecy’ principle for the former head of the Intelligence and Military Security Service (SISMi) and his deputy, as well as three former SISMi members, in order to ensure that justice is carried out without obstacle;
5. Regrets the fact that only one cross-party fact-finding mission to Romania was conducted in September 2015; calls for more fact-finding missions to be organised by the European Parliament in those Member States identified in the US Senate study on the CIA’s Detention and Interrogation Programme as being complicit in that programme, such as Lithuania, Poland, Italy and the United Kingdom;
6. Underlines the fact that transatlantic cooperation based on common values such as the promotion of freedom and security, democracy and fundamental human rights is, and must be, a key priority in EU foreign relations; reiterates the clear position taken in the US-EU statement of 2009 to the effect that joint efforts to combat terrorism must comply with obligations under international law, in particular international human rights law and humanitarian law, and that this will make our countries stronger and more secure; calls on the USA to make every effort, in this context, to respect the rights of EU citizens in the same way as those of US citizens;
7. Believes that transatlantic cooperation on counterterrorism needs to respect fundamental rights, fundamental freedoms and privacy, as guaranteed by EU legislation, for the shared benefit of citizens on both sides of the Atlantic; calls for continued political dialogue between the transatlantic partners on security and counterterrorism matters, including the protection of civil and human rights, in order to combat terrorism effectively;
8. Regrets the fact that, more than a year after the release of the US Senate study and the adoption of this Parliament’s resolution which called on the USA to investigate and prosecute the multiple human rights violations resulting from the CIA rendition and secret detention programmes, and to cooperate with all requests from EU Member States in connection with the CIA programme, no perpetrators have been held to account and the US Government has failed to cooperate with EU Member States;
9. Repeats its call on the USA to continue to investigate and prosecute the multiple human rights violations resulting from the CIA rendition and secret detention programmes led by the previous US administration, and to cooperate with all requests from EU Member States for information, extradition or effective remedies for victims in connection with the CIA programme; encourages the US SSCI to publish its study of the CIA’s Detention and Interrogation Programme in full; underlines the fundamental conclusion reached by the US Senate that the violent and illegal methods applied by the CIA failed to generate intelligence that prevented further terrorist attacks; recalls its absolute condemnation of torture and enforced disappearance;
10. Regrets the closure of the inquiry conducted by the Secretary-General of the Council of Europe under Article 52 of the European Convention on Human Rights, given that

investigations in a number of Member States remain outstanding and that further follow-up is required in this connection; reiterates, to that end, its calls on Member States to investigate, ensuring full transparency, the allegations that there were secret prisons on their territory in which people were held under the CIA programme, and to prosecute those involved in these operations, including public actors, taking into account all the new evidence that has come to light (including the payments made as outlined in the SSCI Summary), and notes with regret the slow pace of investigations, the limited accountability and the excessive reliance on state secrets;

11. Urges Lithuania, Romania and Poland to conduct, as a matter of urgency, transparent, thorough and effective criminal investigations into CIA secret detention facilities on their respective territories, having taken into full consideration all the factual evidence that has been disclosed, to bring perpetrators of human rights violations to justice, to allow the investigators to carry out a comprehensive examination of the renditions flight network and of contact people publicly known to have organised or participated in the flights in question, to carry out forensic examination of the prison sites and the provision of medical care to detainees held at these sites, to analyse phone records and transfers of money, to consider applications for status/participation in the investigation from possible victims, and to ensure that all relevant crimes are considered, including in connection with the transfer of detainees;
12. Insists on the full and prompt execution of the European Court of Human Rights judgments against Poland and the former Yugoslav Republic of Macedonia, including compliance with urgent individual and general measures; reiterates the Council of Europe Committee of Ministers' call for Poland to seek and receive diplomatic assurances from the USA concerning the non-application of the death penalty and an assurance of fair proceedings, and to undertake timely, thorough and effective criminal investigations, to ensure that all relevant crimes are addressed, including in relation to all victims, and to bring perpetrators of human rights violations to justice; welcomes, to that end, the intention of the former Yugoslav Republic of Macedonia to set up an ad hoc independent investigatory body, and urges its swift establishment with international support and participation;
13. Recalls that the former director of the Romanian secret services, Ioan Talpes, admitted on record to the European Parliament delegation that he had been fully aware of the CIA's presence on Romanian territory, acknowledging that he had given permission to 'lease' a government building to the CIA;
14. Expresses concerns regarding the obstacles encountered by national parliamentary and judicial investigations into some Member States' involvement in the CIA programme, and the undue classification of documents leading to de facto impunity for perpetrators of human rights violations;
15. Recalls that the European Court of Human Rights has now expressly acknowledged – in its judgment of 24 July 2014 – that public sources and cumulative evidence which help to shed more light on Member States' involvement in the CIA rendition programme are admissible evidence in judicial proceedings, especially where official state documents are barred from public or court scrutiny on the grounds of 'national security';
16. Calls on the Commission to present a White Paper on the instances in which national



security and state secrets cannot be invoked in a democratic society, in essence defining what does not fall within the notion of ‘national security’;

