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# Partners in crime: Europe's role in US renditions

## Introduction

*“The body of information gathered makes it unlikely that European states were completely unaware of what was happening, in the context of the fight against international terrorism, in some of their airports, in their airspace or at American bases located on their territory. Insofar as they did not know, they did not want to know. It is inconceivable that certain operations conducted by American services could have taken place without the active participation, or at least the collusion, of national intelligence services.”*

Dick Marty, Rapporteur of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe<sup>1</sup>

Europe's governments have repeatedly denied their complicity in the US programme of renditions – an unlawful practice in which numerous men have been illegally detained and secretly flown to third countries, where they have suffered additional crimes including torture and enforced disappearance.<sup>2</sup> As evidence of this programme has come to light, however, it has become clear that many European governments have adopted a “see no evil, hear no evil” approach when it comes to rendition flights using their territory, and that some states have been actively involved in individual cases.

European airports and airspace have been used by US Central Intelligence Agency (CIA) planes<sup>3</sup> for flights that have repeatedly been linked to renditions. Agents of a few European countries have participated in the apprehension of people destined for rendition or in the interrogation of such detainees once they have been transferred to countries where torture is known to be routine. The rendition programme has also highlighted the fact that foreign intelligence agencies operate covertly in Europe outside the rule of law and without accountability.

Reports suggest that the USA may have operated secret detention facilities in European countries. *The Washington Post* reported in 2005 that the CIA was running a system of covert prisons, referred to as “black sites”, in Eastern Europe and elsewhere,<sup>4</sup> and Human

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<sup>1</sup> *Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states*, 7 June 2006 Draft report – Part II (Explanatory memorandum), Dick Marty, Rapporteur of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, para. 230 (7 June Marty report).

<sup>2</sup> Amnesty International uses the term “rendition” to describe the transfer of individuals from one country to another by means that bypass judicial and administrative due process.

<sup>3</sup> The term “CIA planes” in this report refers to planes operated or leased by the CIA either directly or through shell companies.

<sup>4</sup> “CIA Holds Terror Suspects in Secret Prisons”, *The Washington Post*, 2 November 2005.

Rights Watch suggested that Poland and Romania were possible locations of such sites.<sup>5</sup> In April 2006 Amnesty International reported on the cases of three Yemeni men who had been held in secret US custody for more than 18 months. Although they had been held incommunicado, the information the men were able to provide about their transfers and conditions of detention suggests that they could have been held in Eastern Europe.<sup>6</sup>

Europe often presents itself as a beacon for human rights. The uncomfortable truth is that without Europe's help, some men would not now be nursing torture wounds in prison cells in various parts of the world. Without information provided by European intelligence agencies, some of the victims of rendition may not have been abducted in the first place. Without access to Europe's airport facilities and airspace, CIA planes would have found it more difficult to transport their human cargo. In short, Europe has been the USA's partner in crime.

This report focuses on six cases of rendition involving 13 victims. Although the victims have very different backgrounds, their cases have a common pattern – all involve men being bundled onto planes and transferred abroad, without due process, to places of detention where they have suffered abuse. The impact on all of the men and their families has been devastating. The report highlights the role of various European states and shows how the action or lack of action by those states contravened their obligations under domestic and international law.

The cases leave no doubt that the seven highlighted states – Bosnia and Herzegovina, Germany, Italy, Macedonia, Sweden, Turkey and the UK – have failed in their duty to respect and protect human rights. These and other states must be held to account for the part they played in the renditions.

Under international law, states that facilitate transfers to countries where they know or should know that there is a risk of serious human rights abuses are complicit in these abuses, and individuals complicit in abductions, torture or “disappearances” should be held criminally responsible. Urgent action is needed at national and regional levels to ensure a permanent end to European involvement in the US programme of renditions.

The report does not look in detail at the role and responsibilities of the governments in the USA and Middle East that have been directly responsible for most of the abuses suffered by the victims of rendition – these concerns have been covered elsewhere by Amnesty International.<sup>7</sup>

The information in this report has been gathered by Amnesty International from interviews with victims and their relatives, the findings of official investigations, reports by

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<sup>5</sup> Human Rights Watch statement on US Secret Detention Facilities in Europe, 7 November 2005.

<sup>6</sup> USA: *Below the radar – Secret flights to torture and “disappearance”* (AI Index: AMR 51/051/2006).

<sup>7</sup> Egypt: *Torture and secret detention – Testimony of the “disappeared” in the “war on terror”* (AI Index: MDE 12/029/2005); *Beyond Abu Ghraib – Detention and torture in Iraq* (AI Index: MDE 14/001/2006); *Algeria: Torture in the “war on terror” – A memorandum to the Algerian President* (AI Index: MDE 28/008/2006); Op. cit., USA: *Below the radar*.

journalists and human rights activists, analysis of flight data, and interviews with officials. Special thanks are due to the International Human Rights Clinic of the Center for Human Rights and Global Justice at the New York University School of Law for its valuable research and analytical contributions.

Uncovering the truth about renditions is a tough challenge. Painstaking monitoring of flight records, for example, is of limited use without specific details of cases – for example, who was on the plane and why. But case details are hard to find because of the secretive nature of renditions, the “disappearance” or inaccessibility of many of the victims, and the less than forthright response of governments to inquiries. In his draft report of 7 June 2006, Dick Marty notes: “We are still far from knowing all the details of ‘extraordinary renditions’ and the conditions in which abducted persons have been detained and interrogated in Europe... Elements presently in the public domain – which are supplemented with new information as every week goes by – not only justify, but require that member States finally decide to open serious inquiries on the extent to which they were directly or indirectly implicated in such activities.”<sup>8</sup>

The denial by most European states of their involvement in renditions lacks credibility when it has been demonstrated that CIA planes known to have transported rendition victims have repeatedly used European airports and airspace.<sup>9</sup> In any case, governments should have systems in place to ensure that planes passing through their territory are not being used for criminal purposes, whether for trafficking in drugs, people or arms, or for human rights violations including the unlawful transfer of detainees.

Moreover, an ostrich approach to renditions does not absolve Europe’s governments of their responsibility for the abuses suffered by people they have allowed to be illegally transferred from, through or to their territory. Some of the victims have ended up in the torture centres of countries such as Egypt and Syria. Others have found themselves in US-run detention centres where they have suffered torture or other ill-treatment and been denied all legal rights due to detainees, including the right to be charged with a crime and to receive a prompt and fair trial or be released. Others have “disappeared”. European governments and individuals must be held to account for their part in facilitating these abuses. States should also ensure that the victims and their families receive full reparation.

The combination of secrecy, denial and obfuscation means that the scale of the renditions programme involving Europe –past and present – can only be a matter of speculation. Until transparent and lawful procedures are used by governments when dealing with people allegedly suspected of terrorism, no one can be sure what their government is allowing the CIA to do in their skies or on their land, perhaps only a few kilometres from their home.

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<sup>8</sup> Op. cit., 7 June 2006 Marty report, para.16.

<sup>9</sup> Op. cit., *USA: Below the radar*.

## **Responsibilities of states**

*“Every State has the duty to promote through joint and separate action universal respect for and observance of human rights and fundamental freedoms in accordance with the [UN] Charter.”*<sup>10</sup>

Renditions are illegal because they bypass standard judicial and administrative due process and violate the right to recognition everywhere as a person before the law. They typically involve multiple human rights violations. Most of the victims were arrested and detained unlawfully in the first place – some were abducted and others were refused access to any legal process to challenge, for example, their transfer to countries where torture is rife. Many of those unlawfully detained in one country and unlawfully transported to another have “disappeared”. All the victims of rendition interviewed by Amnesty International say they were tortured or otherwise ill-treated.

Any state that helps another state violate international law is internationally responsible if it does so “with knowledge of the circumstances” of the violation.<sup>11</sup> In other words, states that facilitate transfers in violation of the principle of *non-refoulement* (the absolute obligation not to transfer anyone to a country where they risk torture or other ill-treatment) or to countries where those transferred risk enforced disappearance or secret and incommunicado detention, are complicit in these abuses. According to the International Law Commission, “facilitating the abduction of persons on foreign soil”, “knowingly providing an essential facility” and “placing its own territory at the disposal of another state” are examples of acts that may constitute complicity.<sup>12</sup>

The European Convention on Human Rights and Fundamental Freedoms (ECHR) obliges states to take the diplomatic, economic, judicial or other measures in their power to secure the rights guaranteed by the Convention to people within their territory, even in the absence of effective control over a part of that territory.<sup>13</sup> Council of Europe member states are therefore co-responsible for abuses suffered by anyone held in any US-run detention centres or on US airbases located in their territory.

Even where a state had no actual knowledge of illegal activities, it may still be legally responsible if it has failed either to take adequate measures to protect individuals on its

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<sup>10</sup> Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, approved by the UN General Assembly, Resolution 2625 (XXV), 24 October 1970.

<sup>11</sup> International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, Article 16 (Aid or assistance in the commission of an internationally wrongful act), UN General Assembly Resolution 56/83, UN Doc. A/RES/56/83, 12 December 2001.

<sup>12</sup> International Law Commission, Commentaries to the Articles on Responsibility of States for Internationally Wrongful Acts, Article 16, p.157, paras 1 and 8. A second element is included in the rule: the violation must be illegal for both states, a requirement that is fulfilled in relation to the human rights rules relevant to rendition.

<sup>13</sup> European Court of Human Rights, *Ilaşcu and others v. Moldova and Russia*, Judgment, 8 July 2004, paras 331-333.

territory or subject to its jurisdiction, or to carry out thorough effective and independent investigations when subsequent information comes to light.

Some European states have sought to shield themselves from responsibility by seeking “diplomatic assurances” that anyone transferred to a particular country will not be tortured or ill-treated. However, reliance on such assurances does not satisfy the absolute obligation not to transfer anyone to a country where they risk torture or other ill-treatment. If the risk of torture or other ill-treatment is so great that assurances are needed, then the risk is obviously too great to permit the transfer. Furthermore, states that seek such assurances implicitly accept that other states may use torture on other people in their custody, so long as they do not torture individuals of particular concern to them.

States that allow CIA planes to cross their airspace or use their airports often cite the Convention on International Civil Aviation (also known as the Chicago Convention). They say they have no authority to question the reasons for the flight or to board the plane at an airport because the Convention allows private non-commercial flights to fly over a country or make technical stops there, without prior authorization or notification.

However, the Chicago Convention does not cover aircraft being used to carry out state functions and makes clear that every state has the right to require that an aircraft flying over its territory must land at a designated airport for inspection if there are “reasonable grounds to conclude that it is being used for any purpose inconsistent with the aims of [this] convention”. Given that renditions violate international law, it follows that transferring, or facilitating the transfer of, a detainee in such circumstances cannot be a purpose consistent with the aims of the Chicago Convention. The extensive reporting by the media, human rights organizations and parliamentary bodies of specific planes and chartering companies that appear to be involved in renditions constitutes “reasonable grounds” for suspicion, and therefore gives countries the right – and duty – to stop any aircraft suspected of involvement in renditions.

Renditions involve conduct that is criminal under international, regional and national law. Enforced disappearance and torture are crimes under international law. All states are obliged to bring to justice those responsible, including those whose conduct involves complicity,<sup>14</sup> for such crimes, and to ensure that victims and their families receive full reparation.<sup>15</sup>

### ***Europe's response***

In 2005 mounting evidence of Europe's complicity in the US programme of renditions repeatedly hit the headlines. The evidence came not from those possibly already in the know – intelligence agents, government agencies and airport officials – but from those who had been deliberately kept in the dark – victims' relatives, lawyers, human rights activists and journalists.

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<sup>14</sup> UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 4 (1).

<sup>15</sup> Human Rights Committee, General Comment No. 31 [80], para.18, 26 May 2004.

As the allegations mounted in 2005, questions were increasingly raised in European parliaments and criminal investigations into individual cases gathered steam in Italy, Germany and Spain.<sup>16</sup> By the end of the year the Council of Europe had launched a two-pronged inquiry into alleged CIA activities in Europe.

