



**Kidnapped by the State:  
Extraordinary Rendition and  
Secret Detention in the 'War  
on Terror'**

**Editors:  
Vesselina Vandova and  
Rachel Fleetwood**

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# CIA Secret Detention Places in Poland – Current Legal Developments

Adam Bodnar

Poland was one of the Central European countries named in reports by Human Rights Watch and articles in *The Washington Post* in November 2005 as hosting USA Central Intelligence Agency (CIA) secret detention places.<sup>1</sup> A few years have since passed and we are now much closer to the truth of Poland's shameful involvement in the CIA rendition programme.

Currently, there is an official investigation being undertaken by the Prosecutor General into the matter. Until 2008, almost every politician in Poland denied any cooperation with the CIA in this regard.

It has also been officially confirmed that CIA planes landed in the territory of Poland at Szymany airport.<sup>2</sup> However, we still do not have the final confirmation as regards the existence of CIA secret detention places in the territory of Poland, although there are more facts now known which confirm this supposition.<sup>3</sup> It has been claimed that such detention places could have been located at the territory of the Polish intelligence school in Stare Kiejkuty.

**Denial by the Polish Government**  
Poland has been accused of being one of the countries which helped the USA during 2003 in the CIA rendition programme, supposedly hosting a secret detention place, where detainees were transported from Afghanistan and Pakistan, tortured, and then sent to Guantánamo or other places of detention.

From the very beginning of such claims being made, the Polish left-wing Government and politicians adopted a strategy of denial. Denial was made even by the former President of Poland, Aleksander

Kwaśniewski. Politicians denied cooperation with CIA, secret flights over the territory of Poland and the existence of CIA secret detention places.

They also refused any cooperation with the investigative committees of the European Union and the Council of Europe, led by Dick Marty.<sup>4</sup> In fact, there was only one politician, the Polish MEP Józef Pinior who was a member of the special committee created by the European Parliament, who presented a different vision of facts and was indeed interested in explaining the matter.<sup>5</sup>

**From the very beginning of such claims being made, the Polish left-wing Government and politicians adopted a strategy of denial.**

The same approach was adopted by the next Government which took power in September 2005, formed by the Law and Justice Party. It continued the policy of denial, but possibly due to different reasons. The former left-wing Government could have been interested in covering up the matter due to its personal interest (in 2003 Aleksander Kwaśniewski was the President of Poland and left-wing politicians were in the Government). The right-wing Law and Justice Party headed by Jarosław Kaczyński most probably did not want to spoil good relations with the USA, the most important international partner for Poland.

In mid 2008, the new Polish Government, headed by Donald Tusk, decided to change the policy of denial and started an investigation as regards the existence of CIA sites in Poland. One can explain this change of strategy

through political and international factors. The ruling party – Civic Platform – could feel secure as regards the potential results of investigation. Finding that Poland hosted CIA sites was not a political threat for its major politicians, as they were not in power when it happened. It was also important internationally to start an investigation. The policy of denial, when respected international actors (such as the Council of Europe or the European Parliament or NGOs such as Amnesty International) confirmed Poland's involvement in the CIA rendition programme, stopped being a good strategy. By starting an investigation, the Polish Government could start to present itself as accountable towards the international community.

**Current Status of Proceedings**

Currently the criminal investigation by the Prosecutor General in Poland is still pending. One of the country's leading prosecutors has been appointed to deal with the case. The case is being treated with maximum seriousness (which is not always the case in Poland as regards major political cases).

The investigation seeks to identify whether public officials committed a crime of abuse of power by allowing a certain part of Polish territory to be under control of a foreign state. One may question whether a Polish prosecutor is equally interested in the crime of torture allegedly committed on Polish territory. There is a risk that there will be no sufficient evidence to prove it, especially if the USA would prefer to protect its agents against any international liability. One can presume the defence strategy of Polish officials involved in the matter would be that they did not really know what

was happening in Stare Kiejkuty, at the territory of the school of Polish intelligence. According to some journalists, 'Zero Zone' was located in this school which was an area only CIA agents could access, and secret detention places were created in specially modified houses.<sup>6</sup>

Without the official results of the investigation these are only predictions. We can only base our knowledge on publicly available information, the results of journalists' investigations as well as new official reports.

Despite official requests by the Helsinki Foundation for Human Rights (HFHR) and demands expressed by the media, there is no information about the current stage of proceedings and when it is going to end.

It is believed that the Polish investigation may be affected by the results of an investigation in Lithuania.<sup>7</sup> An important question raised by this investigation is whether High Value Detainees were transported from Polish secret detention places to the Lithuanian ones. If there is proof of that in the Lithuanian investigation, then it should be taken into account in the Polish investigation.

