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on Alleged Transportation & illegal detention of prisoners in European countries by the CIA: follow up of the EP TDIP Committee report

Committee on Civil Liberties, Justice and Home Affairs

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Introduction

When reports on allegations of European complicity in the illegal CIA detention and secret detention programmes put in place by the Bush administration in the context of its “war on terror” hit the headlines in 2005, the news shook Europe to its foundations. The human rights violations involved: torture, kidnapping, illegal detention and enforced disappearances were unthinkable. The nature and extent of the illegal operations in Europe, decided outside any public and democratic scrutiny, amounted to a breakdown of the rule of law.

The gravity of the situation prompted a remarkable reaction by the European Parliament. Early 2006, it set up a temporary committee of inquiry¹ to look into Europe’s role in illegal transfers and detention of prisoners implying torture and ill-treatment in breach of the EU’s and Member States’ obligations under international and European law. This one year inquiry is cited today along the Council of Europe authoritative reports on the same issue.

In its final resolution adopted on 14 February 2007², the EP urged the Council and the Commission to act on the findings of the report, expecting the Council to promote full inquiries at national level with detailed reporting on the progress and eventually a separate independent inquiry at EU level. It provided for political follow-up by the EP on the basis of ex articles 6 and 7 of Treaty on the EU.

Five years later, the lack of an appropriate response at EU level appears in blatant contrast with the number of new reports and recommendations emanating from intergovernmental organisations, judiciary and parliamentary bodies, and civil society actors. Confronted with this reality, the EP has decided to substantiate its follow-up in an own initiative report.

Purpose of the report

As evidence of illegal actions continue to emerge, the EU must explain what happened, confront what went wrong and guarantee accountability. The EU must be able to guarantee that in crisis situations, such human rights violations are never repeated.

This is essential in order to:

- preserve citizens’ trust in the democratic institutions of the EU
- effectively protect and promote human rights in EU’s internal and external policies
- ensure legitimate, effective and sustainable security policies based on international law

Background and presentation of the facts

Since 2001, several hundreds “terrorism” suspects are estimated to have been abducted and detained by the CIA in more than a dozen countries. CIA agents then transferred these suspects forcibly, without legal procedure, to countries known for systematic torture like Egypt or Syria. In secret prisons, suspects were held for months *incommunicado* where they were tortured and interrogated.

In 2009, a report by the International Committee of the Red Cross (ICRC)³ leaked to the press, detailed allegations of torture and other ill treatment of the 14 "high value" detainees

¹ Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (TDIP)

² P6_TA(2007)0032.

³ ICRC report on the treatment of 14 "High value detainees" in CIA custody, 14 February 2007, leaked in 2009, available at <http://www.nybooks.com/media/doc/2010/04/22/icrc-report.pdf>

held in the CIA secret programme and subsequently been transferred to Guantanamo. The use of waterboarding in particular was confirmed by official US sources, including former President George W. Bush in his memoirs in 2010¹.

The TDIP report highlighted the fact that these CIA programmes were implemented in Europe with at least 12 Member States involved. It named more than 20 victims of renditions and over 1000 suspect flights using EU airspace. Not all European states participated equally. Some of the states concerned were content not to oppose these programs while others were playing an active role.

The possible use of article 5 of the NATO Treaty (armed attack invoked in September 2001 for the first time in its history) by EU Member States as the basis of the cooperation with the CIA including extraordinary permissions and protections granted to CIA agents raises a number of questions.

Developments since the TDIP report

The argument that there is no new or not enough information must be challenged.

New reports from the Council of Europe and the UN bodies have put on the record new research, challenging the adequacy of accountability processes that have or need to be carried on in Europe.

The main ‘news’ since 2007 concerning Europe relate to the existence of CIA blacksites in EU Member States. In December 2009, the Lithuanian government confirmed the existence of CIA secret detention centres in Lithuania (EU Member State that was not mentioned at the time of the TDIP report). In October 2011, one of the most well-known victims of the Bush administration's rendition and secret detention programmes, Abu Zubaydah, filed a complaint against Lithuania for failing to conduct an effective investigation into its responsibility for his enforced disappearance and torture in secret detention. A flight from Morocco to Lithuania (via Jordan) alleged to have carried Abu Zubaydah as a passenger was only discovered in 2011.

Freedom of information requests brought to light new evidence of Polish complicity in the CIA programmes in 2009-2010. In 2010-2011, Abu Zubaydah and Al – Nashiri (another well-known victim) were granted formal status as victims in the criminal investigation opened in 2008 (they are also currently detained in Guantanamo Bay). Both have lodged complaints against Poland before the European Court of Human Rights for non effective remedy. In Romania, mounting evidence is being revealed by the media on the landing of planes, the detention of named individuals and the location of sites (ex. news reports end 2011 identifying a building in the centre of Bucharest as a former CIA detention centre).