One prong has been led by the Secretary General of the Council of Europe, Terry Davis, who underscored that European governments are obliged to ensure respect for the rights protected by the ECHR.<sup>17</sup> “Not knowing is not good enough,” he said, “regardless of whether ignorance is intentional or accidental.”<sup>18</sup> On 1 March 2006, speaking at the publication of his report of the inquiry, Secretary General Davis noted that “it would appear that most of Europe is a happy hunting ground for foreign security services.”<sup>19</sup>

The second prong has been led by Senator Dick Marty on behalf of the Parliamentary Assembly of the Council of Europe. As the Rapporteur appointed by the Committee on Legal Affairs and Human Rights, he has gathered information about allegations of secret detention in Europe, including by the CIA, and flights involving the transport of detainees without any judicial involvement.<sup>20</sup> His 7 June draft report noted that while there was not yet proof of the existence of secret CIA detention centres in Poland, Romania or other Council of Europe member states, “serious indications continue to exist and grow stronger.”<sup>21</sup> The report was even stronger on the issue of European involvement in renditions:

*“The impression which some Governments tried to create at the beginning of this debate – that Europe was a victim of secret CIA plots – does not seem to correspond to reality. It is now clear – although we are still far from having established the whole truth – that authorities in several European countries actively participated*

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<sup>16</sup> The Italian and German investigations are described in this report. In Spain, a complaint was filed in March 2005 with the public prosecutor of the Superior Court of Justice of the Balearic Islands, alleging that the Son Sant Joan Airport was being used by the CIA to illegally transfer detainees. The Guardia Civil carried out an investigation into these flights, which concluded that there was no evidence of illegal activity by the occupants of those flights while they were in Palma de Mallorca, and the prosecution was shelved. According to the 27 February 2006 response of the Spanish government to the Secretary General of the Council of Europe, following new accusations, the case was transferred to the National Criminal Court of Spain. In November 2005 a similar investigation was initiated into stopovers in the Canary Islands.

<sup>17</sup> As allegations of secret detention and rendition on and through European territory became more pronounced, the Secretary General launched his investigation pursuant to his authority under Article 52 of the ECHR and requested information from member states about the consistency of their national law with their obligation to ensure effective implementation of the Convention.

<sup>18</sup> “Secretary General sets the parameters of the Council of Europe inquiry into alleged CIA activities in Europe”, Press release, Council of Europe, 15 December 2005.

<sup>19</sup> Secretary General’s speaking notes for the press conference on the report under Article 52 of the ECHR, 1 March 2006.

<sup>20</sup> Dick Marty, *Information Memorandum (revised) on Alleged secret detention centres in Council of Europe members states*, Parliamentary Assembly, Council of Europe, 22 November 2005, AS/jury (2005) 52 rev 2.

<sup>21</sup> Op. cit., 7 June Marty report, para. 22.



*with the CIA in these unlawful activities. Other countries ignored them knowingly, or did not want to know.*"<sup>22</sup>

The European Parliament of the European Union (EU) also responded to the allegations of renditions. In January 2006 it set up a Temporary Committee to investigate the alleged use of European countries by the CIA for the transport and illegal detention of prisoners. In April 2006 the author of the committee's draft interim report, Claudio Fava, condemned the practice of extraordinary renditions and raised concern that "serious and inadmissible violations of fundamental human rights have, since 11 September 2001 and as part of the essential action to combat terrorism, taken place on several occasions..."<sup>23</sup> The draft interim report noted that it is "implausible, on the basis of the testimonies and documents received to date, that certain European governments were not aware of the... rendition activities taking place on their territory and in their airspace or airports..."<sup>24</sup>

The initial findings of the Council of Europe and the European Parliament strongly indicate that renditions and secret detention have taken place in and through European territory. They also indicate that it is implausible that such activity occurred without the knowledge of some governments, or at least their intelligence services. This view has been echoed by US officials, including former US Secretary of State Colin Powell, who said:

*"The fact is that we have, over the years, had procedures in place that would deal with people who are responsible for terrorist activities, or suspected of terrorist activities, and so the thing that is called rendition is not something that is new or unknown to my European friends."*<sup>25</sup>

### **Amnesty International's recommendations**

In light of the evidence of the involvement of European states in the US programme of renditions, Amnesty International makes the following recommendations.

#### **To all Council of Europe member states:**

1) State publicly that renditions and rendition flights will not be permitted and take effective measures to prevent renditions and rendition flights through your territory and airspace. Such effective measures should include:

- not transferring anyone to the custody of the agents of another state, or facilitating such transfers, unless the transfer is carried out under judicial supervision and in line with international standards;

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<sup>22</sup> Op. cit., 7 June Marty report, para.285.

<sup>23</sup> *Draft Interim Report on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners* of the European Parliament's Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners, 24 April 2006, 2006/2027(INI).

<sup>24</sup> Op. cit., *Draft Interim Report*, 24 April 2006, para.8.

<sup>25</sup> "Powell raps Europe on CIA flights", *BBC news online*, 17 December 2005. <http://news.bbc.co.uk/1/hi/world/americas/4538788.stm> (accessed 19 May 2006).

- ensuring that no part of the territory within your state or subject to its control, including all airports and military bases, whether or not leased or used by other states or inter-state organizations, is used to carry out or facilitate renditions;
- requiring that the operators of any plane or helicopter used to carry out activities of intelligence agencies declare that it is being used for state purposes, even if the aircraft in question is chartered from a private company;
- requiring that operators of aircraft seeking permission to land in your territory indicate whether any passengers on board are deprived of their liberty;
- requiring, if the flight is carrying anyone deprived of their liberty, that information is provided as to their status, destination and legal basis for their transfer;
- ensuring that every aircraft carrying anyone deprived of their liberty is inspected by law enforcement agents, who should verify the legality of the detention and that detainees are not being ill-treated; and holding the flight until appropriate law enforcement action is taken if an inspection raises reasonable suspicion that a flight is being used for the unlawful transfer of people or other human rights violations.

2) Initiate, if implicated in a case of rendition, an independent and impartial inquiry into the practice of rendition. Such an inquiry should effectively investigate any action taken by state agents, either domestic or foreign, linked to any cases of rendition. It should also review thoroughly any policies and practices that may facilitate renditions. The findings of such an inquiry should be made public.

3) Ensure that no one is arbitrarily detained, secretly or otherwise, on your territory or any territory within your effective control. If you have not already done so, establish without delay an independent and impartial expert body that is mandated to visit any place within such territory where anyone is deprived of their liberty, as required by the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Ratify and implement the Optional Protocol if you have not already done so.

4) Co-operate fully with the ongoing international and regional investigations on rendition and secret detention, including by providing them with access to all relevant people and information. Take steps to ensure that the USA provides full and truthful information as to unlawful CIA activities in Council of Europe member states.

5) Ensure the accountability of intelligence agencies by:

- prohibiting the practice of mutual assistance in circumstances where there is a substantial risk that such co-operation would contribute to unlawful detention, torture or other ill-treatment, "disappearance", unfair trial or the imposition of the death penalty;
- taking immediate steps to develop and implement a regulatory framework governing the activities of foreign intelligence services, so as to provide effective safeguards against human rights violations.

6) Enforce the prohibition of forcible return or transfer of any person to any place where there are substantial grounds to believe that the person would be at risk of grave human rights violations or the death penalty; and do not seek or accept “diplomatic assurances” or similar bilateral agreements where there are substantial grounds for believing that a person for whom a forcible return or transfer is contemplated would be at risk of torture or other ill-treatment.

7) Prosecute anyone reasonably suspected of being responsible for human rights violations in connection with renditions, including crimes under international law such as torture and enforced disappearances, or for aiding or abetting these crimes.

8) Ensure that the fate and whereabouts of all victims of secret detention and rendition are established and notified to their relatives.

9) Ensure that all victims obtain prompt and adequate reparation from the state(s) responsible, including restitution, rehabilitation and fair and adequate financial compensation.

### **To the Council of Europe:**

1) Ensure that all relevant bodies and mechanisms of the Council of Europe, including the Committee of Ministers, the Parliamentary Assembly (PACE), the Secretary General, the Commissioner for Human Rights and the European Committee for the Prevention of Torture (CPT), continue working on the issues related to renditions and secret detention, specifically by monitoring and publicly reporting on developments. The PACE should establish a commission of inquiry assisted by experts and be vested with powers of investigation.

2) Ensure that the relevant bodies and mechanisms of the Council of Europe take all necessary action to ensure that the shortcomings in law and practice that have facilitated secret detention and renditions are addressed regionally and by the member states.

### **To the European Union:**

1) Affirm unequivocally, in the development of the EU-wide counter-terrorism policy, that renditions are unacceptable, as is the use of “diplomatic assurances” in cases where people would be at risk of torture or other ill-treatment.

2) Ensure that all EU institutions, agencies and bodies co-operate fully with the European Parliament’s Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners, and ensure that they, as well as EU member states, take appropriate action in light of the conclusions and recommendations of the Committee. In this context, make public and review any current or past agreements with the USA relevant to renditions.

3) Take action to establish clear and binding regulations safeguarding against the use of the airspace or airports of EU member states for rendition purposes and ensuring full accountability for the operations of foreign and national intelligence services.

## **1: Bosnia and Herzegovina, Turkey and the case of Mustafa Ait Idir, Belkacem Bensayah, Hadj Boudellaa, Saber Lahmer, Lakhdar Boumediene and Mohamed Nechle**

*“The Bosnian government was told by US officials that if these six people were not arrested, the US would withdraw its support for Bosnia.”*

Stephen Oleskey, a US lawyer representing the six men

Mustafa Ait Idir, Belkacem Bensayah, Hadj Boudellaa, Saber Lahmer, Lakhdar Boumediene and Mohamed Nechle were all born in Algeria. Most of them went to Bosnia and Herzegovina (BiH) in the early to mid-1990s; all subsequently married Bosnian women and have children born in Bosnia. By 1997, five of them had been granted citizenship and one had the right to residency in BiH.

On the night of 17-18 January 2002 Federation of Bosnia and Herzegovina (FBiH)<sup>26</sup> police arrested the six men and, along with Sarajevo's cantonal police, handed them to US forces then stationed in BiH as part of the North Atlantic Treaty Organization (NATO)-led peacekeeping Stabilization Force (SFOR). The six men were taken to the NATO/SFOR base in Tuzla (BiH), from where they were transferred to the Incirlik Air Base in Turkey<sup>27</sup>, then to the US naval base at Guantánamo Bay, Cuba, where they remain held.<sup>28</sup>

Mustafa Ait Idir has allegedly been tortured and ill-treated at Guantánamo. A lawsuit filed in April 2005 provides some details. It alleges that, a few days before the Ramadan holiday in 2003, guards entered his cell, secured his hands and slammed his body and head into the steel bed and floor. The guards allegedly forced his face into the toilet and repeatedly pressed the flush button, and a garden hose was pushed into his mouth and the water turned on until he could not breathe.<sup>29</sup>

In February or March 2004, he says, guards asked to search his cell. When his hands were shackled behind him, the guards allegedly pushed his head into the toilet in his cell and flushed it repeatedly. He says that he felt he would suffocate. The guards then carried him outside and threw him down on the gravel. One guard allegedly jumped on him, landing on

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<sup>26</sup> The General Framework Agreement for Peace in Bosnia and Herzegovina of 14 December 1995 established two semi-autonomous entities in the country, the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska.

<sup>27</sup> Although Incirlik is formally a Turkish base under the Turkish Air Force's 10th Tanker Base Command, the US 39th Air Base Wing maintains a forward operating base at Incirlik, and the vast majority of the troops stationed at Incirlik are from the US Air Force.

<sup>28</sup> Memorandum from Stephen Oleskey to the European Parliament's Temporary Committee investigating renditions, 11 April 2006.