One of the most important recent reports is the one prepared by the United Nations Special Rapporteur on torture, the United Nations Special Rapporteur on the promotion and protection of human rights while combating terrorism, the Working Group on Arbitrary Detention, and the Working Group on Enforced or Involuntary Disappearances.<sup>8</sup> In addition to general information as regards Poland's involvement in the CIA rendition programme, the report provides information on using private aviation contractors to make flights in the territory of Poland and the practice of preparing fake documentation. Most importantly, it includes information on the alleged detention of Abd al-Rahim al-Nashiri in Poland.

Freedom of Information Act Litigation by the Helsinki Foundation for Human Rights

The HFHR was one of the few organisations to be continuously interested in seeking an explanation of Poland's involvement in the matter. Since November 2005, the HFHR has sent different intervention letters to Prime Ministers and members of Polish Parliament – however with no result.<sup>9</sup>

The similar policy of denial was used both with respect to international actors and to domestic non-governmental organisations (NGOs). In 2007 the HFHR, in cooperation with the Open Society Justice Initiative (OSJI), started a special programme designed to gain access to information on Poland's involvement in the CIA rendition programme, using the Act of 1997 on the Access to Public Information. The objective is to obtain as much knowledge as possible about secret flights in the territory of Poland, secret detention places, agreements signed with foreign governments and intelligence, the stage of investigation led by the Prosecutor General as well as the role of the Parliamentary Committee of Special Services.

The HFHR is currently in the stage of submission of different freedom of information (FOI) requests. Some of them are answered, but in most of the cases different Polish agencies refer to the national security argument and refuse to answer our questions. The aim of proceedings is to bring certain cases in front of the administrative courts. In the opinion of the HFHR, the administrative courts should

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confirm that, because of the risk of serious violation of human rights, freedom of information prevails over national security and certain information should be made available.

Most importantly, as a result of FOI requests, the HFHR has officially obtained the list of flights of CIA planes into the territory of Poland from the Polish Aviation Authority.<sup>10</sup> It was another confirmation (following the admittance by the prosecutor's authority)<sup>11</sup> that such flights took place. It seems also that the list of flights, and information related to them, contains new facts as compared to those available from Eurocontrol which were provided to Dick Marty. The HFHR, together with its international partners, is currently analysing in detail the content and importance of the data provided.

If the criminal investigation (discussed above) concludes with an official indictment, the HFHR would seek to join proceedings as a third party. Our ultimate goal is to watch over the activities of the Polish authorities in explaining Poland's participation in the CIA rendition programme.

However, the hitherto outcome of our activities shows that, in general, there is no sufficient democratic supervision over intelligence in Poland. Therefore, the HFHR has started other litigation, not related directly to the CIA rendition programme. For example, in July 2009 we submitted a case to the Regional Administrative Court in Warsaw, claiming that Polish special services should provide us with statistics of wire-tapping and operational control. The special services claim that even statistics are confidential.

It should be underlined that our activities in this area resulted in bringing this issue to the public agenda and discussion. Recently, the Minister of Justice has announced the draft law which stipulates the disclosure of such data.

The activities in Poland are part of the broader strategy of OSJI of using FOI laws in order to bring accountability for the CIA rendition programme, undertaken also in other countries (e.g. Romania, Macedonia and recently Lithuania). The cooperation within the international network allows for the exchange of information and strategies between OSJI partners.

#### Journalists' Approach to the Issue

An issue of special concern is the approach of the Polish press towards Poland's involvement in the CIA rendition programme. When the news first broke, the Polish media obviously reported the story and made their checks. However, without getting any special or additional knowledge, they stopped being interested in the topic. There was no real journalists' investigation undertaken and one could learn more about the CIA rendition programme in Poland from Dick Marty's reports than from the Polish media.

There is a risk that some journalists accepted the hypothesis presented by politicians that the whole story is a product of imagination of USA journalists.

Alternatively, some journalists could have adopted a strategy of self-restraint and were not especially interested in the issue due to the potential threat to Poland's national security. It is remarkable that the first real journalists' investigation took place as late as in the first quarter of 2009, by journalists at *Rzeczpospolita*, who managed to find more facts than had been found previously by investigative committees.<sup>13</sup>

#### Obama Administration's Impact on the Proceedings in Poland

It is quite probable that the administration of Barack Obama, President of the USA, may have a substantial impact on the situation in Poland.

It seems that the strategy of the new administration is to steadily disclose information on the CIA rendition programme to the public. Up to now,

none of the publicly disclosed documents officially confirm Poland's involvement in the programme. Nevertheless, we know more and more about what really has happened during the Bush administration and the 'war on terror' or about certain details concerning possible detention of High Value Detainees in the secret detention places in Poland.<sup>14</sup>

Another source of information could be different trials undertaken by civil liberties groups in the USA and testimonies made by people involved in the rendition programme. As a consequence, one may expect that the Polish public will obtain an official confirmation by external sources before one by internal sources.

