



The Rendition of Khaled el-Masri: Macedonia / Germany / USA



Khaled el-Masri with two of his children, courtesy of ACLU, <http://www.aclu.org/safefree/torture/rendition.html>

Khaled el-Masri, a 43-year-old German of Lebanese origin, was arrested and unlawfully detained while on a trip to Macedonia in December 2003. He was initially detained and interrogated by Macedonian officials for 23 days, then handed to US agents and secretly flown via Iraq to Afghanistan as part of the US programme of “rendition”.¹ He was held in a US-run prison in Afghanistan for five months, during which time he was allegedly ill-treated and half-starved.

He was then flown to an as yet unidentified location in the Balkans, and driven to the Albanian border, after the US authorities apparently realized they had the wrong man. The Albanian authorities then arranged his flight back to Germany.

In December 2005 the American Civil Liberties Union (ACLU) filed a complaint in the USA to seek remedy for Khaled el-Masri. The case was dismissed in May 2006 on grounds of state secrecy. The ACLU and Khaled el-Masri continue to pursue their complaint, including filing an appeal against this decision on 25 July 2006.

¹ “Rendition” is the transfer of individuals from one country to another by means that bypass judicial and administrative due process. For further information on rendition and the case of Khaled el-Masri, see the report *Partners in Crime: Europe’s Role in US Renditions* (AI Index: EUR 01/008/2006).

Arrest and unlawful detention in Macedonia

"I was guarded at all times, the curtains were always drawn, I was never permitted to leave the room, I was threatened with guns, and I was not allowed to contact anyone. I was questioned about meetings with people that had never occurred, or associations with people I had never met."

Khaled el-Masri

Khaled el-Masri was detained by Macedonian officials on 31 December 2003 after his passport was confiscated on the Macedonian border with Serbia. He was interrogated at the border, and then driven to the Macedonian capital Skopje by armed officials in plain clothes. He was held in a hotel room for 23 days by teams of armed men believed to be from Macedonia's Directorate for Security and Counter-Intelligence (Uprava za Bezbednost i Kontrarazuznavanje, UBK). Khaled el-Masri was interrogated in English, a language he says he barely understands, about his activities and Islamist organizations.

He says he asked repeatedly for access to the German embassy, but this was not granted.

Rendition to US secret detention

Khaled el-Masri says he was forced to record a video saying that he had been treated well and that he was being flown back to Germany. He was then blindfolded, handcuffed and driven to an airport, probably Skopje, on 23 January 2004. At the airport he was allegedly beaten by men dressed in black and wearing hoods and gloves. He was then handed to US officials.

"Someone sliced the clothes off my body. When I would not remove my underwear, I was beaten again until someone forcibly removed them from me. I was thrown on the floor, my hands were pulled behind me, and someone's boot was placed on my back. Then I felt something firm being forced inside my anus."

Khaled el-Masri

He says he was then dressed in plastic underpants and a tracksuit, and had a bag put over his head. He was marched to a plane, hooded and shackled to the floor and sides of the aircraft. Amnesty International believes this plane was a Boeing 737, initially N313P and later

registered as N4476S, contracted from Premier Executive Transport, a CIA front company that exists only on paper.²

Khaled el-Masri was flown via Baghdad in Iraq to Kabul in Afghanistan. He was then taken to a prison that his lawyers believe was the "Salt Pit", an abandoned brick factory run by US agents as a prison in the north of the business district in Kabul.

He says he was detained in a dark cell where he was beaten, half-starved, and interrogated. Isotope analysis of his hair has confirmed his allegations about the geographical location of the cell. To protest against his treatment he went on hunger strike, and was subsequently force fed. He says he was interrogated repeatedly by US agents, and also by a uniformed German-speaker who identified himself only as "Sam".

In May 2004, Khaled el-Masri was freed without ever having been charged with a crime or brought before a court. His release was reported to have been personally ordered by US Secretary of State Condoleezza Rice, allegedly after she learned that he had been mistakenly identified as someone suspected of terrorism.

On 28 May 2004, Khaled el-Masri was flown to an airport somewhere in the Balkans, probably Tirana, Albania. Upon landing he was blindfolded and handcuffed and driven in a car for about six hours. He was finally let out of the car and was given his suitcase. He was then instructed to walk down a path without looking back.

"Sam' informed me that the plane would land in a European country other than Germany, because the Americans did not want to leave clear traces of their involvement in my ordeal, but that I would eventually continue on to Germany. I believed I would be executed rather than returned home [...] As I walked down the path I feared that I was about to be shot in the back and left to die."