<sup>29</sup> “Guantánamo Bosnians cry ‘torture’”, *BBC news online*, 14 April 2005. <http://news.bbc.co.uk/2/hi/americas/4443449.stm> (accessed 9 June 2006).

his head so hard that it caused searing pain to pass through his body; other guards pressed their knees into his back. While he was held like this on the ground, he says, the guards bent two of his fingers back so far that the knuckles remain disfigured.<sup>30</sup>

A lawsuit filed on Mustafa Ait Idir's behalf in April 2005 shortly after the incident alleges that "one half of his face became paralysed. He was in pain. He could not eat normally; food and drink leaked from his non-functioning mouth. Guards teased him because of his condition."<sup>31</sup> Mustafa Ait Idir has since been diagnosed with Bell's palsy, which he believes was caused by this incident.

### ***Bosnia and Herzegovina's role***

In October 2001 the six men were arrested by the FBiH police on suspicion of involvement in a plot to attack the US and UK embassies in Sarajevo. Following a request for an investigation by the FBiH public prosecutor on 19 October, they were detained by order of the investigative judge of the FBiH Supreme Court.

On 17 January 2002, the court ordered the men's release, finding there was no basis to hold them. Although the US embassy in Sarajevo had indicated that it had evidence linking the men to al-Qa'ida and supporting the allegations of the planned embassy attacks, no such evidence was submitted to the court.

The same day the Human Rights Chamber of Bosnia and Herzegovina issued an interim order for provisional measures to be taken to prevent the deportation, expulsion or extradition of four of the men, following applications made to the court by the four men on 14 and 16 January 2002. As ordered by the court, the Sarajevo prison authorities released all six men late on 17 January. The men were immediately seized by FBiH police and, as described above, handed over to US forces.

Stephen Oleskey, a US lawyer representing the six men, told the European Parliament's Temporary Committee investigating renditions that the authorities in BiH had violated Bosnian law and the ECHR. He said:

*"The Bosnian government was told by US officials that if these six people were not arrested, the US would withdraw its support for Bosnia. As no evidence was provided on the need for such detentions, the Bosnian Supreme Court ordered them to be released. But they were deported to Guantánamo illegally... This was not an extradition nor a deportation but rather an unlawful transfer without justification, using military force."*<sup>32</sup>

A BiH government delegation went to Guantánamo in June 2004 to visit the men. The delegates were reportedly forced to comply with strict conditions imposed by the US

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<sup>30</sup> *Stephen Oleskey v. US Department of Defense and Department of Justice*, filed in the United States District Court, District of Massachusetts, 13 April 2005.

<sup>31</sup> *Op. cit.*, *Stephen Oleskey v. US Department of Defense and Department of Justice*.

<sup>32</sup> European Parliament press release, "MEPs examine the case of six prisoners taken from Bosnia to Guantanamo", 26 April 2006.

authorities. They only visited four of the men, were not able to visit the cells in which they were held, and could only question them in the presence of US authorities. On their return, the head of the delegation announced that the prisoners were being fairly treated. The delegation provided little information to the families, in one case stating that they were unable to be “specific about his condition, as he was not allowed to respond to the majority of questions they asked him”. However, the wife of one of the men was told that some of the men were in very poor health.<sup>33</sup>

The Human Rights Chamber for Bosnia and Herzegovina ruled on the cases of Hadj Boudellaa, Lakhdar Boumediene, Saber Lahmer and Mohamed Nechle in October 2002 and the cases of Belkacem Bensayah and Mustafa Ait Idir in April 2003. It found that BiH and the F BiH had arbitrarily expelled the men, in violation of Article 1 of Protocol No.7 to the ECHR (procedural safeguards relating to the expulsion of aliens) and Article 3 of Protocol No.4 to the ECHR (prohibition of expulsion of nationals). It stated that the BiH and F BiH authorities had violated the men’s rights to liberty from the time the courts ordered their release until their forcible removal from BiH. The Chamber ordered BiH to use diplomatic channels to protect the men’s rights, taking all possible steps to contact them, provide them with consular support and ensure they would not be subjected to the death penalty. The authorities were also ordered to retain lawyers to protect the men’s rights while in US custody and in case of possible proceedings involving them, and to pay compensation.<sup>34</sup> The BiH and F BiH authorities have paid compensation for the violation of their rights to liberty, their expulsion and the failure of the authorities to secure diplomatic assurances that the men would not face the death penalty.

In Amnesty International’s view, the visit of the BiH delegation to Guantánamo did not gather an accurate account of the detainees’ situation and treatment, and the authorities in BiH have failed in their duty to take all possible measures to protect the rights of the six men, including as ordered by the Human Rights Chamber.

In April 2006, following a complaint submitted by Hadj Boudellaa’s wife, the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina concluded that the BiH authorities had failed to implement the 2002 decision of the Human Rights Chamber with regard to Hadj Boudellaa. The Commission said the authorities had failed to use diplomatic channels to protect the rights of the detainee, provide him with consular support and take all necessary steps to ensure that he would not be subjected to the death penalty, including by asking the USA for guarantees to that effect.

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<sup>33</sup> Letter to Amnesty International from the wife of Hadj Boudellaa.

<sup>34</sup> Human Rights Chamber for Bosnia and Herzegovina, *Boudellaa and others v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina* (Case No. CH/02/8679), Decision on admissibility and merits, 11 October 2002 (Boudellaa Decision), paras 323-332 and Conclusions. *Bensayah v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina* (Case No. CH/02/9499), Decision on admissibility and merits, 4 April 2003 (Bensayah Decision), paras 212-219 and Conclusions. *Ait Idir v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina* (Case No. CH/02/8961), Decision on admissibility and merits, 4 April 2003 (Ait Idir Decision), paras 163-171 and Conclusions.

BiH has an obligation to protect the human rights of its nationals and everyone on its territory. The arbitrary detention of the six men, and their subsequent rearrest and transfer to US custody, constitute a violation of the right to liberty and security of the person.<sup>35</sup> Their rearrest and transfer in the face of a determination by the FBiH Supreme Court that there was no basis for their detention, as well as the interim order for provisional measures to prevent the deportation, expulsion or extradition of four of the men, constitutes an unlawful interference with the independence of the judiciary in contravention of international standards.<sup>36</sup> As affirmed by the Human Rights Chamber, it also constitutes a violation of safeguards relating to the expulsion of aliens.<sup>37</sup> The BiH authorities had a duty to prevent the men's *refoulement* and failed to do so. BiH has clearly been complicit in the rendition of these individuals and therefore in the ensuing violations. Its subsequent behaviour with regard to the continued unlawful detention and reported ill-treatment of the men at Guantánamo Bay may also make BiH directly complicit in violations by US agents in Guantánamo Bay.

*Amnesty International calls on the authorities in Bosnia and Herzegovina to:*

- Initiate an independent, thorough and impartial investigation into the circumstances of the unlawful transfer of Mustafa Ait Idir, Belkacem Bensayah, Hadj Boudellaa, Saber Lahmer, Lakhdar Boumediene and Mohamed Nechle to the custody of US forces stationed in BiH. The investigation should aim to clarify the role played by the authorities in BiH in the unlawful transfer, and to bring to justice anyone responsible for violations of international or national law.
- Review and amend any procedures that allowed the transfer of the six men to US custody, despite an order for their release by the FBiH Supreme Court and provisional measures by the Human Rights Chamber of Bosnia and Herzegovina to prevent the deportation, extradition or expulsion of four of the men.
- Take all necessary measures to ensure that the US authorities investigate the allegations of torture and release the six men if they are not to be charged with a recognizably criminal offence and tried without further delay in proceedings that meet international standards of fairness and do not result in the death penalty.
- Take all possible measures to protect the rights of the six men, including as ordered by the Human Rights Chamber. Such measures should include the provision of regular consular and legal assistance, as well as representations to the US authorities asking for the return of the detainees to BiH.

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<sup>35</sup> Article 9 of the International Covenant on Civil and Political Rights (ICCPR) and Article 5 of the ECHR.

<sup>36</sup> UN Basic Principles on the Independence of the Judiciary. Principle 4 provides: "There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision".

<sup>37</sup> Article 3 of Protocol 7 of the ECHR.

- Ensure that, if released, the six men are allowed to return to BiH if they so wish, and are not sent to Algeria or any other state where they would be at risk of torture or other ill-treatment.
- Ensure that the six men are granted full reparation – including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition – for the human rights violations they suffered as a result of their unlawful transfer to US forces stationed in BiH and subsequently to Guantánamo Bay.<sup>38</sup>

*Amnesty International calls on NATO to:*

- Thoroughly and impartially investigate the involvement of members of the NATO-led Stabilization Force (SFOR) in the unlawful transfer of the six men to US custody; take all necessary measures to ensure that the perpetrators of human rights violations are brought to justice by the relevant authorities in accordance with international standards; and ensure adequate reparation to the men for the involvement by SFOR in the unlawful transfer.

### **Turkey's role**

Mustafa Ait Idir, Belkacem Bensayah, Hadj Boudellaa, Saber Lahmer, Lakhdar Boumediene and Mohamed Nechle were taken on a US C-130 aircraft from Tuzla to Incirlik Air Base in Turkey. The six were apparently taken in US military transport planes, rather than privately leased jets. From there they were transferred to Guantánamo Bay, where they faced a risk of arbitrary detention and torture or other ill-treatment. The six men were transported to Guantánamo Bay along with 28 detainees who had been brought to Incirlik from Kandahar, Afghanistan.<sup>39</sup> Records obtained from the US government by lawyers representing the six men suggest that Incirlik was a hub for the transportation of prisoners to Guantánamo Bay, as the official records note 10 additional dates for “follow-on missions” from Incirlik.<sup>40</sup>

During the flights, the six men were shackled, their eyes were covered by opaque goggles and their hands were put in mittens; the records indicate that they were kept in this state for at least 30 hours.

US military and civilian personnel stationed in Turkey must respect Turkish law and abstain from any activity inconsistent with the Status of Forces Agreement (SOFA).<sup>41</sup> The SOFA provides that the USA has the primary right to exercise jurisdiction over its military or

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<sup>38</sup> The Human Rights Chamber awarded them some compensation in 2002. However, this was for the violations they suffered in the context of their unlawful transfer, not for what happened in Guantánamo Bay.

<sup>39</sup> Memorandum from Stephen Oleskey to the European Parliament's Temporary Committee investigating renditions, 11 April 2006. The memorandum includes copies of official information regarding these flights and detainees received from the US government in response to a lawsuit under the US Freedom of Information Act.

<sup>40</sup> Op. cit., Memorandum from Stephen Oleskey.

<sup>41</sup> See the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, 1951, <http://www.nato.int/docu/basic/b510619a.htm> (accessed May 2006).



civilian personnel in relation to offences conducted in the performance of official duty. Conduct constituting or facilitating international crimes, such as torture and enforced disappearance, cannot be seen as performance of such a duty.

Turkey retains the obligation to protect everyone within its territory against human rights violations, even in the absence of effective control over a part of that territory and irrespective of the SOFA or other bilateral agreement. If Turkey knew or should have known about an individual's transfer through its territory and still allowed the US plane to land, knowing that other violations could possibly occur, then Turkey would be in breach of that obligation and responsible for any human rights violations suffered by that person. These could include violations of the right to recognition everywhere as a person before the law; the right to liberty and security of person; the right to access to a court to challenge the legality of detention; the right to an effective remedy;<sup>42</sup> and the right not to be subjected to torture or other ill-treatment. These rights are enshrined in the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention against Torture.

*Amnesty International calls on the Turkish authorities to:*

- Not allow Turkish territory to be used by the USA (or any other country) to transport people to countries where they may face unlawful detention, torture or other abuses.
- Thoroughly and impartially investigate the use of Incirlik in the unlawful transport of the Bosnian detainees to Guantánamo Bay; ensure that any Turkish officials involved in the transfer are brought to justice by the relevant authorities in accordance with international standards; and ensure adequate reparation to the men for the involvement by Turkey in the unlawful transfer.