It is also probable that some of this information (if not yet publicly disclosed) is already being used by the Polish prosecutor's authorities in its domestic investigation.

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#### Who May Be Liable?

Confirmation of the existence of CIA secret detention places on the territory of Poland may have serious legal consequences.

First, public officials (most probably agents of the Polish intelligence services) could face indictment for abuse of their power (and maybe for negligence to prevent torture in the territory of Poland).

However, there is also a possibility of responsibility of the highest public officials, especially ministers, before the Tribunal of State – a special constitutional organ designed to deal with violations of the laws and the Constitution. One can imagine a prosecution of the minister responsible for secret services who could have known about CIA secret detention places. The prosecution may reach both left-wing Government

members (responsible for what happened in 2003) as well as right-wing Law and Justice Government members (as it is most certain that they knew about Poland's involvement and did nothing in order to properly explain it or to start the investigation).

#### Why Was Poland Involved in the CIA Rendition Programme?

There are two likely reasons for Poland's involvement in the CIA rendition programme.

First, for many years, Poland has traditionally been an ally of the USA. Poland was one of the few EU Member States which decided to support the USA intervention in Iraq by providing military assistance. It seems that the support for the USA in its fight with terrorism was just a part of keeping good relations. There is also no doubt that Polish intelligence, for many years, had good cooperation with USA intelligence.

Second, it seems that Polish intelligence could act beyond sufficient political control and supervision. One may guess that the cooperation between Polish and USA intelligence started with typical activities, but then – due to lack of sufficient supervision – turned into more advanced form of cooperation, which was not even known to ministers supervising the coordination of special services.

Polish special services have undertaken recent reforms. First, the lack of supervision and sufficient control over the Military Intelligence Services was a major point of public debate in 2006-2007, and resulted in the dissolution of these services and creation of the new services – Service of the Military Intelligence (*Śłużba Wywiadu Wojskowego*) and Service of the Military Counter-Intelligence (*Śłużba Kontrwywiadu Wojskowego*). Second, the role of the Agency of Internal Security (*Agencja Bezpieczeństwa Wewnętrznego*) has been strengthened, as well as improving democratic control over it and other intelligence services.

If Poland's involvement in the CIA

rendition programme is confirmed, it could be one of the greatest sins of the new Polish democracy. The Polish Constitution of 1997 explicitly prohibits torture, degrading or inhuman treatment. Poland is also a proud signatory to many international conventions, including the United Nations Convention against Torture and the European Convention on Human Rights. Since 2004 Poland is also a member of the EU. Such close cooperation with the CIA and the giving away of a certain part of Polish territory in order to allow for torture may be a great contradiction of the universal values which Poland claims to share.

Therefore it should be an effort of every stakeholder – politicians, prosecutors, judges, journalists as well as NGOs – to fully explain Poland's involvement in the CIA rendition programme and to hold accountable those responsible for abuses. It must happen despite even the highest political consequences.

**Adam Bodnar is the head of the legal division and member of the Management Board of the Helsinki Foundation for Human Rights, a leading Polish human rights NGO. He is also a lecturer at the Warsaw University Faculty of Law and Administration and a member of the visiting faculty of the Central European University in Budapest.**

<sup>1</sup> Priest, D., 'CIA Holds Terror Suspects in Secret Prisons', *The Washington Post*, 2 November 2005.

<sup>2</sup> See statement by Mr. Robert Maitowski, prosecutor leading the investigation, on 4 February 2009. He confirmed that a secret CIA flights (mostly by Gulfstreams) were made to the territory of Poland and airplanes landed in Szymany airport. His statement on secret flights was the first official statement by Polish authorities confirming the cooperation with CIA. Nevertheless, he underlined that it is not clear what the cargo of the CIA planes was, and whether detainees were transported with them. See also 'CIA Planes Did Land in Poland But What Was Their Cargo?', translation of an article published in *Gazeta Wyborcza*, 5 February 2009, available at: <[http://wyborcza.pl/1,75539,15248694,CIA\\_Planes\\_Did\\_Land\\_in\\_Poland\\_But\\_What\\_Was\\_Their\\_Cargo.html](http://wyborcza.pl/1,75539,15248694,CIA_Planes_Did_Land_in_Poland_But_What_Was_Their_Cargo.html)>.

<sup>3</sup> See *Joint study on global practices in relation to secret detention in the context of countering terrorism of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances*, A/HRC/15/42, 26 January 2010.

