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Committee on Legal Affairs and Human Rights

Closure of the Secretary General's inquiry under Article 52 of the ECHR: illegal CIA detentions and transport of detainees suspected of terrorist acts¹

Information document

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- II. Table summarising States' Parties replies to request made in 2015, for any additional information on past or ongoing investigations, relevant cases before domestic courts or other measures taken with regard to the matter of this inquiry.

¹ Article 52 of the ECHR specifies "On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention." See documents SG (2006)01, 05 & 13. For a comprehensive overview of most aspects pertaining to this file, see "[Timeline: the Council of Europe's investigation into CIA secret prisons in Europe](#)" (which provides hyperlinks to the most important case-law and documents on this subject).

Strasbourg, 11 February 2016

Dear President,

I refer to the inquiry under Article 52 of the European Convention on Human Rights initiated by my predecessor. It aimed at seeking explanations from all member states on their compliance with the legal obligations under the Convention in relation to "the question of secret detention and transport of detainees suspected of terrorist acts, notably by or at the instigation of foreign agencies".

Opened a decade ago, the inquiry served as a mechanism for rapid reaction to widespread allegations of grave human rights abuses arising from the practice of "extraordinary renditions" that were later qualified by the European Court of Human Rights as "anathema to the rule of law and the values protected by the Convention".

While not all national replies were substantial, the procedure has nonetheless yielded information which has subsequently been used in Council of Europe actions in order to identify and remedy the violations concerned.

These actions were later pursued by the Parliamentary Assembly, not least through Resolution 1507(2006) and Recommendation 1754(2006) on "alleged secret detentions and unlawful inter-state transfers of detainees involving member states". Since 2012 the European Court of Human Rights has found numerous violations of the Convention arising from the disputed practices and the Committee of Ministers is presently supervising the adoption of remedial measures to be taken by the States in response to the Court's judgments (*El-Masri v. "the former Yugoslav Republic of Macedonia"*, *Al Nashiri and Husayn (Abu Zabaydah) v. Poland*).

For the sake of transparency, I enclose herewith a table summarising the member states' latest replies, most of which had nothing further to add to their earlier submissions. I also note that cases raising similar issues in certain countries (Italy, Lithuania and Romania) are yet to be decided by the Court, through investigations, where required, for which the States concerned are bound to provide all necessary facilities (Article 38 of the Convention).

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Mr Pedro Agramunt
President
Parliamentary Assembly of the Council of Europe

I therefore conclude that the inquiry under Article 52 of the Convention has fulfilled its purpose and declare it closed.

Yours sincerely,

Thorbjørn Jagland

COUNTRY	DATE OF LETTER	PO REFERENCE	MAIN COMMUNICATION
Albania			
Andorra			
Armenia	14/09/15	I 2015-1420	Nothing to disclose.
Austria	30/09/15	I 2015-1530	Nothing to disclose since contribution in 2006. - Reply nevertheless provides additional information (17 page annex to letter) in view of certain important legal reforms which entered into force in 2014.
Azerbaijan	07/10/15	I 2015-1560	Nothing to disclose concerning Azerbaijan. - Reply further states that “Government is not in a position to provide (the SG) information with respect to the situation on this matter in the occupied territories of the Republic of Azerbaijan by Armenia.”
Belgium			
Bosnia and Herzegovina	19/10/15	I 2015-1646	Nothing to disclose.
Bulgaria	29/09/15	I 2015-1517	Nothing to disclose. - Mention of one case of terrorism generally (JSR: no apparent link to CIA): suicide bombing attack at the Sarafovo Airport in July 2012, currently under investigation.
Croatia			
Cyprus	30/09/15	I 2015-1653 and I 2015-1570	Nothing to disclose.
Czech Republic	29/09/15	I 2015-1520	Nothing to disclose further to February 2006 submission.
Denmark	23/09/15	I 2015-1507	- Set up Inter-ministerial Working Group for the Compilation of the Report Concerning Secret CIA Flights in Denmark, Greenland and on the Faroe Islands in 2008 (<i>report attached to letter</i>). - Report (23.10.08) concluded that info received from US did not allow to authoritatively substantiate 1) whether or not CIA flights had occurred there, including illegal transit of detained persons 2) the claim that authorities from these states should have had or actually did have knowledge of alleged extra-judicial CIA activities. - Examination by Danish Institute for International Studies of allegations that Danish Gov did not raise critical questions with the US authorities requested by Minister of Foreign Affairs, Villy Sovndal, in 2011.