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<sup>42</sup> Article 2 of the ICCPR and Article 13 of the ECHR.

## 2: Germany and the case of Muhammad Haydar Zammar

*“If you send a prisoner, for instance, to Egypt you will probably never see him again, the same way with Syria.”*

Robert Baer, former CIA station chief in the Middle East<sup>43</sup>

Muhammad Haydar Zammar, a 45-year-old Syrian-born German national, was detained in Morocco in December 2001 and held for several weeks without charge before being flown, reportedly in a CIA plane, to Syria, where he apparently remains in custody. Reports indicate that he may have been tortured there, and his family does not know where he is currently being held.

Muhammad Zammar left Germany on 27 October 2001. He had a return ticket and was travelling on his German passport. He spent several weeks in Morocco, travelled to Mauritania for about 12 days, then returned to Morocco. Senior government sources in Morocco have reportedly indicated that he was taken into custody by Moroccan intelligence agents before boarding his return flight to Germany on 8 December, and was then interrogated by Moroccan and US intelligence officials for over two weeks.<sup>44</sup>

In late December 2001, Muhammad Zammar was transferred, reportedly by the CIA, to Damascus, Syria; CIA Director George Tenet later told a US congressional inquiry that Muhammad Zammar “was moved from Morocco into Syrian custody, where he has remained.”<sup>45</sup> While US officials have said they do not have direct access to Muhammad Zammar in Syria, they reportedly provided written questions to his interrogators. Murhaf Jouejati, a former adviser to the Syrian government, testified before the US National Commission on Terrorist Attacks Upon the United States (9/11 Commission)<sup>46</sup> that “Muhammad Haydar Zammar had been arrested in Morocco and sent to Syria for interrogation, with American knowledge. Although US officials have not been able to interrogate Zammar, Americans have submitted questions to the Syrians.”<sup>47</sup>

In early 2003, a Moroccan man recently released from the Palestine Branch (Far’ Falastin) of Military Intelligence in Damascus told *The Washington Post* that he had been told by other prisoners that Muhammad Zammar was being held at Far’ Falastin, where he had

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<sup>43</sup> “File on 4”, *BBC Radio 4*, 8 February 2005.

<sup>44</sup> Peter Finn, “Al Qaeda Recruiter Reportedly Tortured”, *The Washington Post*, 31 January 2003.

<sup>45</sup> Testimony of George Tenet to the Joint Inquiry into Intelligence Community Activities before and after the Terrorist Attacks of September 11, 2001, <http://files.findlaw.com/news.findlaw.com/cnn/docs/911rpt/part2.pdf>.

<sup>46</sup> *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*, 2004 (New York: Norton).

<sup>47</sup> See [http://www.globalsecurity.org/security/library/congress/9-11\\_commission/030709-joujati.htm](http://www.globalsecurity.org/security/library/congress/9-11_commission/030709-joujati.htm).

been tortured by Syrian officials.<sup>48</sup> Robert Baer, a former CIA station chief in the Middle East, told Amnesty International that he had sought an interview with Muhammad Zammar in April 2003, while working in Syria, but was told that “he is no longer with us”. There were persistent rumours that Muhammad Zammar’s physical condition had deteriorated, and even that he had died.

In 2004 Amnesty International learned from a former detainee that Muhammad Zammar had been held in solitary confinement at Far’ Falastin since his arrival in Damascus. His underground cell was said to be 1.85m long, less than 0.9m wide, and less than 2m high – dimensions that would not allow him to lie down or stand up comfortably. These cells are often referred to as “tombs”. Amnesty International was told that his condition was “skeletal”.

Former detainees say the underground section of Far’ Falastin is infested with rats and lice. There is no bed or mattress in a “tomb” cell, only a couple of old and filthy blankets. One plastic bottle is provided for drinking water, another for urine. Access to fresh air and sunlight in the yard is restricted to a maximum of 10 minutes each month, but can be as infrequent as 10 minutes every six to eight months.

Torture and other ill-treatment are commonly reported at Far’ Falastin. In addition to the prolonged solitary confinement in cramped and wretched conditions, detainees are often beaten or subjected to other methods of torture.

Amnesty International received information that Muhammad Zammar was taken from his solitary confinement cell in Far’ Falastin in October 2004. He may then have been held in Sednaya prison near Damascus. His family in Germany was given their first real indication that he was still alive when a brief letter from him, dated 8 June 2005, was sent to them through the International Committee of the Red Cross (ICRC) in Damascus.

Four and a half years after his detention, it appears that Muhammad Zammar has yet to be charged with any offence and his whereabouts remain unknown to his family.

### ***Germany’s role***

Muhammad Zammar, who had spent time in Afghanistan and reportedly had contacts with known or suspected Islamist militants, had been under intermittent surveillance in the German city of Hamburg for some years before his arrest. He had been questioned by German police after the 11 September 2001 attacks in the USA, and was brought before a court in Hamburg less than a week later. There was not enough evidence to hold him, but the Federal Public Prosecutor initiated an investigation into allegations that he had “supported a terrorist organization”.<sup>49</sup> Muhammad Zammar then left Germany for Morocco. Information about his travel plans, allegedly supplied by Germany’s BKA (the Bundeskriminalamt, or Federal Investigation Office), may have been instrumental in his arrest in Morocco.<sup>50</sup>

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<sup>48</sup> Op. cit., Peter Finn, “Al Qaeda Recruiter Reportedly Tortured”.

<sup>49</sup> Holger Stark, “The Forgotten prisoner: A Tale of Extraordinary Renditions and Double-Standards”, *Der Spiegel*, 21 November 2005.

<sup>50</sup> Holger Stark, “Schlaege und Pistazien”, *Der Spiegel*, 6 March 2006.

In June 2002, however, German officials said they had not been informed that Muhammad Zammar had been arrested, and that they had just learned of his transfer to Syria from press reports.<sup>51</sup> At this point the government reportedly ordered its intelligence agents to locate him, and they were subsequently informed by US officials that he was in the custody of the Syrian authorities.

On 20 November 2002, a delegation of German intelligence and law enforcement officials arrived in Damascus and interrogated Muhammad Zammar for three days. According to reports, they said that he provided them with information about the activities of Islamist militants in Hamburg, but no transcripts of these interrogations have been released or apparently used in other investigations. As *Der Spiegel* magazine noted: “no court operating under the rule of law would ever accept an interrogation conducted in a Damascus prison notorious for its torture practices.”<sup>52</sup>

German diplomatic officials, however, have not been able to visit Muhammad Zammar. They have reportedly filed 13 *notes verbales* and personal interventions asking for clarification of the reasons and location of Muhammad Zammar's detention and seeking a lawyer for him. The Syrian government, which does not recognize Muhammad Zammar's renunciation of his Syrian nationality, has not responded.<sup>53</sup>

Germany's involvement in the arbitrary arrest and detention of Muhammad Zammar in Morocco, as alleged, may make it complicit in the human rights violations committed by Moroccan and Syrian officials. Complicity arises if German officials provided information about Muhammad Zammar that facilitated his arrest in Morocco in the knowledge that the arrest was illegal or that other violations of his rights were imminent. Complicity also arises if German agents carried out an interrogation with the knowledge of the systematic torture of security detainees in Syria, or that the conditions of his detention amounted to torture or other ill-treatment.

In particular, depending on the circumstances, Germany would be complicit in the violation of rights including: the right to recognition everywhere as a person before the law;<sup>54</sup> the right to liberty and security of the person;<sup>55</sup> the right to an effective remedy;<sup>56</sup> and the

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<sup>51</sup> Peter Finn, “Syria Interrogating Al Qaeda Recruiter”, *The Washington Post*, 19 June 2002.

<sup>52</sup> Op. cit., Holger Stark, “The Forgotten prisoner...”

<sup>53</sup> Bundestagsdrucksachen 16/426 and Bundestagsdrucksache 16/287:

Drucksache 16/287: <http://dip.bundestag.de/btd/16/002/1600287.pdf>

Drucksache 16/426: <http://dip.bundestag.de/btd/16/004/1600426.pdf>; see also “German, CIA Roles in Terror Suspect's Torture in Syria”, *BBC Monitoring International Reports*, 22 November 2005.

<sup>54</sup> Article 16 of the ICCPR, which Germany ratified in 1973.

<sup>55</sup> Article 9 of the ICCPR and Article 5 of the ECHR, which Germany ratified in 1952.

<sup>56</sup> Article 2 of the ICCPR and Article 13 of the ECHR.

right not to be subjected to torture or other ill-treatment.<sup>57</sup> These rights are enshrined in the ICCPR and the ECHR as well as the Charter of Fundamental Rights of the European Union.<sup>58</sup>

Germany's intelligence agents and criminal investigation officers should have done everything in their power to ensure that Muhammad Zammar did not remain in detention without charge in circumstances in which it was known that torture and other ill-treatment were routine.

Muhammad Zammar's case is now on the agenda of the parliamentary committee of inquiry (Untersuchungsausschuss) in Germany that was set up to investigate Germany's secret co-operation with the USA and other states in the "war on terror" and the Iraq war. The committee started its work in May 2006.

*Amnesty International calls on the German authorities to:*

- Make strong diplomatic representations on Muhammad Zammar's behalf to ensure that his rights are respected in Syria, that allegations of torture are investigated, and that he is released unless he is to be charged with a recognizably criminal offence and tried without any further delay in proceedings that meet international fair trial standards and do not result in the death penalty.
- Obtain confirmation of his whereabouts and current state of health, and share such information with his family.
- Fully co-operate with the parliamentary committee of inquiry (Untersuchungsausschuss) looking into Germany's involvement in the rendition of Muhammad Zammar and his interrogation by German officials.
- Bring to justice anyone responsible, directly or indirectly, for any human rights violations suffered by Muhammad Zammar.
- Ensure that Muhammad Zammar and his family are granted full reparation, including restitution, adequate and fair compensation, and rehabilitation.

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<sup>57</sup> Article 7 of the ICCPR and Article 3 of the ECHR.

<sup>58</sup> Charter of Fundamental Rights of the European Union, Official Journal C 364, 18 December 2000, pp.1-22.

### 3: Italy, Germany and the case of Abu Omar

*“The kidnapping of Abu Omar was not only a serious crime against Italian sovereignty and human rights, but it also seriously damaged counterterrorism efforts in Italy and Europe... In fact, if Abu Omar had not been kidnapped, he would now be in prison, subject to a regular trial, and we would have probably identified his other accomplices.”*

Armando Spataro, Italian prosecutor investigating the abduction of Abu Omar<sup>59</sup>

Osama Mustafa Hassan Nasr, an Egyptian cleric better known as Abu Omar, was abducted in Milan, Italy, in February 2003. He was then flown to Germany, and from there to Egypt. He is believed to be still in prison in Egypt without charge, and has allegedly been tortured.

Abu Omar had been granted asylum in Italy because his membership of a radical Islamist group, Al Jama'a Al Islamiya, left him at risk of persecution in Egypt. On the morning of 17 February 2003, he began a short walk to the Viale Jenner mosque in Milan, but vanished before arriving.<sup>60</sup>

His wife, Nabila Ghali, reported him missing to the Italian police, who opened a missing person investigation. It soon emerged that a woman had witnessed Abu Omar's abduction.<sup>61</sup> She was interviewed by officers of the General Investigation and Special Operations Division (Divisione Investigazioni Generali e Operazioni Speciali – DIGOS) and by the Prosecutor.<sup>62</sup> The woman returned to Egypt the day after her deposition. Her husband later said that she had seen “two Western-dressed men attack a bearded Arab, dressed in a white jalabia, who struggled and cried for help while being violently grabbed and forcibly made to enter a van.”<sup>63</sup>

More than a year later, in April 2004, Abu Omar was temporarily released and was able to speak by telephone to Nabila Ghali and to an Egyptian friend in Milan, Elbadry Mohammed Reda. In these conversations, Abu Omar described his abduction. He said that he had been stopped on the street by some Italian-speaking men who identified themselves as police. They demanded his identification, then sprayed something on his mouth and nose and pushed him into a van, where his mouth was taped. The van drove off and travelled for about five hours.