Khaled el-Masri

A short while later, at a turning in the path, he was met by three armed men in uniform who took his passport and escorted him to a building flying an Albanian flag. There, the officer in charge

² For more information, see *Below the radar: secret flights to torture and 'disappearance'* (AI Index: AMR 51/051/2006).

informed him that he had entered Albania illegally. However, instead of detaining him as would have been expected, the officer told him that he would be taken to the airport. Three men in uniform then drove him to the Mother Teresa International Airport near Tirana. A ticket was bought for him to Frankfurt, Germany. An officer in plain clothes then accompanied him to the plane. The plane arrived in Frankfurt on the morning of 29 May 2004.

Khaled el-Masri returned home to find his family gone. After his "disappearance", his wife, who had not known where he was or if he would ever return, had taken the children to her family's home in Lebanon.

Khaled el-Masri and his family now live in Germany once more.

European involvement

Macedonia: In early 2006, two senior Macedonian officials told *The New York Times* newspaper that the USA had asked them to detain Khaled el-Masri in Macedonia. "We consider the Americans as our partners," one of them reportedly said. "We cannot refuse them."

This partnership appears to be working particularly well at the level of the intelligence services. According to a report prepared by the Parliamentary Assembly of the Council of Europe (PACE), their information shows that Macedonia's UBK consulted directly with the CIA after taking Khaled el-Masri into custody, and that the CIA asked the UBK "to assist in securing and detaining Mr El-Masri until he would be handed over to the CIA for transfer."

Despite this information, Macedonian authorities have officially denied that Khaled el-Masri was held illegally:

"There is nothing the ministry has done illegally [...] The man is alive and back home with his family. Somebody made a mistake. That somebody is not Macedonia."

Hari Kostiv, then Interior Minister and later Prime Minister of Macedonia

In fact, the arrest of Khaled el-Masri and subsequent 23 days of incommunicado detention violated his right to liberty and security of the person and to recognition as a person before the law. This contravened Macedonia's obligations under Article 9 and 16 of the International Covenant on Civil and Political Rights and Article 5 of the European Convention for

the Protection of Human Rights and Fundamental Freedoms.

Further, his treatment in custody violated Macedonia's obligation to refrain from torture and other ill-treatment under these treaties as well as under the UN Convention against Torture or other Cruel, Inhuman or Degrading Treatment or Punishment. In addition, the alleged actions of Macedonian officials ensured the concealment of Khaled el-Masri's whereabouts, placing him outside the protection of the law and constituting an act of enforced disappearance, a crime under international law.

According to international human rights law, at all stages of Khaled el-Masri's ordeal in Macedonia, from his arrest and unlawful detention to his transfer out of the country, Macedonia's officials are responsible for the violations he suffered, and may be considered complicit in the alleged violations by US officials.

Macedonia has refused to cooperate fully with investigations carried out by the Council of Europe (CoE) and European Parliament (EP). A recent report by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe into allegations of unlawful detentions and renditions in CoE member states notes that the Macedonian authorities have not only denied, but have actively tried to cover-up their role in Khaled el-Masri's abduction. The EP's Temporary Committee investigating the case in April 2006 found several inconsistencies in accounts given by Macedonian authorities. Macedonia has also failed to investigate the alleged violations of Khaled el-Masri's rights, to bring to justice UBK personnel or other officials suspected of responsibility or involvement in the arrest, unlawful detention, alleged ill-treatment and unlawful rendition of Khaled el-Masri, and have failed to ensure that reparations are made to him.

Germany: Although German authorities have insisted that they knew nothing of Khaled el-Masri's unlawful detention until 31 May 2004, his lawyer in Germany, Manfred Gnjjidic, believes that the interrogation and alleged ill-treatment may have occurred with the knowledge of German officials, and that German authorities knew that Khaled el-Masri had been arrested in Macedonia.

The German authorities officially took up his case in June 2004, after Manfred Gnjidic, Khaled el-Masri's lawyer, informed the German police of his client's experience. Police interviewed Khaled el-Masri, and the prosecution authorities confirmed several key aspects of his account and formally contacted the Macedonian authorities.

In December 2005 German Foreign Minister Frank-Walter Steinmeier denied that his government had helped the USA to apprehend Khaled el-Masri by providing information about him.

In February 2006 Khaled el-Masri picked a senior German police official out of a line-up and said he was "90 per cent" certain that this was "Sam", the man who had interrogated him in Kabul. The official selected by Khaled el-Masri was Gerhard Lehmann, who officially works for the German Federal Criminal Police.

Khaled el-Masri's case is now also with the German parliamentary committee of inquiry set up to investigate Germany's secret co-operation with the USA and other states in the "war on terror" and the Iraq war.

