

Alleged transportation and illegal detention of prisoners in European countries by the CIA

European Parliament resolution of 10 October 2013 on alleged transportation and illegal detention of prisoners in European countries by the CIA (2013/2702(RSP))

The European Parliament,

- having regard to the European Court of Human Rights (ECtHR) ruling of 13 December 2012 which condemns the Former Yugoslav Republic of Macedonia (FYROM) for the ‘extreme seriousness’ of its violations of the European Convention on Human Rights (Articles 3, 5, 8 and 13) during the extraordinary rendition of Khaled El-Masri,
- having regard to the following cases pending before the ECtHR: Al Nashiri v Poland, Abu Zubaydah v Lithuania, Abu Zubaydah v Poland and Nasr and Ghali v Italy; having regard to the application filed by Mr Al Nashiri against Romania in August 2012 and to the application filed by the Human Rights Monitoring Institute (HRMI) and the Open Society Justice Initiative against Lithuania in December 2012 for violation of their right to information and right to an effective remedy,
- having regard to the Italian Supreme Court ruling of September 2012 upholding the conviction of 23 US nationals in connection with the 2003 abduction of Abu Omar, including the former CIA Milan station chief, Robert Seldon Lady, who was sentenced to nine years in prison,
- having regard to the Milan Appeal Court decision of February 2013 sentencing three other CIA agents¹ previously considered to be covered by diplomatic immunity to six to seven years in prison; having regard to the same court’s decision also to sentence Nicolò Pollari, the former head of the Italian Military Intelligence and Security Service (SISMI), to 10 years in prison, the former SISMI deputy head, Marco Mancini, to 9 years, and three SISMI agents to 6 years each,
- having regard to the Italian President’s decision of 5 April 2013 to pardon US Colonel Joseph Romano, who had been convicted in Italy for his responsibility in the abduction of Abu Omar in that country;
- having regard 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’²,
- having regard to the documents forwarded to the rapporteur by the Commission, including non-country-specific letters sent in March 2013 to all the Member States, to which only a few Member States (Finland, Hungary, Spain and Lithuania) replied,
- having regard to its resolutions on Guantánamo, the most recent being that of 23 May 2013

¹ Including Jeffrey W. Castelli, former CIA station chief in Rome.

² Texts adopted, P7_TA(2012)0309.

on ‘Guantánamo: hunger strike by prisoners’¹,

- having regard to its resolution of 12 December 2012 on the situation of fundamental rights in the European Union (2010-2011)²,
 - having regard to the flight data received from Eurocontrol up to September 2012,
 - having regard to the request sent by the rapporteur in April 2013 to the Agency for Aerial Navigation Safety in Africa and Madagascar (ASECNA) for cooperation on disclosure of flight data, and to the positive reply received in June 2013,
 - having regard to the Council conclusions on fundamental rights and the rule of law and on the Commission’s 2012 report on the application of the Charter of Fundamental Rights of the European Union (Luxembourg, 6-7 June 2013),
 - having regard to the ‘Stockholm Programme – An open and secure Europe serving and protecting citizens (2010-2014)’,
 - having regard to the numerous media reports and acts of investigative journalism, in particular – but not limited to – the investigative work broadcast on Romania’s Antena 1 television channel in April 2013,
 - having regard to the research and investigations carried out notably by Interights, Redress and Reprieve, and to the reports produced since the adoption of its aforementioned resolution of 11 September 2012, by independent researchers, civil society organisations and national and international non-governmental organisations, in particular the Open Society Justice Initiative’s report on ‘Globalising Torture: CIA Secret Detention and Extraordinary Rendition’ (February 2013), the independent bipartisan study conducted in the US by the Constitution Project’s Task Force on Detainee Treatment (April 2013), the Rendition Flights Database published by the British academic website The Rendition Project (May 2013), the Amnesty International report ‘Unlock the truth: Poland’s involvement in CIA secret detention’ (June 2013), and the letter sent by Human Rights Watch to the Lithuanian authorities (June 2013),
 - having regard to questions raised by its Committee on Civil Liberties, Justice and Home Affairs and its Committee on Foreign Affairs (O-000079/2013 – B7-0215/2013 and O-000080/2013 – B7-0216/2013),
 - having regard to Rules 115(5) and 110(4) of its Rules of Procedure,
- A. whereas respect for fundamental rights is an essential element in successful counter-terrorism policies;
- B. whereas Parliament has condemned the US-led CIA rendition and secret detention programmes involving multiple human rights violations, including unlawful and arbitrary detention, torture and other ill-treatment, violations of the non-refoulement principle, and enforced disappearance through the use of European airspace and territory by the CIA; whereas Parliament has repeatedly called for full investigations into the collaboration of

¹ Texts adopted, P7_TA(2013)0231.