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<sup>59</sup> “CIA Ruse Is Said to Have Damaged Probe in Milan”, *Washington Post Foreign Service*, 6 December 2005.

<sup>60</sup> Arrest Warrant of 20 July 2005, Tribunale Ordinario di Milano, Section XI Criminal Court as Review Judge, N° 1413/2005 RG TRD [3]. Abu Omar was also under investigation by DIGOS for his connection to an organization with terrorist aims, Id. [3]. For this reason his telephone was, prior to his “disappearance”, subject to wire-tapping, Id. [3] and [32].

<sup>61</sup> Op. cit., Arrest Warrant of 20 July 2005, TRD [24-25].

<sup>62</sup> Op. cit., Arrest Warrant of 20 July 2005, TRD [24].

<sup>63</sup> Op. cit., Arrest Warrant of 20 July 2005, TRD [31].

Abu Omar told Elbadry Mohammed Reda that he believed he was first taken to a US military airbase “because he had clearly spotted US military aircraft”. The Italian investigation into the abduction confirmed that Abu Omar had been brought to the joint US/Italian airbase at Aviano in Italy. At the base, according to Elbadry Mohammed Reda, Abu Omar said he was handed over to people who were speaking English and Italian and who had an Arabic interpreter:

*“Those who spoke English and Italian... who Abu Omar believed to be American... beat him whilst repeatedly asking questions on three specific issues... on his relationship with Al Qaeda... on his involvement with the Iraqi war, asking if he was sending volunteers in that area to fight Americans... He told me he was beaten... tortured... interrogated.”*<sup>64</sup>

From Aviano he was reportedly put on a Learjet LJ-35 (SPAR-92): SPAR stands for Special Air Resources, a military airlift service that reportedly uses Learjets and other executive-style jets to transport senior military officers and civilian VIPs.<sup>65</sup> Flight records show that the plane left Aviano at 6.20pm, arriving about an hour later in Germany at Ramstein airbase, the headquarters of US Air Forces Europe.<sup>66</sup>

In Germany, Abu Omar was apparently transferred to a Gulfstream IV jet (N85VM) owned by Phillip Morse, a co-owner of the Boston Red Sox baseball team in the USA, and chartered by Richmor Aviation. Flight records show that this plane left Ramstein for Cairo, Egypt, at 8.31pm. Phillip Morse told *The Boston Globe* that he charts this plane to the CIA as well as to other clients, and that he was “stunned” by reports that it had been used in renditions.<sup>67</sup>

On arrival in Cairo, Abu Omar was blindfolded and taken by Egyptian personnel to a location in the city, where he says he suffered various forms of torture. According to Elbadry Mohammed Reda:

*“[T]he first measure was to leave him in a room where incredibly loud and unbearable noise was made... he has experienced damage to his hearing. The second kind of torture was to place him in a sauna at tremendous temperature and straight after to put him in a cold storeroom... occasioning terrible pain to his bones... as if they were cracking... The third was to hang him upside down... and apply live wires to the sensitive parts of the body including his genitals... and producing electric shocks... he has suffered damage to his motory and urinary systems... he became incontinent... They tortured him accusing him of being an Al Qaeda terrorist and a*

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<sup>64</sup> Statement of Elbadry Mohammed Reda, dated 15 June 2005, quoted in Arrest Warrant of 20 July 2005, TRD [49], omissions in the original.

<sup>65</sup> John Crewdson, Tom Hundley and Liz Sly, “Italy Charges CIA Agents”, *Chicago Tribune*, 25 June 2005.

<sup>66</sup> Op. cit., Arrest Warrant of 20 July 2005 TRD, p.187.

<sup>67</sup> Gordon Edes, “CIA uses jet, Red Sox partner confirms”, *The Boston Globe*, 21 March 2005.

*militant against the Egyptian regime... they wanted to wrest information from him that he was unable to give.*<sup>68</sup>

Abu Omar was released from detention in Egypt on 20 April 2004, some 14 months after his abduction. In a phone call recorded by Italian investigators on 8 May, Abu Omar told Elbadry Mohammed Reda:

*"I was freed for health reasons, I have a kind of paralysis. To this day I cannot walk for more than 200 metres. I'm always sitting down. I was incontinent, suffered from liver trouble, with high blood pressure... so they let me out on health grounds..."*<sup>69</sup>

He was re-arrested about three weeks later, on 12 May, possibly because he disobeyed instructions from the Egyptian authorities not to tell anyone what had happened to him. Nabila Ghali went to Egypt and visited her husband on 21 February 2005 in a prison near Alexandria. She returned three days later to be informed that he had been transferred to Cairo.<sup>70</sup> His family has not seen him since.

For more than a year after the abduction, DIGOS made "no significant progress" in finding Abu Omar. Indeed, investigators had almost dropped the case after a communication forwarded by the CIA in March 2003 – apparently aimed at misdirecting the investigation – stated that "Abu Omar had relocated to an unknown Balkan location."<sup>71</sup>

Examination of mobile phone records led to a decisive breakthrough. By tracing all calls in the area at the time of the abduction, police compiled a list of suspects, now believed to be CIA agents. The prosecutor who led the investigation, Armando Spataro, said that the police identified 17 mobile phones that were in the area at the time of the kidnapping. The same technique revealed the suspects' movements in the months leading up to the kidnapping. According to the mobile phone records, the alleged CIA agents began arriving in Milan around two months before the kidnapping and staked out the predominantly immigrant neighbourhood where Abu Omar lived.<sup>72</sup>

The phone records show that two groups were at work on the day of the abduction. One carried out the abduction, while a second group waited on the outskirts of Milan to receive Abu Omar. Phone tracking shows that the kidnappers travelled to the US/Italian airbase at Aviano.<sup>73</sup>

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<sup>68</sup> Op. cit., Arrest Warrant of 20 July 2005, TRD [49], p.8.

<sup>69</sup> Op. cit., Arrest Warrant of 20 July 2005, TRD, p.5.

<sup>70</sup> Op. cit., Arrest Warrant of 20 July 2005, TRD [53], p.9.

<sup>71</sup> Op. cit., Arrest Warrant of 20 July 2005, TRD [33]. See also Craig Whitlock, "CIA Ruse Is Said to Have Damaged Probe in Milan", *The Washington Post*, 6 December 2005.

<sup>72</sup> Op. cit., Arrest Warrant of 20 July 2005, TRD [160].

<sup>73</sup> Op. cit., Arrest Warrant of 20 July 2005, TRD [161]. The Aviano base is a main component of the US North Atlantic Treaty Organization (NATO) operations in Europe. It is run jointly by the US and Italian air forces and has an estimated 4,200 troops and 1,000 US and Italian civilians. Source: Tracy Wilkinson and Bob Drogin, "Missing Imam's Trail Said to Lead from Italy to CIA", *Los Angeles Times*, 3 March 2005.



Twenty-two of the arrest warrants requested by prosecutors and police in Milan were issued. The warrants were registered with Europol, the police agency for the EU. In December 2005, an Italian court also issued European arrest warrants, which allow for detention anywhere in the EU, for the 22 suspects. If any of the 22 suspects travel to a Europol country under their CIA cover names, they could be arrested and extradited to Italy for trial. However, it is likely that the names used by most of the suspects were false.

On 10 November 2005, a formal request was issued to the Italian government by Italian prosecutors seeking the extradition of 22 alleged CIA operatives on charges of kidnapping. In January 2006, Justice Minister Roberto Castelli approved a request by Milan prosecutors for international court assistance, or a rogatory, which could allow prosecutors to travel to the USA to question suspects and witnesses. On 11 April, however, he refused to submit an extradition request to the USA for the 22 people named on the indictments. Roberto Castelli was part of the government voted out of office in April 2006.<sup>74</sup> Prosecutor Armando Spataro said: "We will repeat the extradition request the moment the new government is formed... We are convinced there will be a different decision from the next minister of justice."<sup>75</sup>

### ***Italy's role***

The Italian government and security services have denied any knowledge or involvement in the rendition of Abu Omar, and in February 2006 Prosecutor Armando Spataro noted that the investigation conducted by Italian prosecutors had found no direct evidence of Italy's involvement in the abduction and rendition.

However, the draft interim report of the European Parliament Temporary Committee's investigation into renditions, released on 24 April 2006, said that on the basis of the evidence it had studied it was "implausible" that:

*"the abduction of the Egyptian national Abu Omar by CIA agents in Milan on 17 February 2003 was organized and carried out without prior notice being given to the Italian government authorities or security services."*<sup>76</sup>

The 7 June Marty report reached a similar conclusion:

*"Is it conceivable or possible that an operation of that kind, with deployment of resources on that scale in a friendly country that was an ally (being a member of the coalition in Iraq), was carried out without the national authorities – or at least Italian opposite numbers – being informed?"*<sup>77</sup>

In further developments in the investigation in early May 2006, *L'Espresso* magazine had reported that an Italian Carabinieri officer had participated in the abduction of Abu Omar.

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<sup>74</sup> "Italy halts CIA extradition bid", *BBC news online*, 12 April 2006, <http://news.bbc.co.uk/2/hi/europe/4903518.stm> (accessed 15 May 2006).

<sup>75</sup> Eric Lyman, "US-Italian relations face change under Prodi", *ISN Security Watch*, 25 April 2006.

<sup>76</sup> Op. cit., *Draft interim report*, 24 April 2006.

<sup>77</sup> Op. cit., 7 June Marty report, para.162.

The officer admitted to prosecutors that he was the man who had stopped Abu Omar in the street on the pretext of carrying out a routine documents check. Carabinieri officials say that the officer was acting without official authorization.<sup>78</sup> According to the UK newspaper *The Guardian*, prosecutors accepted that the officer “was not obeying instructions from his Carabinieri superiors. But they are looking into whether he might have been moonlighting with Italy’s military intelligence service, SISMI.”<sup>79</sup>

*The Washington Post* had reported in June 2005 that the CIA station chief in Rome had informed SISMI about the planned abduction and had asked for its prior approval. Anonymous CIA officials reportedly said that the CIA and SISMI agreed to deny any involvement if the operation became public.<sup>80</sup>

Italy has an obligation to protect everyone on its territory against human rights violations. If it is confirmed that Italian officials co-operated in or were aware of and took no measures to prevent Abu Omar’s abduction, Italy would have breached that obligation. It would then be complicit in any human rights violations suffered by Abu Omar in the context of his rendition, including violations of the right to personal liberty,<sup>81</sup> the right to recognition everywhere as a person before the law,<sup>82</sup> the right not to be subjected to torture or other ill-treatment and the right not to be transferred to a country where he risked being tortured or ill-treated.<sup>83</sup> These rights are enshrined in the ICCPR, the ECHR, the UN Convention against Torture and the Charter of Fundamental Rights of the European Union.<sup>84</sup>

Any de facto agreement to transfer Abu Omar to US control that bypassed appropriate legal safeguards would implicate Italy in the violation of the prohibition of arbitrary expulsion of aliens in Article 13 of the ICCPR and Article 1 of Protocol No. 7 to the ECHR.<sup>85</sup>

Italy has an obligation to investigate these violations, hold those responsible to account, and provide appropriate reparation to Abu Omar and his family. This obligation should be met by issuing a formal request seeking the extradition of the suspected perpetrators of the violations.

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<sup>78</sup> *L'Espresso*, May 2006,

<http://www.espressonline.it/eol/free/jsp/detail.jsp?idCategory=4821&idContent=1522775&m2s=null>

<sup>79</sup> John Hooper, “Italy denies role in CIA abduction”, *The Guardian*, 12 May 2006.

<sup>80</sup> Dana Priest, “Italy Knew About Plan to Grab Suspect”, *The Washington Post*, 30 June 2005.