On 1 June 2006 the German Federal Intelligence Service (BND) made known that a staff member had been told about Khaled el-Masri's detention in January 2004, but had failed to report it. The staff member, apparently a radio engineer, did not report the incident at the time "because he did not attach any significance to it." The BND has pledged to deal with the information breakdown in order to rule out the possibility of future reoccurrences.

Seeking remedy from US authorities

On 6 December 2005 the ACLU filed a complaint in a US District Court on Khaled el-Masri's behalf against former CIA Director George Tenet, three CIA-linked air transport companies and 20 employees of the CIA or the transport companies. When Khaled el-Masri attempted to travel to the USA to join the ACLU in announcing the filing of the lawsuit, he was reportedly denied entry to the country at Atlanta airport and was sent back to Germany.

"[I]f El-Masri's allegations are true or essentially true, then all fair-minded people, including those who believe that state secrets must be protected, that this lawsuit cannot proceed, and that renditions are a necessary step to take in this war, must also agree that El-Masri has suffered injuries as a result of our country's mistake and deserves a remedy."

Judge T. S. Ellis III, US District Court for the Eastern District of Virginia

The case was dismissed in May 2006 on grounds of state secrecy after US government lawyers argued that the suit could jeopardize US national security interests by exposing CIA methods and activities to the general public.

Khaled el-Masri and the ACLU announced that they would continue to pursue a fair hearing. The ACLU noted that the US government is "abusing the state secrets privilege to cover up its kidnapping and torture of an innocent man".

On 25 July 2006, the ACLU announced that it had filed an appeal against this decision at the US Court of Appeals.

Take action!

Call on the Macedonian authorities to:

- **Stop** all cooperation with US intelligence services in rendition operations;
- **Initiate an independent, thorough and impartial investigation** into allegations of law enforcement officers' involvement in the reported violations of Khaled el-Masri's rights from the moment of arrest to his departure from Macedonia;
- **Bring to justice** any law enforcement officers responsible for violations of national law or international standards;
- **Ensure that Khaled el-Masri is granted full reparation**, including restitution, adequate and fair compensation, and rehabilitation for the abuses he suffered;
- **Cooperate fully with any further inquiries** by the Council of Europe or European Parliament into these allegations, including disclosing any information they have about information on Khaled el-Masri imparted to US intelligence agencies prior to his rendition and during his captivity.

Call on the German authorities to:

- **Stop** all cooperation with US intelligence services in rendition operations;
- **Fully co-operate with the parliamentary committee of inquiry looking into Germany's involvement in the rendition of Khaled el-Masri**, including by handing over any information they have or can obtain about the alleged presence of a German agent in the detention facility in Afghanistan where Khaled el-Masri was being held;
- **Co-operate** with investigations by German prosecutors into Germany's involvement in the rendition of Khaled el-Masri;
- **Publicly disclose any information they have** about information on Khaled el-Masri imparted to US intelligence agencies prior to his rendition and during his captivity;

Write to:

Minister of Internal Affairs

Minister za vnatreshni raboti
Dimche Mirchev bb
1000 Skopje
Macedonia

Fax: +389 23 143 400

Email: goran_pavlovski@moi.gov.mk

Salutation: Dear Minister

- **Ensure that Khaled el-Masri's allegations of torture and other ill-treatment are raised with the US authorities**, with a view to achieving an independent and impartial inquiry as well as criminal accountability for any torture or other ill-treatment and reparation for the victim.

Write to:

Federal Chancellor

**Bundeskanzlerin
Angela Merkel**
Bundeskanzleramt
Willy-Brandt Str. 1
10557 Berlin
Germany

Fax: (49 30) 4000 2357

Email: internetpost@bundeskanzlerin.de

Salutation: Dear Chancellor

Call on the US authorities to:

- **End** its practice of renditions and incommunicado and secret detentions;
- **Ensure that victims of rendition such as Khaled el-Masri are protected from torture or ill-treatment**, and that all those detained in the “war on terror” are charged and given a fair trial, or released;
- **Disclose the identities and whereabouts of the location and status of the detention centre** where Khaled el-Masri was held, and disclose the identities and whereabouts of all others held in secret locations and their legal status, and invite the ICRC to have full and regular access to those detained;
- **Set up a full commission of inquiry** into all aspects of the USA’s ‘war on terror’ detention and interrogation policies and practices;

- **Bring to justice** those responsible for any violations of national law or international standards;
- **Provide prompt and adequate reparation to released detainees** for the period spent unlawfully detained and other violations that they may have suffered, such as torture or other ill-treatment.

Write to:

Director of the CIA

Michael Hayden

Central Intelligence Agency
Office of Public Affairs,
Washington DC 20505,
USA

Fax: +1 703 4821739

Salutation: Dear Director