17. Welcomes the efforts made so far by Romania, and calls on the Romanian Senate to declassify the remaining classified parts of its 2007 report, namely the annexes on which the conclusions of the Romanian Senate inquiry were based; reiterates its call on Romania to investigate the allegations that there was a secret prison, to prosecute those involved in these operations, taking into account all the new evidence that has come to light, and to conclude the investigation as a matter of urgency;
18. Notes that the data collected during the Lithuanian Parliamentary Committee on National Security and Defence (Seimas CNSD) inquiry into Lithuania’s involvement in the CIA’s secret detention programme has not been made public, and calls for the release of the data, with any necessary redactions;
19. Express its disappointment that, despite several requests (a letter to the Minister of Foreign Affairs of Romania, Bogdan Aurescu, from the Chair of Parliament’s Committee on Civil Liberties, Justice and Home Affairs, and another request at the time of the fact-finding mission to the Secretary of State, George Ciamba), the members of the fact-finding mission were not able to visit ‘Bright Light’, a building repeatedly – and officially – reported to have been used as a detention site;
20. Calls on the Commission and the Council to report back to plenary before the end of June 2016 on the follow-up action taken on the recommendations and requests made by the European Parliament in its inquiry into the alleged transportation and illegal detention of prisoners in European countries by the CIA and in its subsequent resolutions, and on the findings of investigations and prosecutions conducted in the Member States;
21. Calls for the regular, structured EU-US interparliamentary dialogue, in particular between the European Parliament Committee on Civil Liberties, Justice and Home Affairs and its relevant counterparts in the US Congress and Senate, to be reinforced by using all the avenues of cooperation and dialogue provided by the Transatlantic Legislators’ Dialogue (TLD); welcomes, in this connection, the 78th meeting of the TLD between the European Parliament and the US Congress, to be held in The Hague on 26-28 June 2016, as an opportunity to reinforce that cooperation, given that counterterrorism cooperation will be an integral part of the discussion;
22. Recalls that transparency is the absolute cornerstone of any democratic society, the sine qua non for a government’s accountability to its people; is therefore profoundly worried by the increasing trend for governments to unduly invoke ‘national security’ with the sole or primary aim of blocking public scrutiny by citizens (to whom the government is accountable) or by the judiciary (which is the guardian of a country’s laws); points to the great danger of deactivating any democratic accountability mechanisms, effectively absolving the government of its accountability;
23. Expresses its regret at the fact that the US President’s undertaking to close Guantánamo by January 2010 has not yet been implemented; reiterates its call on the US authorities to review the military commissions system with a view to ensuring fair trials, to close Guantánamo and to prohibit in all circumstances the use of torture, ill-treatment and

indefinite detention without trial;

24. Welcomes the recent positive steps taken by President Obama in his continuing and repeated efforts to close the detention facility at the US military base in Guantánamo Bay, and to provide for the release of those detainees who have not been charged; calls on the USA to address concerns raised by international human rights bodies regarding the human rights of detainees at Guantánamo, including access to adequate medical care and the provision of rehabilitation for torture survivors; stresses that President Obama, in his State of the Union address of 20 January 2015, reiterated his determination to fulfil his 2008 campaign pledge to close down the Guantánamo Bay prison, and further welcomes the plan he sent to Congress on 23 February 2016; calls on the Member States to offer asylum to those prisoners who have been officially cleared for release;
25. Reiterates its conviction that normal criminal trials under civilian jurisdiction are the best way to resolve the status of Guantánamo detainees; insists that detainees in US custody should be charged promptly and tried in accordance with the international standards of the rule of law or released; emphasises, in this context, that the same standards concerning fair trials should apply to all, without discrimination;
26. Calls on the US authorities not to impose the death penalty on detainees at Guantánamo Bay;
27. Instructs its President to forward this resolution to the Council, the Commission, the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy, the governments and parliaments of the Member States, the US Convening Authority for Military Commissions, the US Secretary of State, the US President, the US Congress and Senate, the UN Secretary-General, the UN Special Rapporteur on Torture, the Secretary-General of the Council of Europe, the Organisation for Security and Cooperation in Europe, and the Inter-American Commission on Human Rights.