<sup>81</sup> Article 9 of the ICCPR and Article 5 of the ECHR. Italy ratified the ICCPR in 1978 and the ECHR in 1955.

<sup>82</sup> Article 16 of the ICCPR.

<sup>83</sup> Article 7 of the ICCPR, Article 3 of the ECHR, and the UN Convention against Torture, including the *non-refoulement* principle provisions of Article 3.

<sup>84</sup> Charter of Fundamental Rights of the European Union, Official Journal C 364, 18 December 2000, pp.1-22.

<sup>85</sup> Italy ratified Protocol No.7 on 7 November 1991.

***Amnesty International calls on the Italian authorities to:***

- Co-operate fully with the Italian judiciary by asking the US authorities for the extradition of the people for whom arrest warrants have been issued.
- Give to the Italian judiciary all information they have on the actions of CIA agents before, during and after the abduction of Abu Omar.
- Ensure that appropriate reparation is provided to Abu Omar and his family by the states responsible for the violation of his human rights.
- Press the government of Egypt to establish an independent and impartial investigation into allegations of torture or other ill-treatment of Abu Omar, hold accountable any individual responsible, and provide full reparation.
- Make immediate representations to Egypt for the return of Abu Omar to Italy unless he is promptly charged with a recognizably criminal offence and tried without any further delay; the proceedings should comply fully with international fair trial standards and exclude the possibility of the death penalty.

***Germany's role***

Abu Omar was flown from Italy to the US airbase in Ramstein, Germany. From there he was put on a plane bound for Egypt where he faced a clear risk of torture or other ill-treatment. German prosecutors started a formal investigation in 2005, after receiving files from the Italian prosecutors indicating that Abu Omar had been transported from Aviano to Ramstein by the CIA.

German prosecutor Eberhard Bayer told Amnesty International that he has found no evidence implicating German officials in the abduction of Abu Omar. However, the findings of the Italian investigation indicated that the crimes of deprivation of liberty and coercion were probably committed against Abu Omar on German soil by persons unknown. The agents holding Abu Omar had to step out of the plane – and therefore onto German soil – to transport Abu Omar to the plane that brought him to Egypt. The identity of the persons unknown is crucial to the investigation, as the prosecutor believes that the Status of Forces Agreement (SOFA) would prevent him from initiating a prosecution against US soldiers stationed in Germany. But if the perpetrators were identified as CIA agents, or others not covered by the SOFA, he believes that a prosecution would be possible. Based on telephone numbers provided by the Italian investigators, the prosecutor found two individuals who were not only present in Milan but also travelled to Ramstein. However, he has been unable to locate these individuals and the US authorities have not provided any information about them.<sup>86</sup>

US military and civilian personnel stationed in Germany must respect German law and abstain from any activity inconsistent with the SOFA (Article II). Amnesty International believes that while the SOFA provides that the USA has the primary right to exercise

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<sup>86</sup> Telephone interviews with Eberhard Bayer, German prosecutor on the Abu Omar case, November 2005 and February and May 2006.

jurisdiction over its military or civilian personnel in relation to offences committed in the performance of official duty, conduct constituting or facilitating international crimes, such as torture or enforced disappearances, cannot be seen as performance of such a duty. In addition, if the USA declines to exercise jurisdiction in criminal cases, it is obliged to give “sympathetic consideration” to a request from German authorities to exercise such jurisdiction (SOFA, Article VII). Indeed, as affirmed by the European Court of Human Rights, member states are obliged to take all measures within their power to ensure that no person within their territory is subjected to violations of rights secured by the ECHR, including violations committed by foreign officials. This obligation extends to parts of their territory such as foreign military bases over which they may have limited or no effective control.

Germany has an obligation to protect everyone within its territory against human rights violations, even in the absence of effective control over a part of that territory. If Germany had been informed about Abu Omar’s abduction and transfer through German territory and still allowed the CIA plane to land, knowing that other abuses could possibly occur, then Germany would be in breach of that obligation and responsible for any human rights violations suffered by him. These would include violations of, among others, the right to recognition everywhere as a person before the law; the right to liberty and security of person; the right to an effective remedy;<sup>87</sup> and the right not to be subjected to torture or other ill-treatment. These rights are enshrined in the ICCPR, the ECHR, the UN Convention against Torture, and the Charter of Fundamental Rights of the European Union.<sup>88</sup>

Germany would also have a general obligation to investigate any of these violations, hold any perpetrators to account, including criminally for conduct constituting torture, and to provide appropriate reparation to Abu Omar and his family.

*Amnesty International calls on the German authorities to:*

- Not allow German territory to be used by the USA (or any other country) to transport people to countries where they may face serious human rights violations including torture or other ill-treatment. Any provision of the SOFA that may hinder Germany’s authority in this regard must be modified.
- Co-operate fully with the German judiciary investigating the case and press the US authorities to provide all information necessary to clarify the case.
- Ensure that those who co-operated with the CIA in the transfer of Abu Omar are brought to justice.
- Provide appropriate reparation to Abu Omar and his family if it is found that his human rights were violated in Germany.

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<sup>87</sup> Article 2 of the ICCPR and Article 13 of the ECHR.

<sup>88</sup> Germany ratified the ICCPR in 1973 and the ECHR in 1952.

## 4: Macedonia, Germany and the case of Khaled el-Masri

*“The story of El-Masri is the dramatic story of a person who is evidently innocent – or at least against whom not the slightest accusation could ever be made – who has been through a real nightmare in the CIA’s ‘spider’s web’ ...”*<sup>89</sup>

Dick Marty, Rapporteur of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe

Khaled el-Masri, a German national who lives in the village of Senden, near Neu-Ulm in southern Germany, was abducted on a trip to Macedonia. He was detained and interrogated, then handed to US officials and secretly flown to Afghanistan where he was held in a US-run prison for five months. He was then flown to somewhere in the Balkans, driven for a while in a car and finally left by the side of a road in Albania.

His ordeal began on 31 December 2003 when he was detained by Macedonian officials after his passport was confiscated on the border between Serbia and Macedonia. He was interrogated at the border, and then driven to the capital, Skopje, by armed men in plain clothes, possibly police. He was subsequently held in a hotel room for 23 days by at least nine armed men, in rotating teams of three, believed to be from the Uprava za Bezbednost i Kontrarazuznavanje (UBK), the Directorate for Security and Counter-Intelligence.<sup>90</sup> He was interrogated in English, a language he says he barely understands, about Islamist organizations and was accused of attending a “terrorist training camp” in Jalalabad, eastern Afghanistan. He says he repeatedly asked for access to the German ambassador or other authority.

*“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. At the hotel, I was repeatedly questioned about my activities in Ulm, my associates, my mosque, meetings with people that had never occurred, or associations with people I had never met.”*<sup>91</sup>

He says he was forced to record a video saying that he had been treated well and that he was being flown back to Germany before being blindfolded, handcuffed and driven to

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<sup>89</sup> Op. cit., 7 June Marty report, para.132.

<sup>90</sup> Police and intelligence sources told the Institute for War and Peace Reporting (IWPR) that Khaled el-Masri was held for 23 days by members of the security police from the Macedonian Directorate for Security and Counter-Intelligence – in response to information and a request from the CIA. “Investigation: Macedonia Implicated in ‘Abduction’ Case,” BCR (Balkan Crisis Report) No.538, 21 January 2005, retrieved at [www.iwpr.net/?=bcr&s=f&o=242469&apc\\_state=henibcr2005](http://www.iwpr.net/?=bcr&s=f&o=242469&apc_state=henibcr2005).

<sup>91</sup> *El-Masri v. George Tenet; Premier Executive Transport Services; Keeler and Tate Management LLC; Aero Contractors Ltd*; Does 1-20, complaint filed in the US District Court, Eastern District of Virginia, 6 December 2005.

what appears to have been Skopje airport on 23 January 2004. At the airport he was beaten by men dressed in black and wearing hoods and gloves.

*“Someone sliced the clothes off my body, and 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 says he was dressed in plastic underpants and a tracksuit with short sleeves and legs, had a plastic bag put over his head making it hard to breathe, and was subject to other sensory deprivation. He was marched to the plane hooded and still shackled, was thrown onto the floor and spread-eagled, and then had his arms and legs secured to the sides of the plane.

He was flown to Baghdad in Iraq and then on to 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.<sup>92</sup> Amnesty International believes he was flown on the CIA’s Boeing 737, registration number N313P, from Macedonia to Afghanistan, as flight records show that the plane left Skopje just before midnight on 24 January, the day of his rendition, and flew to Kabul via Baghdad.<sup>93</sup>

Khaled el-Masri says he was detained in a cell in a dark cellar where he was beaten and given insufficient food. To protest against his treatment he went on hunger strike, and was subsequently forcibly fed. Isotope analysis of his hair confirmed that he “had spent time in a South Asian country and had been deprived of food for an extended period”.<sup>94</sup> He was repeatedly interrogated by US agents, and on four occasions by a uniformed German speaker “with no foreign accent at all”, 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.<sup>95</sup> However, the “mix-up” explanation lacks credibility. In both Macedonia and Afghanistan, Khaled el-Masri was repeatedly interrogated about activities at the cultural centre attached to a mosque in Neu-Ulm, which he regularly attended. If he had really been mistaken for another Khaled el-Masri, an individual identified in the *9/11 Commission Report* who reportedly trained at an al-Qa’ida training camp, the interrogators would surely have asked him about this.<sup>96</sup>

The extraordinary manner of his return to Europe highlights the disregard shown for human rights in the context of anti-terrorism measures, even of those deemed to have been

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<sup>92</sup> Op. cit., *El-Masri v. George Tenet*, para. 35.

<sup>93</sup> Op. cit., *USA: Below the radar*.

<sup>94</sup> Op. cit., *El-Masri v. George Tenet*, para. 57.

<sup>95</sup> David Johnston and Don Van Natta, “Rice ordered release of German sent to Afghan prison in error”, *The New York Times*, 23 April 2005.

<sup>96</sup> Op. cit., *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*, 2004, p.165.

mistakenly arrested. On 28 May, Khaled el-Masri was put on a plane and told he would be flown to a European country that would not be Germany. When the flight landed, he was put into a car and driven along mountainous roads for about six hours. At one point, three men with “south European/Slavic accents” climbed into the car, but said little. He was finally let out of the car, his blindfold and handcuffs were removed, and he was given his suitcase. He was then instructed to walk down a path without looking back. It was dark, he said, and “as I walked I feared that I was about to be shot in the back and left to die.”<sup>97</sup>

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 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. When he asked how far away the airport was, the officer told him that it was “as far and from the same place that you came from”, suggesting to Khaled el-Masri that he had already landed at the Albanian capital, Tirana, before being driven to the border. Amnesty International has not been able to corroborate this.

The three men in uniform then drove him to the Mother Teresa International Airport near Tirana. They arrived at around 6.30am and were met by an officer in plain clothes who took Khaled el-Masri's passport and money. A ticket was bought for him to Frankfurt, Germany. The officer in plain clothes then accompanied him to the plane.<sup>98</sup> The plane arrived in Frankfurt on the morning of 29 May 2004. Khaled el-Masri says that he went to Senden to find his house deserted, his family gone. 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.

On 6 December 2005 the American Civil Liberties Union (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. 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.

In dismissing the case, however, the judge noted:

*“[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. Yet, it is also clear from the result reached here that the only sources of that remedy must be the Executive Branch or the Legislative Branch, not the Judicial Branch.”*<sup>99</sup>

<sup>97</sup> *El-Masri v. George Tenet*, Declaration of Khaled el-Masri, April 2006.

<sup>98</sup> *Op. cit.*, *El-Masri v. George Tenet*; English translation of statement made in German by Khaled el-Masri, Exhibit F.

<sup>99</sup> *Op. cit.*, *El-Masri v. George Tenet*, Document 51.