			- DIIS report of 2012 found 1) no basis for allegations 2) the conclusions of the Inter-ministerial WG correct.
Estonia	02/10/15	I 2015-1595	Nothing to disclose beyond submissions of 20 February and 4 April 2006.
Finland			E-mail 05/10/15 indicates a delayed reply will be sent soon.
France	06/10/15	I 2015-1549	Nothing to disclose.
Georgia			
Germany	08/10/15	I 2015-1564	<p>In response to this new request for information, Germany draws attention to a previous explanation (from 26.01.07) and additional information:</p> <p>Investigations:</p> <ul style="list-style-type: none"> - <u>26.01.07</u>: Munich local court issued arrest warrants for 13 individuals for their involvement in the abduction of the German citizen Khaled El Masri. An international search was also initiated by INTERPOL. - <u>16.12.14</u>: Following the US Senate Select Committee on Intelligence's report on 9.12.14 on the former CIA detention and interrogation programme (2002-09), the Federal Public Prosecutor General of Germany launched an examination as to whether the report raises suspicions that crimes have been committed under the German Code of Crimes against International Law (CCAIL). <i>It is unclear when this examination will be concluded.</i> - The investigation in the case of Egyptian religious leader Abu Omar, was discontinued in 2008, reopened in early 2011, but closed again on 5.09.11 due to lack of promising investigative leads. <p>Proceedings:</p> <ul style="list-style-type: none"> - <u>06.08.08</u>: Mr Khaled El Masri brought an administrative court action to order the Federal Government to submit an extradition request to the US on the basis of the arrest warrants issued by the Munich local court in his case. - <u>07.12.10</u>: the Administrative Court in Cologne dismissed the action as unfounded and ruled that the Federal Government had not exercised its discretion erroneously with regard to its decision not to submit such a request.
Greece			
Hungary			
Iceland	15/10/2015	I 2015-1627	Reiterates 2007 finding that Iceland has nothing to disclose.
Ireland	22/10/2015	I 2015-1698	Nothing to disclose.
Italy			
Latvia			
Liechtenstein	10/09/2015	I 2015-1413	Nothing to disclose.

Lithuania	23/10/15	I 2015-1722	<p>Criminal investigations currently ongoing:</p> <ul style="list-style-type: none"> - On 13.02.14, the Prosecutor General's Office (PGO) of Lithuania launched a <u>pre-trial investigation No. 01-2-0015-14</u> into the commission of a criminal offence under Art. 292(3) of the Criminal Code, i.e. unlawful transportation of persons across the state border. - The factual circumstances of this pre-trial investigation are related with the issues of possible transportation and confinement of persons detained by the US CIA on the territory of Lithuania. The complaint (brought by Director of REDRESS, and the Human Rights Monitoring Institute) and material, provided to the PGO, alleges the participation of officers and state authorities of Lithuania during the transfer, secret detention, torturing and inhuman and degrading treatment of the national of Saudi Arabia, Mustafa Ahmed al-Hawsawi. According to the applicants, Mr al-Hawsawi is facing trial by the US Military Commission in Guantanamo regarding the terrorist attacks committed in the USA on 11 September 2001. - Following a Resolution of 19.01.10 by the <i>Seimas</i>, which approved findings of the Parliamentary Investigation by the <i>Seimas</i> Committee on National Security & Defence concerning the Alleged Transportation and Confinement of Persons Detained by the CIA on the Territory of Lithuania, the Organized Crime and Corruption Investigation Department of the PGO's Office launched a pre-trial investigation on 22.01.10 regarding the abuse of office as provided for in Art. 228(1) of the Criminal Code of Lithuania. By a decision passed on 14.01.14, the Prosecutor of the Organized Crime and Corruption Investigation Dept. closed the <u>investigation No. 01-2-00016-10</u> due to lack of evidence. However, this decision was overturned by the Chief prosecutor of the Organized Crime and Corruption Investigation Department on 22.01.15 taking into consideration: <ul style="list-style-type: none"> 1. the contents of information presented in the censored US Senate report of 09.12.14; 2. certain concurrences of the said censored Report with the data presented in the Findings of the Parliamentary Investigation by the <i>Seimas</i> Committee, and; 3. the links with the subject of the <u>pre—trial investigation No. 01-2-00016-10</u>. - Joinder of <u>pre-trial investigations No. 01-2-00015-14</u> and <u>No. 01-2-00016-10</u> into one <u>pre-trial investigation No. 01-2-00015-14</u> by virtue of decision of 06.02.15. <u>This pre-trial investigation is ongoing</u> and is conducted by a group of prosecutors. The scope of the pre-trial investigation may be extended if
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			<p>sufficient factual data is collected, other significant circumstances emerge, or other alleged criminal offences are detected in the course of the criminal proceedings (the norms of criminal procedure do not limit the scope of this investigation).</p> <ul style="list-style-type: none"> - Pursuant to Art. 177 (1) of the Code of Criminal Procedure, information about pre-trial investigation is not public. It may exceptionally be made public before the hearing of the case in court, subject to a prosecutor's permission and to the extent permissible. In this context, the PRO's submitted material of the pre-trial investigation, except classified documents, to the ECHR in the case of <i>Abus Zubaydah v. Lithuania</i>, relying on Rule 33(2) of the Rules of the ECtHR, which restricts public access to such materials. - However, since the material of the pre-trial investigation contains information, which has been recognized as the state or official secret in the procedure provided by laws, the detailed information about the progress and results of the pre-trial investigation No. 01-2-00015-14 may not be provided/made public.
Luxembourg	25/09/15	I 2015-1501	Nothing to disclose.
Malta	13/08/15	I 2015-1265	Nothing to disclose.
Moldova	16/09/15	I 2015-1439	Nothing to disclose.
Monaco	03/09/15	I 2015-1352	Nothing to disclose.
Netherlands	07/10/15	I 2015-1558	Nothing to disclose.
Norway			
Poland	02/10/15 (letter date 30.09.15)	I 2015-1545	<p>Criminal investigation concerning secret CIA prisons on Polish territory currently conducted by the Appellate Prosecutor's Office in Krakow. Investigation remains pending, due, <i>inter alia</i>, to the <u>complexity of the case</u> and <u>obstacles in obtaining evidence</u> (investigation highly dependent on international cooperation).</p> <ul style="list-style-type: none"> - Prosecutor's office has submitted numerous requests for international legal assistance to Italy, Lithuania, Romania, Switzerland, and the US (with the US informing the Prosecutor General of Poland that, according to Article 3 of the US-Polish Cooperation Treaty in Criminal Matters, four requests were refused, and underlining that the Intelligence Report on Rendition, Detention and Interrogation Program was classified). <p>Measures to comply with ECtHR rulings in <i>Al Nashiri</i> and <i>Abu Zubaydah v. Poland</i> cases:</p> <ul style="list-style-type: none"> - Rapid individual measures (through meeting with US counterparts) to ensure that death penalty would not be imposed. - <u>6.03.15 & 13.05.15</u>: diplomatic notes sent to the US Embassy in Warsaw,