² Texts adopted, P7_TA(2012)0500.

national governments and agencies with the CIA programmes;

- C. whereas Parliament undertook to continue fulfilling the mandate given to it by the Temporary Committee, pursuant to Articles 2, 6 and 7 of the Treaty on European Union, and instructed its relevant committees to address Parliament in plenary on the matter a year after the adoption of the aforementioned resolution of 11 September 2012, as it considered it essential to assess the extent to which the recommendations adopted by Parliament had been implemented;
- D. whereas accountability for renditions is essential in order to protect and promote human rights effectively in the EU's internal and external policies, and to ensure legitimate and effective security policies based on the rule of law; whereas the EU institutions have recently engaged in a debate on how the EU can better protect and promote fundamental rights and the rule of law;
- E. whereas there have been no substantive replies from the Council or the Commission to Parliament's recommendations;
- F. whereas the Lithuanian authorities have reiterated their commitment to reopening the criminal investigation into Lithuania's involvement in the CIA programme if new elements emerge, but still have not done so; whereas in their observations to the ECtHR in the case of Abu Zubaydah, the Lithuanian authorities demonstrated critical shortcomings in their investigations and a failure to grasp the meaning of the new information; whereas Lithuania holds the presidency of the Council of the European Union in the second half of 2013; whereas a complaint was submitted on 13 September 2013 to the Lithuanian Prosecutor General, calling for an investigation into allegations that Mustafa al-Hawsawi, who is currently facing trial by military commission at Guantánamo Bay, had been illegally transferred to, and secretly detained and tortured in, Lithuania as part of a CIA-led programme;
- G. whereas the in-depth investigative work broadcast on the Antena 1 television channel in April 2013 provided further indications of Romania's central role in the prison network; whereas former national security advisor Ioan Talpeş stated that Romania provided logistical support for the CIA; whereas a former Romanian senator admitted the limitations of the previous parliamentary inquiry and called for prosecutors to initiate judicial proceedings;
- H. whereas a request was filed with Polish prosecutors on 11 June 2013 for a third man, Yemenite Walid Mohammed Bin Attash, to be officially recognised as a victim after he was illegally arrested in Pakistan in 2003, kept in a secret prison in Poland from June to September 2003 and subsequently moved to Guantánamo, where he remains; whereas Polish prosecutors have extended until October 2013 an ongoing criminal investigation;
- I. whereas the British authorities are raising procedural obstacles to the civil claim brought in the UK by Libyan Abdel Hakim Belhadj, allegedly rendered to torture in Libya by the CIA with British assistance, and have expressed their intention to seek to have evidence heard in secret proceedings;
- J. whereas in December 2012 Italy issued an international arrest warrant against Robert Seldon Lady, who was arrested in Panama in July 2013; whereas the extradition request subsequently made by Italy was not accepted by Panama, and Robert Seldon Lady

was returned to the US in July 2013; whereas the Italian President decided on 5 April 2013 to pardon US Colonel Joseph Romano, who had been convicted by an Italian court for his responsibility in the abduction of Abu Omar in Italy;

- K. whereas in November 2012 the Parliamentary Ombudsman of Finland initiated an investigation into the use of Finnish territory, airspace and flight records systems in the CIA rendition programme, sent detailed written requests for information to 15 government agencies and asked the Lithuanian authorities for specific information on related flights;
 - L. whereas the inquiry carried out by Denmark up to May 2012 does not constitute an independent, impartial, thorough and effective investigation as required by international human rights law and standards, given its lack of sufficient powers and its limited scope;
 - M. whereas only two Member States (Germany and the United Kingdom) have replied to the follow-up letters sent to eight Member States (France, Germany, Italy, Lithuania, Poland, Romania, Sweden and the United Kingdom) by the UN Special Procedures, requesting additional information following the UN Joint Study on global practices in relation to secret detention in the context of countering terrorism¹;
 - N. whereas US President Obama has reiterated his commitment to close Guantánamo, announcing on 23 May 2013 that he would restart the release of detainees and would lift a moratorium on releasing Yemeni prisoners who had already been deemed safe to transfer back to Yemen, despite resistance in the US Congress; whereas the US authorities must honour their international obligations by prosecuting Robert Seldon Lady;
 - O. whereas, in the opening statement which she delivered at the 23rd session of the Human Rights Council (Geneva, May 2013), the UN High Commissioner for Human Rights, Navi Pillay, quoted Parliament's aforementioned resolution of 11 September 2012, asked for 'credible and independent investigations' as 'a vital first step towards accountability' and '[called] on States to make this a priority';
 - P. whereas, in his 2013 annual report², the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, cited Parliament's work and endorsed some of the recommendations made in its aforementioned resolution of 11 September 2012;
- 1. Deeply deplores the failure to implement the recommendations contained in its aforementioned resolution of 11 September 2012, notably by the Council, the Commission, the governments of the Member States, the candidate states and the associated countries, NATO, and the United States authorities, especially in the light of the serious fundamental rights violations suffered by the victims of the CIA programmes;
 - 2. Considers that the climate of impunity regarding the CIA programmes has enabled the continuation of fundamental rights violations in the counter-terrorism policies of the EU and the US, as further revealed by the mass surveillance programmes of the US National Security Agency and surveillance bodies in various Member States, which are currently

¹ A/HRC/13/42.