The ACLU announced that it would continue to pursue a fair hearing, and noted that the US government is “abusing the state secrets privilege to cover up its kidnapping and torture of an innocent man”.<sup>100</sup>

### ***Macedonia's role***

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.”<sup>101</sup>

This partnership appears to be working particularly well at the level of the intelligence services. The 7 June Marty report notes that information received by the Council of Europe inquiry shows that the 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.”<sup>102</sup> The report continues: “The UBK has an excellent reputation for its professionalism. It is well practiced in the conduct of clandestine surveillance and detention operations... Information obtained from our internal sources indicates that the UBK is equally skilled in working on behalf of the CIA...”<sup>103</sup>

Macedonia has officially denied that Khaled el-Masri was held illegally. Hari Kostiv, the Interior Minister at the time and later the Prime Minister, reportedly said:

*“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.”*<sup>104</sup>

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 ICCPR and Article 5 of the ECHR.

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. 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,

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<sup>100</sup> ACLU press release: “Day in Court Denied for Victim of CIA Kidnapping and Rendition, Khaled El-Masri”, 19 May 2006.

<sup>101</sup> Don Van Natta Jr., Souad Mekhennet and Nicholas Wood, “Germany weighs if it played role in seizure by U.S.”, *The New York Times*, 21 February 2006.

<sup>102</sup> Op. cit., 7 June Marty report, para. 116.

<sup>103</sup> Op. cit., 7 June Marty report, para. 117.

<sup>104</sup> Op. cit., Don Van Natta Jr., Souad Mekhennet and Nicholas Wood.



Macedonia's officials are responsible for the violations he suffered, and may be considered complicit in the alleged violations by US officials.

Macedonia had publicly agreed to assist in the German prosecution<sup>105</sup> (see below) and to disclose all relevant information to the Council of Europe's investigation.<sup>106</sup> However, its initial response was characterized as "inadequate" by Council of Europe Secretary General Terry Davis, who concluded that Macedonia had missed the opportunity to "dispel all doubts about their alleged misconduct".<sup>107</sup> Goran Pavlovski, head of the Interior Minister's cabinet, insisted that "Macedonia has answered all questions sent by the Council of Europe... We are ready to answer additional questions, if any, as we did when the members of the European Parliament and EU brought up this issue."<sup>108</sup> Terry Davis sent a second letter to Macedonia asking for an answer by 7 April. On 12 April he said that he had received an answer that was being analysed.<sup>109</sup> Amnesty International is still waiting for a response to a letter it sent to the authorities on this case.

Members of the European Parliament's Temporary Committee who conducted further investigations, including through meetings with government officials, in Macedonia in late April 2006 found inconsistencies in the account given by the Macedonian authorities, although they have yet to report formally on their findings.<sup>110</sup>

Macedonia's refusal to cooperate fully with the Council of Europe and European Parliament has been mirrored in its own failure to investigate the alleged violations of the rights of Khaled el-Masri, bring disciplinary or criminal proceedings against UBK personnel or other officials suspected of responsibility or involvement, or pay reparation to Khaled el-Masri. According to the 7 June Marty report, the Macedonian authorities have not only denied, but have actively tried to cover up their role in Khaled el-Masri's abduction, while the Macedonian Parliament "has not shown the initiative to take up the issue..."<sup>111</sup> The committee assigned to supervise the secret services apparently ceased to operate some three years ago.<sup>112</sup>

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<sup>105</sup> E-mail from August Stern, 9 February 2006.

<sup>106</sup> *Behörden ermitteln: Mazedonien will im Fall Al Masri helfen*, www.tagesschau.de, 27 January 2006.

<sup>107</sup> "Europe Urged to Restrain Foreign Spies", *The Washington Post*, 2 March 2006.

<sup>108</sup> "Macedonia Insists It Fully Complied with COE Demands over Al-Masri-CIA Case", *BBC Monitoring International Reports*, 1 March 2006 (Source: Makfax news agency, Skopje, in English, 1 March 2006).

<sup>109</sup> Speaking notes for the press conference of Terry Davis, Secretary General of the Council of Europe, 12 April 2006, available at [http://www.coe.int/T/E/Com/Files/PA-Sessions/April-2006/20060412\\_Speaking-notes\\_sg.asp](http://www.coe.int/T/E/Com/Files/PA-Sessions/April-2006/20060412_Speaking-notes_sg.asp).

<sup>110</sup> European Parliament press release, "FYROM: 'Contradictions' found in government's version of El Masri case", 4 May 2006.

<sup>111</sup> Op. cit., 7 June Marty report, para. 126.

<sup>112</sup> Op. cit., 7 June Marty report, para. 253.

*Amnesty International calls on the Macedonian authorities to:*

- Initiate an independent, thorough and impartial investigation into the reported violations of Khaled el-Masri's rights from the moment of arrest to his departure from Macedonia, and bring to justice anyone 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.

### **Germany's role**

Khaled el-Masri's lawyer in Germany, Manfred Gnjdic, believes that the interrogation and reported torture of Khaled el-Masri may have occurred with the knowledge of German officials,<sup>113</sup> and that there are indications that the German authorities knew that Khaled el-Masri had been arrested in Macedonia. However, the German authorities have insisted that they knew nothing of Khaled el-Masri's plight until 31 May 2004, shortly after he was freed.<sup>114</sup>

In June 2004, after Manfred Gnjdic informed the German police by letter of his client's experience, the German authorities took up his case.<sup>115</sup> Police interviewed Khaled el-Masri and the prosecution confirmed several key aspects of his account.<sup>116</sup> The German prosecutors issued letters rogatory (request for international court assistance) to the Macedonian government on 18 April 2005. On 14 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.<sup>117</sup>

On 20 February 2006, Khaled el-Masri picked a senior German police official out of a line-up and said that he was "90 per cent" certain that this was "Sam", the man who had interrogated him several times in Kabul.<sup>118</sup> The official selected by Khaled el-Masri was Gerhard Lehmann, who officially works for the German Federal Criminal Police.

Khaled el-Masri believes that "Sam" was on the flight that took him from Afghanistan to Europe on 28 May 2004. He said:

*"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*

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<sup>113</sup> Telephone interview with Manfred Gnjdic, 28 November 2005.

<sup>114</sup> "Macedonia faces tough questions on CIA prisoner", *Reuters*, 27 April 2006.

<sup>115</sup> E-mail from August Stern, 9 February 2006.

<sup>116</sup> Telephone interviews with Martin Hofmann and August Stern, 6 February 2006.

<sup>117</sup> Minutes of the Bundestag (Bundestagsprotokoll), 14 December 2005;

<http://dip.bundestag.de/btp/16/16007.pdf>. Frank-Walter Steinmeier told the German parliament that neither the Bundesnachrichtendienst (equivalent of the CIA) nor the Verfassungsschutz (comparable to the UK's internal security agency MI5) nor the Bundesanwaltschaft (Federal Prosecutor's Office) were involved.

<sup>118</sup> Telephone interview with Manfred Gnjdic on 22 February 2006.

*involvement in my ordeal, but that I would eventually continue on to Germany. I believed I would be executed rather than returned home."*

Khaled el-Masri's case is now also with the parliamentary committee of inquiry (Untersuchungsausschuss) in Germany that was set up to investigate Germany's secret co-operation with the USA and other states in the "war on terror" and the Iraq war. The committee started its work in May 2006.

On 1 June 2006 the German Bundesnachrichtendienst (BND or Federal Intelligence Service) 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 BND said that the staff member had been in the cafeteria of a Macedonian government agency when "a person unknown to him" told him that "a German citizen by the name of El-Masri had been detained at Skopje Airport because he was named on a wanted persons list. El-Masri was then turned over to the Americans." The staff member, apparently a radio engineer, did not report the incident at the time "because it was not part of his range of duties and he did not attach any significance to it."<sup>119</sup> According to the official statement from the BND: "This information breakdown within the Service is being thoroughly dealt with by all those involved in order to rule out the possibility of anything like this happening again."<sup>120</sup>

*Amnesty International calls on the German authorities to:*

- Fully co-operate with the parliamentary committee of inquiry (Untersuchungsausschuss) 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 Afghanistan detention facility 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 regarding the imparting of information on Khaled el-Masri to US intelligence agencies prior to his rendition and during his captivity.
- 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.

*Amnesty International calls on the Albanian authorities to:*

- Make public the role of their officials, including in any negotiations with the US authorities, in connection with the return of Khaled el-Masri to Germany.

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<sup>119</sup> *Spiegel online*, "Masri-Anwalt erwägt Klage gegen Bundesregierung", 2 June 2006.

<sup>120</sup> *Spiegel online*, "Dokumentiert die Mitteilung des BND von heute zum Fall El-Masri", 1 June 2006.

## 5: Sweden and the case of Ahmed Hussein Mustafa Kamil Agiza and Mohammed El Zari<sup>121</sup>

*“This kind of complete transfer of the exercise of public authority to foreign officials on Swedish territory is not compatible with Swedish law.”*

Mats Melin, Sweden's Chief Parliamentary Ombudsman

On 18 December 2001 a distressed woman rang the offices of Amnesty International in Sweden. Hanan Attia said that her husband, Ahmed Agiza, had just been detained and was about to be deported to Egypt, along with another Egyptian national, Mohammed El Zari. In 1998 Ahmed Agiza had been tried *in absentia* before a military court in Egypt “for terrorist activity directed against the state” along with around 100 others. He was found guilty of belonging to an illegal group, Al Jihad, and was sentenced to 25 years' imprisonment without the possibility of appeal.

Both men had been seeking asylum in Sweden. The government had rejected their applications without informing their lawyers about this decision or the decision to summarily expel them to Egypt, and without allowing them access to a court or independent administrative body to challenge the decisions. Within hours of the government's decision, they were chained inside the back of a small CIA-leased plane, surrounded by US agents, heading for Cairo in Egypt.

The CIA plane had arrived in Sweden with a crew and a security team of seven or eight, among them a doctor and two Egyptian officials.<sup>122</sup> At the airport, the members of the security team, who were all masked and communicated with one another largely through hand signals, took Ahmed Agiza and Mohammed El Zari to a small changing room where they carried out a thorough body search which they referred to as a “security check”. The two men's clothes were cut off and placed in bags, their hair was thoroughly examined, as were their mouths and ears. One of the men has said that he was forced to bend over while naked, and that he then felt some object being inserted into his anus, apparently some kind of muscle relaxant. He was then given waterproof underpants. Other reports indicate that both men underwent this procedure.<sup>123</sup>

The men were handcuffed, shackled and dressed in boiler suits before being photographed. They were then hooded. They were not given any shoes or socks, despite the freezing temperature. Paul Forell, a Swedish police inspector among those present at the

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<sup>121</sup> Unless otherwise stated, the following information is based on the extract from Scrutiny Report 2005/06:KU2 from Sweden's Parliamentary Committee on the Constitution, or the report of the inquiry, registration number 2169-2004, by Mats Melin, Sweden's Chief Parliamentary Ombudsman, date of adjudication: 22 March 2005.

<sup>122</sup> *Op. cit.*, English summary of Mats Melin's inquiry, p.7.

<sup>123</sup> See, for example, *Swedish TV4*, Kalla Fakta Program: “The Broken Promise”, Part I (English Transcript), 17 May 2004, available at <http://hrw.org/english/docs/2004/05/17/sweden8620.htm>.

airport on the night of 18 December, noted that the whole process was carried out quickly, silently and “extremely professionally”.<sup>124</sup> Within about 30 minutes, the two men were on the waiting plane.

Amnesty International has flight records showing that on 18 December a Gulfstream V executive jet (N379P) arrived at Bromma, Sweden, from Cairo, Egypt, landing just before 9pm. The plane took off again an hour later, heading for Cairo, landing just before 3am on 19 December. The plane had made at least four other trips to Cairo that month. The same Gulfstream V has been used in other known cases of rendition.

