

AMNESTY INTERNATIONAL

PUBLIC STATEMENT BY AMNESTY INTERNATIONAL AND THE INTERNATIONAL COMMISSION OF JURISTS

16 May 2012

European Court of Human Rights hears key case concerning European complicity in the US-led secret detentions and renditions programme

Today the Grand Chamber of the European Court of Human Rights (ECtHR) will hold a public hearing in the case *El-Masri v. "The former Yugoslav Republic of Macedonia"* (Macedonia).

On 31 December 2003, the Macedonian authorities arrested Khaled El-Masri, a German national of Lebanese descent, after he entered Macedonia from Serbia. They held him incommunicado, subjecting him to repeated interrogations and to ill-treatment, until 23 January 2004 when they handed him over to Central Intelligence Agency (CIA) agents at Skopje airport. As with other people who were among those subjected to the covert, US-led secret detentions and renditions programme (the 'renditions programme'), the CIA transferred Khaled El-Masri to a secret detention facility, in his case located in Afghanistan. There he was held unlawfully in secret, unacknowledged and incommunicado detention, thus subjected to enforced disappearance, and to other treatment in violation of the prohibition of torture or inhuman or degrading treatment or punishment, for over four months. Inquiries by, among others, the Parliamentary Assembly of the Council of Europe and the Temporary Committee on Extraordinary Rendition of the European Parliament have attested to the veracity of Khaled El-Masri's account. Macedonia continues to deny any wrongdoing.

Today's hearing arises from Khaled El-Masri's complaint that Macedonia was responsible for gross violations of his human rights under the European Convention on Human Rights (ECHR). In particular, Khaled El-Masri complains that Macedonia is responsible for the treatment inflicted on him while he was detained in Skopje; for failing to prevent his ill-treatment by the CIA rendition team when he was handed over to them; as well as for his enforced disappearance and the treatment he suffered while held in Afghanistan. This responsibility arises because the Macedonian authorities handed him over to US agents even though they knew or ought to have known that there was a real risk that, once in US custody, he would be subjected to torture or other ill-treatment, given what was publicly known by January 2004 about US detention and rendition operations and the egregious human rights violations they entailed.

In view of the importance of the case in opening at least one avenue of accountability in relation to Council of Europe Member States' involvement in the US-led renditions programme, Amnesty International and the International Commission of Jurists filed written submissions with the Grand Chamber of the ECtHR. The submissions emphasise that, by January 2004, states world-wide knew or ought to have known that the USA was engaged in arbitrary and secret detentions in the context of counterterrorism operations, entailing multiple, composite and cumulative human rights violations. These violations included enforced disappearance and torture, which are crimes under international law. The practices run contrary to international obligations binding on both the USA and on all Council of Europe Member States involved. Further, the submissions focus on international law principles of state responsibility, in consonance with the Court's own jurisprudence, with a view to the development of its case-law in relation to the liability of Council of Europe Member States under the ECHR for their involvement in the US-led renditions programme.

In the context of a broader failure by many European states to ensure accountability for their involvement in the renditions programme, both the German and Macedonian governments have failed to undertake an effective investigation into their involvement in Khaled El-Masri's case and to provide him with effective redress. A flawed German parliamentary inquiry that lacked the full cooperation of the German government concluded in July 2009 that neither the German government nor its agents were involved in the human rights violations perpetrated against Khaled El-Masri. In Macedonia, a request to launch a criminal investigation into his treatment has not been pursued.

On the other side of the Atlantic, courts in the USA have dismissed Khaled El-Masri's case, as part of their consistent refusal to hear the merits of lawsuits seeking redress for human rights violations committed in this context, citing national security, secrecy and various forms of immunity under US law. Both the administration of President George W. Bush and that of President Barack Obama have argued for judicial dismissal of such lawsuits, while at the same time, failing to ensure other routes to accountability and remedy. The operational details of the past detention, rendition and interrogation activities of the CIA remain generally classified 'Top Secret' and exempted from disclosure under the Freedom of Information Act. Criminal investigations into the CIA secret detention and interrogation programme have been all but shut down by the US Department of Justice. Khaled El-Masri's case against the USA is currently pending before the Inter-American Commission on Human Rights.

Khaled El-Masri's complaint against Macedonia may be the first case in which an international human rights court will consider the merits of a claim disclosing evidence attesting to the participation of a European State in the US-led renditions programme. However, other victims of the programme have also sought to hold European governments accountable for their involvement. Abu Zubaydah and 'Abd al Rahim al-Nashiri, both currently detained at the US naval base at Guantánamo Bay, Cuba, have recently lodged complaints with the ECtHR against Poland and Lithuania – underscoring once again how European countries, including within the EU, have been failing to carry out independent, impartial, thorough and effective investigations into their involvement in the US-led renditions programme, with a view to identifying perpetrators and bringing those responsible to justice as required by their human rights obligations, including under the ECHR. Isolated attempts at prosecuting complicity in the US-led secret detention and rendition programme have occurred in some Council of Europe Member States, but without achieving accountability. Most notably, in Italy a criminal court convicted 23 CIA agents for their involvement in the rendition of Abu Omar from the streets of Milan to Egypt. However, Italian secret service agents allegedly involved in the rendition were shielded by the use of the secret of state doctrine, and the Italian government never sought extradition of the convicted CIA agents, who have consequently enjoyed effective impunity.

Background

After the hearing, the Grand Chamber will begin its deliberations in the case. It will deliver its judgment at a later stage.

Today's hearing is a significant development, especially at a time when European governments are coming under increased scrutiny for their involvement in the US-led renditions programme. A report on the illegal transfer, disappearance, and torture of detainees in Europe is being prepared by the European Parliament's (EP) committee on Civil Liberties, Justice & Home Affairs (LIBE). It is the follow-up to the EP's 2007 investigation.

The third-party written submissions on behalf of Amnesty International and the International Commissions of Jurists in the case of *El-Masri v "The Former Yugoslav Republic of Macedonia"*, Application No.39630/09, filed pursuant to Article 36 § 2 of the ECHR and Rule 44 § 3 of the Rules of the European Court of Human Rights, can be found here:

<http://www.amnesty.org/en/library/info/eur65/001/2012/en>

For further information about Amnesty International and the International Commission of Jurists' concern about European states' involvement in the US-led renditions programme,

including the case of Khaled El-Masri, please see the hyperlinks below to selected documents by way of illustration.

- Public Statement, *Europe: "What is new on the alleged CIA illegal detention and transfers of prisoners in Europe?"*, EUR 01/006/2012, March 2012, <http://www.amnesty.org/en/library/info/EUR01/006/2012/en>
- Public Statement, *"Current Evidence: European Complicity in the CIA Rendition and Secret Detention Programmes"*, European Parliament, Background paper for the European Parliament Sub-Committee on Human Rights, EUR 01/001/2011, 25 January 2011, <http://www.amnesty.org/en/library/asset/eur01/001/2011/en/77663b6e-6013-4636-9cd3-6b1ddb2c7181/eur010012011en.pdf>
- Report, *Open secret: Mounting evidence of Europe's complicity in rendition and secret detention*, EUR 01/023/2010, 15 November 2010, <http://www.amnesty.org/en/library/info/eur01/023/2010/en>
- *Assessing Damage, Urging Action*, Report of the ICJ Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, 2009, <http://www.icj.org/dwn/database/EJP-Report.pdf>

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