² Framework Principles for securing the accountability of public officials for gross or systematic human rights violations committed in the context of State counter-terrorism initiatives, A/HRC/22/52, 1 March 2013.

being investigated by Parliament;

Accountability process in the Member States

3. Reiterates its call on those Member States which have not fulfilled their positive obligation to conduct independent and effective inquiries to investigate human rights violations, taking into account all the new evidence that has come to light, and to disclose all necessary information on all suspect planes associated with the CIA and their territory; calls in particular on the Member States to investigate whether operations have taken place whereby people have been held under the CIA programme in secret facilities on their territory; calls on the Member States concerned (France, Italy, Lithuania, Poland, Romania and Sweden) to respond to the letters sent by the UN Special Procedures;
4. Urges Lithuania to reopen its criminal investigation into CIA secret detention facilities and to conduct a rigorous investigation considering all the factual evidence that has been disclosed, notably regarding the ECtHR case of *Abu Zubaydah v Lithuania*; asks Lithuania to allow the investigators to carry out a comprehensive examination of the renditions flight network and contact persons publicly known to have organised or participated in the flights in question; asks the Lithuanian authorities to carry out forensic examination of the prison site and analysis of phone records; urges them to cooperate fully with the ECtHR in the cases of *Abu Zubaydah v Lithuania* and *HRMI v Lithuania*; calls on Lithuania, in the context of reopening the criminal investigation, to consider applications for status/participation in the investigation from other possible victims; urges Lithuania to respond in full to requests for information from other EU Member States, in particular the request for information from the Finnish Ombudsman regarding a flight or flights that could link Finland and Lithuania to a possible rendition route; urges the Lithuanian Prosecutor General to carry out a criminal investigation into Mustafa al-Hawsawi's complaint;
5. Urges the Romanian authorities to swiftly open an independent, impartial, thorough and effective investigation, to locate missing parliamentary inquiry documents and to cooperate fully with the ECtHR in the case of *Al Nashiri v Romania*; calls on Romania to comply fully with its fundamental rights obligations;
6. Asks Poland to continue its investigation on a basis of greater transparency, in particular by offering evidence of concrete actions taken, allowing victims' representatives to meaningfully represent their clients by giving them their rightful access to all relevant classified material, and acting on the material that has been collected; calls on the Polish authorities to prosecute any implicated state actor; urges the Polish General Prosecutor, as a matter of urgency, to review the application of Walid Bin Attash and come to a decision; calls on Poland to cooperate in full with the ECtHR regarding the cases of *Al Nashiri v Poland* and *Abu Zubaydah v Poland*;
7. Calls on the British authorities to cooperate fully with ongoing criminal investigations and to allow civil claims to proceed in full transparency in order to conclude those investigations and claims concerning the rendition of foreign nationals overseas; asks the British authorities to establish a human-rights-compliant inquiry into the rendition, torture and ill-treatment of detainees abroad;
8. Encourages the Italian authorities to continue their efforts to obtain justice regarding human rights violations by the CIA on Italian territory, by insisting on the extradition of Robert Seldon Lady and requesting the extradition of the other 22 US nationals convicted in

Italy;

9. Encourages the Finnish Ombudsman to complete his investigation on a basis of transparency and accountability and, to this end, urges all national authorities to cooperate fully; asks Finland to pursue any leads that implicate Finnish state actors in the rendition programme;

Response of the EU institutions

10. Is highly disappointed by the Commission's refusal to respond in substance to Parliament's recommendations, and deems the letters sent by the Commission to the Member States to be insufficient for achieving accountability on account of their generic nature;
11. Reiterates its specific recommendations to the Commission:
 - to investigate whether EU provisions, in particular those on asylum and judicial cooperation, have been breached by collaboration with the CIA programme,
 - to facilitate and support human-rights-compliant mutual legal assistance and judicial cooperation between investigating authorities and cooperation between lawyers involved in accountability work in Member States,
 - to adopt a framework, including reporting requirements for the Member States, for monitoring and supporting national accountability processes,
 - to adopt measures aimed at strengthening the EU's capacity to prevent, and provide redress for, human rights violations at EU level and to provide for the strengthening of Parliament's role,
 - to put forward proposals for developing arrangements for democratic oversight of cross-border intelligence activities in the context of EU counter-terrorism policies;
12. Urges the Lithuanian authorities to seize the opportunity of their country's EU Council presidency to ensure the full implementation of the recommendations contained in Parliament's report and thus to put the issue on the Justice and Home Affairs (JHA) Council agenda before the end of the Lithuanian presidency;
13. Reiterates its specific recommendations to the Council:
 - to present apologies for having violated the principle enshrined in the Treaties of loyal cooperation between the Union institutions when it incorrectly attempted to persuade Parliament to accept the provision of deliberately shortened versions of the minutes of the meetings of COJUR and COTRA with senior US officials,
 - to issue a declaration acknowledging Member States' involvement in the CIA programme and the difficulties encountered by Member States in the context of inquiries,
 - 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,