<sup>4</sup> Marty, D., *Alleged secret detentions and unlawful interstate transfers involving Council of Europe member states*, doc. 10957, Committee on Legal Affairs and Human Rights/Council of Europe Parliamentary Assembly, 7 June 2006; Marty, D., *Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report*, doc. 1102 rev., Committee on Legal Affairs and Human Rights/Council of Europe Parliamentary Assembly, 11 June 2007.

<sup>5</sup> See *Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners*, European Parliament, 10057/2006(INI) A9-0020/2007.

<sup>6</sup> Marszałek, A. and Majewski, M., 'Amerykanie mieli tajną bazę na Mazurach' [Americans had a secret base in Mazury lakes], available at <[http://dziennik.pl/polityka/article233214?Amerykanie\\_mieli\\_tajna\\_baze\\_na\\_Mazurach.html](http://dziennik.pl/polityka/article233214?Amerykanie_mieli_tajna_baze_na_Mazurach.html)> (in Polish).

<sup>7</sup> On 22 December 2009, the Parliamentary Commission of National Security and Defence in Lithuania published a report concerning results of the parliamentary investigation, which was subsequently adapted by the *Interhuman Security* on 10 January 2010. The Commission found that at least two secret detention centres were created and that during 2002-2005 CIA chartered airplanes were repeatedly allowed to land in Lithuania.

<sup>8</sup> *Supra* note 3, at p. 60.

<sup>9</sup> E.g. letters to the Prime Minister by the Helsinki

Foundation of Human Rights, 11 March 2007, 17 August 2007, 27 June 2008 and 27 January 2010, available at <[www.hfhr.org.pl/cia/cia.html](http://www.hfhr.org.pl/cia/cia.html)>.

<sup>10</sup> See <[www.hfhr.org.pl/cia/cia.html](http://www.hfhr.org.pl/cia/cia.html)>.

<sup>11</sup> *Supra* note 2.

<sup>12</sup> *Supra* note 4.

<sup>13</sup> See following articles: Krykowsk, A. and Kowalewski, M., 'Jak rząd "szpiluje samolotowi loty" [How the Government and the airport services made a flight amendment?]', *Rzeczpospolita*, 15 April 2006; Zembala, E. and Kowalewski, M., 'Czy wylądowały w Polsce CIA? [Did CIA planes land in Poland?]', *Rzeczpospolita*, 15 April 2006; Zembala, E. and Kowalewski, M., 'Szukanie informacji o CIA: Stokier o dokumentach o CIA', *Rzeczpospolita*, 22 April 2009. Translations of those articles are available at <[www.hfhr.org.pl/cia/cia](http://www.hfhr.org.pl/cia/cia)>. Journalists obtained detailed information on flights into the territory of Poland, types of status awarded to flights in relation to CIA, Stokier in which the planes were chartered, they also heard an anonymous witness, an airline pilot, who, according to his statement, carried unidentified and unidentified individuals coming on the plane to Szymany.

<sup>14</sup> E.g. Memorandum for John A. DeLoach, Senior Deputy General Counsel of the Central Intelligence Agency, 30 May 2003, includes a small passage concerning the use of a waterboarding interrogation technique with respect to Khalid Sheikh Mohammad. According to the Memorandum: 'The CIA used the waterboard "at least 85 times during August 2002" in the interrogation of Zuhayr, IG Report at 60, and his father during March 2004 in the interrogation of ASM, stated at 61. It is important to note that following the crisis of flights and landings in Szymany airport, Khalid Sheikh Mohammad could have been held in Poland in March 2005. Memorandum is available at <<http://www.amazonaws.com/prop/terrorism/interrogation/NOI/Genm-olmbaredact06May03.pdf>> (last accessed in April 2009) an International Red Cross report was disclosed, *ICRC Report on the Treatment of Fourteen 'High Value Detainees' in CIA Custody*, February 2007, available at <<http://www.nybooks.com/files/report.pdf>>, which includes statements by Khalid Sheikh Mohammad indicating Poland as a place of his detention. See also Dunne, M., 'US Torture Vows to End the "Black Sites"', *New York Review of Books*, 12 April 2006, available at <<http://www.nybooks.com/articles/1212>>.

On 14 December 2009, a one day international conference entitled **War on Terror and Human Rights – In Search for Truth and Responsibility** was held at the Warsaw University Law Faculty premises. The conference was organised by the Helsinki Foundation for Human Rights (HFHR) in Warsaw under the auspices of the Dean of the Law Faculty of Warsaw University.

The aim of the conference was to analyse the situation in Poland with respect to allegations about the existence of secret CIA detention centres in the north of Poland (at Stare Kiejkuty) and the involvement of Poland in the CIA secret rendition programme.

For further details on the conference please visit: <<http://humanrightshouse.org/Articles/13644.html>>.