			<p>requesting the US Dept of State to provide guarantees that the death penalty would not be imposed or carried out with respect to Mr. Al Nashiri and that Mr Al Nashiri and Mr Abus Zubaydah (both under US jurisdiction) will be guaranteed the right to a fair trial.</p> <p>- Cooperation with the applicants' lawyers continues (they have access to the unclassified case-file of the proceedings, while the classified case-file is successively being made available to them).</p>
Portugal	12/10/2015	I 2015-1594	"...since the decision was taken on 29 May 2009 to discontinue investigation no. 3/07.4TELSB conducted by the Central Criminal Investigation and Prosecution Department (DCIAP), the Portuguese authorities have not conducted any other investigations, and have no investigations ongoing, related to the subject of this inquiry."
Romania	17/09/15	I 2015-1504	<p>The national authorities do not have any evidence that there were any CIA detention centers or that Romanian airports had been used by the CIA for transportation or detention of prisoners suspected of acts of terrorism. Also, until now no evidence could be produced regarding cases where persons of foreign official agencies were involved in Romania in illegal detention or transport of detainees.</p> <p>Steps have been taken to verify these allegations:</p> <ol style="list-style-type: none"> 1) A Commission of Inquiry was established by the Romanian Senate in December 2005; 2) The Report, adopted by the Senate in 2008, concluded that there are no elements on the existence of so-called secret US bases, detention centers or unauthorized CIA flights for the transportation or detention of prisoners suspected of terrorism; 3) A judicial investigation has been initiated and is ongoing. 4) Visit by a delegation of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the EP to Romania (24-25 September 2015), as follow-up to the EP Resolution on "the US Senate report on the use of torture by the CIA", adopted on 11.02.15.
Russian Federation			
San Marino	30/09/2015	I 2015-1519	Nothing to disclose.
Serbia			
Montenegro			
Slovakia			
Slovenia	22/09/15	I 2015-1527	Nothing to disclose.
Spain	08/09/15	I 2015-1380	Nothing to disclose.

Sweden	30/09/15	I 2015-1615	Nothing to disclose.
Switzerland	10/09/15	I 2015-1396	Nothing to disclose.
FR of Macedonia			
Turkey	30/09/15	I 2015-1526	Nothing to disclose.
Ukraine			
UK	30/09/2015	I 2015-1514	<ul style="list-style-type: none"> - An investigation by the Intelligence and Security Committee of Parliament into these and related matters is currently underway. - The UK Gov has provided the Committee with the Security and Intelligence Agencies' written responses to the issues identified in the earlier Detainee Inquiry report, as well as the views of the independent Intelligence Services Commissioner on the Agencies' compliance with the published Consolidated Guidance for dealing with detainees held by other countries. - To aid in their work, the Committee has also been granted access to all the material provided by the UK Gov to the Detainee Inquiry. - The Committee has indicated that its investigation will be completed in this Parliament.