- to hold hearings with relevant EU security agencies to clarify their knowledge of Member States' involvement in the CIA programme and the EU's response,
 - to propose safeguards so as to guarantee respect for human rights in intelligence-sharing, and a strict delimitation of roles between intelligence and law-enforcement activities so that intelligence agencies are not permitted to assume powers of arrest and detention;
14. Calls on the Council and the Commission to include, in their respective multiannual programmes succeeding the Stockholm Programme, specific measures to ensure the rule of law and accountability for fundamental rights violations, especially by intelligence services and law enforcement authorities; asks the Commission to include the issue of accountability on the agenda for the 'Assises de la Justice' to be held in November 2013;
 15. Recalls that it is essential, in order to ensure Parliament's credibility, to substantially reinforce its rights of inquiry for investigating fundamental rights violations in the EU, which should include full power to hear under oath the people involved, including government ministers¹;
 16. Asks Eurocontrol to recognise, as does the American Federal Aviation Authority, that flight route data should in no way be considered confidential and to release such data as are necessary for achieving effective investigations;
 17. Expects its inquiry into the US National Security Agency surveillance programme and surveillance bodies in various Member States to propose measures for effective democratic parliamentary oversight of intelligence services, considering that democratic scrutiny of those bodies and their activities through appropriate internal, executive, independent judicial and parliamentary oversight is essential;
 18. Expresses regret that no progress has been made by EU Member States towards accession to the International Convention for the Protection of All Persons from Enforced Disappearance, with the exception of its ratification by Lithuania in August 2013; calls on the 21 Member States which have yet to ratify that convention to do so as a matter of urgency;
 19. Calls on Belgium, Finland, Greece, Ireland, Latvia, Lithuania and Slovakia to ratify the Optional Protocol to the UN Convention against Torture (OPCAT) as a matter of priority; considers regrettable the very limited support provided to the UN-managed OPCAT Special Fund, and calls on the EU Member States and the Commission to support the Special Fund's work through substantial voluntary contributions; urges the European External Action Service (EEAS) and the Commission to step up their efforts to facilitate the establishment and functioning of National Preventive Mechanisms under the OPCAT in third countries;
 20. Asks the EU to review carefully FYROM's progress in implementing the ECtHR decision in the case of *El-Masri v the former Yugoslav Republic of Macedonia*, which the

¹ See: Proposal for a regulation of the European Parliament on the detailed provisions governing the exercise of the European Parliament's right of inquiry and repealing Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission, OJ C 264 E, 13.9.2013, p. 41.

Committee of Ministers has now subjected to its enhanced procedure, in the context of FYROM's bid for accession; urges the FYROM authorities to open a criminal investigation into state actors' complicity in the El-Masri case and to hold those responsible to account;

21. Calls on the US Government to cooperate with all requests from EU Member States for information or extradition in connection with the CIA programme; urges it to stop using draconian protective orders which prevent lawyers acting for Guantánamo Bay detainees from disclosing information regarding any detail of their secret detention in Europe; encourages it to complete its plan to close the Guantánamo Bay prison promptly;
 22. Urges the Member States to step up their efforts to resettle non-European detainees released from Guantánamo who cannot be repatriated to their home states because they are under threat of death, torture or cruel and inhumane treatment¹; asks the EU to revive the joint initiatives of 2009 by providing a framework for the resettlement of Guantánamo detainees in EU Member States and to engage in a dialogue on concrete plans for cooperation with the new US Special Envoy on detainee transfers out of Guantánamo, Clifford Sloan;
 23. Calls on the Agency for Aerial Navigation Safety in Africa and Madagascar to start its cooperation with Parliament promptly by providing the requested information on flight data;
 24. Calls on the next Parliament (2014-2019) to continue to fulfil and implement the mandate given by the Temporary Committee and consequently to ensure that its recommendations are followed up, to examine new elements that may emerge and to make full use of, and develop, its rights of inquiry;
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25. Instructs its President to forward this resolution to the Council and the Commission, and the governments and parliaments of the Member States.

¹ European Parliament resolution of 18 April 2012 on the Annual Report on Human Rights in the World and the European Union's policy on the matter, including implications for the EU's strategic human rights policy, OJ C 258 E, 7.9.2013, p. 8.