In Europe and North America, the media, lawyers, parliamentarians and NGOs are continuing to request access to information and to analyse and unveil information concerning alleged victims of CIA secret detention in EU Member States. The revelations concerning Lithuania have notably opened the way to new connections to unexplored suspect flights, notably with respect to Finland and Portugal confirming the extent of the rendition flights “spider web” described by the 2006 Council of Europe report. Litigation in the US further unveiled more of the renditions “logistics” laying bare the relationship between the CIA and private aviation

¹ See also CIA Inspector General John Helgerson’s 2004 report into the CIA’s Bush-era interrogations operations, unclassified version released in August 2009, available at <http://washingtonindependent.com/56175/the-2004-cia-inspector-generals-report-on-torture>

companies (Richmor case).

In February 2008, the UK acknowledged that planes operating in the context of the CIA's rendition programme landed at Diego Garcia, alleged to have been a transit stop and/or a secret prison location. At the end of 2011, former prominent opponents to Gaddafi Sami al – Saadi and rebel leader now head of the Tripoli Military Council, Abdel hakim Belhadj, initiated legal proceedings against the British government and security forces for their active role in their illegal abduction, rendition and torture, and that of their families in March 2004 – after documents discovered in Tripoli provided damning evidence. More generally, the Wikileaks cables have also confirmed and/or shed new light on European governments' implication in the CIA programmes.

The response of states and the EU

Under international law, states have a positive obligation to investigate serious human rights violations and serious violations of international humanitarian law. The obligation to investigate arises from the requirement that governments must be held accountable for human rights abuses for which they are responsible, state actors must be prosecuted for crimes under international law that they have committed, and victims must be afforded effective redress for violations they have suffered. The obligation to investigate is inextricably linked to the obligation to prosecute, and also to the right to truth.

The national accountability processes in Europe at parliamentary and judiciary levels are distinct compared to the near absence of accountability in the US. However most of them remain unfinished or partial, some have served merely as 'cover-ups', and 'blackholes' such as the persistent denials by Romania, remain problematic. All raise concerns as regards their compatibility with EU Member States' human rights obligation.

The report adopted by the Council of Europe in 2011 details in particular how abuse of state secrecy and national security have hampered parliamentary and judicial scrutiny of human rights violations in the context of investigations into European complicity in the CIA rendition and secret programmes. The report on the visit of the European Committee for the prevention of torture (CPT) to Lithuania¹ outlines key concerns regarding the criminal investigation that terminated abruptly in 2011. Critical assessments by NGOs and litigation before the European Court of Human rights have further documented the obstacles in the way of accountability.

These include *inter alia* the invocation of state secrecy, lack of transparency, lack of cooperation by the government on inquiries, restrictions imposed on the lawyers to carry out an effective defence and on the victims to effectively participate, very high thresholds for starting or continuing an inquiry and narrow remit of inquiries. Yet in their reports, the Council of Europe, the UN, and civil society experts provide forceful lines of inquiry and guidance to ensure independent, impartial, full and effective human rights compliant inquiries at parliamentary and/or judicial levels.

The response of EU institutions

The Commission and the Council institutions are bound to answer fully and in good faith the recommendations of the European Parliament. Despite repeated calls by the EP, there is no record of Council initiatives to support accountability for human rights violations committed in Europe. The European Commission mentions a few discontinued initiatives, including

¹ CPT report on the visit to Lithuania 14- 18 June 2010, published in May 2011, available at <http://www.cpt.coe.int/documents/ltu/2011-17-inf-eng.htm>

sending letters to the three Member States alleged to have hosted CIA secret detention centres.

Questions to be addressed by the report

- To what extent the rules made within NATO have contributed to the development of the CIA programmes in Europe? Is it justified that the reasons for entering into war and the related agreements are classified top secret? Is Article 5 still valid? Are we still in a war situation?
- What new evidence has emerged on the CIA rendition and secret detention programmes in Europe?
- Have Member States fulfilled their obligation to investigate serious human rights violations?
- What inquiries have been initiated? How do they comply with Member States' obligations under international law?
- Have victims obtained reparation? Have those responsible been brought to justice?
- What are the obstacles encountered in finding the truth and achieving justice? What are the elements of a human right compliant inquiry?
- How has the EU fulfilled its human rights obligations under the Treaties to guarantee accountability in Europe?
- What assistance can EU institutions provide to government and non governmental actors to enable them to overcome the obstacles in finding the truth and achieving justice?
- How do the Lisbon Treaty and the particular developments of EU policies and instruments on human rights, justice and home affairs enhance EU's legitimacy and powers to take action? Would the EU institutions be accountable before the Court of Human Rights after accession to the ECHR?
- What are the implications of EU's increased competence in the area of security? Can the EU seek to enhance cooperation and coordination between the intelligence services and at the same time discharge its liability when these services are committing illegal acts?
- How can the EU guarantee that such abuse will not happen again? What are the safeguards to ensure that security and intelligence activities do not violate international law? Would oversight bodies raise the alarm today?
- How does the lack of accountability affect EU internal policies such as asylum and the coherence between EU internal and external policies on human rights?