Upon arrival in Cairo, Ahmed Agiza and Mohammed El Zari were taken off the plane by Egyptian officials, and were driven away in a bus. They were held incommunicado for five weeks. Both men told Swedish diplomats that they had been tortured or otherwise ill-treated in detention. During the Swedish ambassador's first prison visit to Ahmed Agiza on 23 January 2002 – more than a month after the expulsion – Ahmed Agiza complained of being forced to remain in a painful position during the flight from Sweden to Egypt, of being blindfolded during interrogation, of beatings by prison guards and of threats against his family by interrogators.

On 10 April 2004 Ahmed Agiza was re-tried before a military court in Egypt on charges of joining and leading an illegal group or organization and criminal conspiracy. Later that month, after an unfair trial,<sup>125</sup> he was convicted and again sentenced to 25 years' imprisonment without the possibility of appeal.<sup>126</sup> The court refused to investigate Ahmed Agiza's complaint that he had been tortured, or to order a medical examination, as requested by his lawyer during the trial. His sentence was reduced to 15 years' imprisonment in June 2004 by Egypt's President Hosni Mubarak. Ahmed Agiza remains in prison in Egypt. In 2005 his wife, Hanan Attia, and their five children were granted refugee status in Sweden.

Mohammed El Zari was released from prison in Cairo in October 2003 without ever having been charged with a crime. His complaint against Sweden alleging that his human rights were violated is currently under consideration by the UN Human Rights Committee.

## ***Sweden's role***

### ***(a) Decisions to refuse asylum and expel***

Ahmed Agiza and Mohammed El Zari were denied access to a full and fair asylum determination process in Sweden. Although the Swedish immigration authorities came to the view that the two men were entitled to claim refugee status, they referred the case to the government for a decision because of the Security Police's assessment of them as national

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<sup>124</sup> *Swedish TV4*, Kalla Fakta Program: “The Broken Promise”, Part II, (English Transcript), 24 May 2004, available at <http://www.hrw.org/english/docs/2004/05/24/sweden9219.htm>.

<sup>125</sup> See Human Rights Watch, *Sweden Implicated in Egypt's Abuse of Suspected Militant – Egypt Violated Diplomatic Promises of Fair Trial and No Torture for Terrorism Suspect*, 5 May 2004.

<sup>126</sup> UN Committee against Torture, *Agiza v. Sweden*, 24 May 2005, Communication No. 233/2003, UN Doc. CAT/C/34/D/233/2003.

security threats. The government decided that they should be denied refugee status and be summarily expelled following diplomatic assurances provided by Egypt (see below). These decisions had been taken on the basis of secret intelligence, allegedly provided by foreign intelligence agencies to Säpo (Sweden's Security Police), which was withheld from both men and their lawyers. They were given no opportunity to appeal to an independent or impartial body against the decisions to deny them refugee status and to deny them protection against *refoulement*, or against the subsequent decision to summarily expel them from Sweden. Their summary expulsion to Egypt contravened the prohibition of *refoulement*.

The men's asylum cases had been referred to the Swedish government at the beginning of November 2001.<sup>127</sup> According to the report by Mats Melin, Sweden's Chief Parliamentary Ombudsman, the Security Police had already concluded that expulsion could be required. The Foreign Affairs Ministry announced on 5 December that no decision should be expected before 20 December.<sup>128</sup>

However, on 18 December, following a briefing from the Security Police, the Foreign Affairs Minister decided to exclude the two men from refugee protection; her decision – which the men's lawyers did not receive until after they had been returned to Egypt – stated that the men had been in leading positions in an organization responsible for terrorist acts, and that they could be expelled immediately. It has since emerged that the US authorities had expressed concern to their Swedish counterparts about the presence of Ahmed Agiza and Mohammed El Zari in Sweden – in particular that they were at liberty and that information about these two individuals and their background had originated from US intelligence.<sup>129</sup>

The Swedish government said that it had sought diplomatic assurances<sup>130</sup> from the Egyptian government that the men would not be tortured, would receive a fair trial and would not be sentenced to death.<sup>131</sup> The Swedish government said that it had reached an understanding with the Egyptian authorities that Sweden would monitor any trial of the two men and would regularly visit them in prison. However, there was no agreement over what steps could be taken if the Egyptian authorities did not fulfil their commitments.

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<sup>127</sup> The referral had been made in accordance with Sweden's Aliens Law when a case is considered to be a security matter.

<sup>128</sup> Op. cit., report of the inquiry, registration number 2169-2004, by Mats Melin.

<sup>129</sup> Unofficial transcript of the hearing before Sweden's Parliamentary Committee on the Constitution, questioning of Sven Olof Petersson, former Political Director of the Ministry of Foreign Affairs, 24 May 2005, provided by Human Rights Watch.

<sup>130</sup> For an in-depth study of the human rights concerns to which diplomatic assurances give rise, see, for example, *Still at Risk – Diplomatic Assurances No Safeguard Against Torture*, Human Rights Watch, April 2005; *Diplomatic Assurances – No protection against torture or ill-treatment* (AI Index: ACT 40/021/2005).

<sup>131</sup> The assurances were sought and obtained through an exchange of aides-mémoire and during a conversation between the then Swedish State Secretary Gun-Britt Andersson and an Egyptian representative.

Sweden's Parliamentary Committee on the Constitution reviewed the government's handling of the expulsion of the two men.<sup>132</sup> It concluded that the Swedish government should not have accepted the Egyptian authorities' diplomatic assurances, and that therefore it should not have expelled the two men.

Sweden breached its international obligation not to expel, return or extradite a person to another state where there are substantial grounds for believing that they would be in danger of being tortured or otherwise ill-treated (the obligation of *non-refoulement*). On 25 June 2003, Ahmed Agiza had brought a complaint before the UN Committee against Torture that his removal by Sweden to Egypt on 18 December 2001 violated this provision.<sup>133</sup> In May 2005 the Committee concluded that Sweden was in breach of both substantive and procedural provisions of Article 3 of the Convention against Torture (*non-refoulement*). It also found Sweden in violation of Article 22 (the right to individual petition).<sup>134</sup>

The Committee stated that at the time of Ahmed Agiza's removal, the Swedish authorities knew or should have known that the use of torture was widespread in Egypt and the risk was particularly high in relation to people detained for political and security reasons. The Committee highlighted that the Swedish authorities were aware that the intelligence services of two other states were interested in Ahmed Agiza, that he had been sentenced *in absentia* and was still wanted for alleged involvement in terrorist activities and therefore that the natural conclusion was that he was "at real risk of torture in Egypt in the event of expulsion". The Committee concluded that "the procurement of diplomatic assurances, which moreover provide no mechanism for their enforcement, did not suffice to protect against this manifest risk."<sup>135</sup> The deporting state therefore still bears responsibility.<sup>136</sup>

The Swedish authorities have not offered any compensation and have not lifted the ban on Ahmed Agiza's return to Sweden. Speaking before parliament on 25 October 2005, the Minister for Migration, Barbro Holmberg, dismissed the assertion that the Committee against Torture's conclusions gave rise to an obligation to pay compensation, declaring that the Committee's recommendations were not binding.

### *(b) The enforcement of the expulsion*

The Swedish authorities had chartered a plane for the men's expulsion, which was scheduled to depart on the morning of 19 December 2001. Before the expulsion decision was made, however, the Security Police received an offer from the CIA for the use of a plane that "was said to have what was referred to as direct access so that it could fly over Europe without having to touch down".<sup>137</sup> The Security Police later said that the offer was accepted in order to avoid undue delay. In his report, Mats Melin stated that the information available to him

<sup>132</sup> Scrutiny Reports 2001/02, 2002/03 and 2005/06, the last one published on 21 September 2005. The reports are available in Swedish at <http://www.riksdagen.se/webbnav/index.aspx?nid=5566>.

<sup>133</sup> UN Committee against Torture, *Agiza v. Sweden*, 24 May 2005.

<sup>134</sup> UN Committee against Torture, *Agiza v. Sweden*, 24 May 2005.

<sup>135</sup> UN Committee against Torture, *Agiza v. Sweden*, 24 May 2005.

<sup>136</sup> *Op. cit.*, 7 June Marty report, para. 159.

<sup>137</sup> From the report of the inquiry, registration number 2169-2004, by Mats Melin.

strongly suggested that the Swedish "Foreign Minister was informed about the alternative involving the use of an American aircraft for the enforcement [of the expulsion] and the Security Police received the impression that this procedure had been accepted."<sup>138</sup>

Ahmed Agiza was picked up at a bus stop in Karlstad and informed of the decision to deport him at 4.55pm. Mohammed El Zari was taken from his workplace in Stockholm at about 5pm. Both were body searched by Swedish police officers. They were taken separately to Bromma Airport in Stockholm, arriving at 8.20pm and 8.30pm respectively. Just before 9pm, the Gulfstream jet touched down at the airport. Paul Forell, the Swedish police inspector, later said: "It is a little extraordinary that we had not been contacted about the plane, because all aircraft that come from non-Schengen countries [European countries that are signatories to the 1985 Schengen Agreement on immigration and border issues] are to contact the police, and no one informed us that an American plane would land at Bromma."

A Swedish Security Police officer and a civilian interpreter were taken on the flight to Cairo. They subsequently confirmed that Ahmed Agiza and Mohammed El Zari were strapped to mattresses in the rear of the plane, and remained handcuffed and shackled during the entire flight to Egypt. The Swedish officer said that the body search and the use of handcuffs and shackles were ordered by the plane's captain. He said the captain told him that this "security check" and the hooding of both men were requirements of a policy implemented after 11 September 2001 concerning the transport of individuals with terrorist links. The Swedish officer later reported the case to the head of the Security Police, who drew up a memorandum on the expulsion and submitted it to the Swedish Ministry of Justice. In turn, the Ministry of Justice found that "the measures adopted [during the expulsion] were not obviously incompatible with Swedish law but that at the same time they were not totally in accord with Swedish police procedures. The conclusions reached by the Ministry were presented to the Minister of Justice on March 26, 2002. The Ministry of Justice took no measures as a result of the account presented in the Security Police's memorandum."<sup>139</sup>

In May 2004, after a Swedish television programme broadcast details of the case, the Swedish Parliamentary Ombudsman launched an inquiry into the events at Bromma Airport and the manner in which the expulsions were carried out. In March 2005 he concluded that the Security Police officers at the airport were remarkably submissive to the US officials and gave them free rein to exercise public authority on Swedish territory:

*"The inquiry in this case shows that the American security officials did not merely assist the Security Police in their enforcement but that in reality they took over and were in control from the moment of their arrival at Bromma airport. Admittedly Swedish Security Police officers were present, but they remained passively in the background while the American officials were allowed to conduct the security checks on their own. This kind of complete transfer of the exercise of public authority to foreign officials on Swedish territory is not compatible with Swedish law..."*

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<sup>138</sup> Op. cit., English summary of Mats Melin's inquiry, p.16.

<sup>139</sup> Op. cit., English summary of Mats Melin's inquiry, p.10.



*“To sum up, it can be concluded that at Bromma airport the Security Police had already lost control of the enforcement. In reality, the Security Police officers at the airport relinquished the enforcement to American officials and gave them free hands to exercise public authority. There is no basis in law for conduct of this kind.”*<sup>140</sup>

In May 2005 the Committee against Torture concluded that the men had suffered “at least” cruel, inhuman or degrading treatment by foreign agents on Swedish territory with the acquiescence of the Swedish police.<sup>141</sup>

The Ombudsman considered that the treatment Ahmed Agiza and Mohammed El Zari suffered from the time of the “security check” at the airport until they arrived in Cairo must in its entirety be characterized as inhuman and degrading.<sup>142</sup> He also criticized the behaviour of the Swedish Security Police, saying that they should have prevented the two Egyptians from being treated in this way.

In November 2005 the Swedish Foreign Minister wrote to the Egyptian Foreign Minister proposing an independent investigation involving both countries. However, according to Ahmed Agiza’s lawyer, no such investigation had been established as of May 2006.

Sweden has an obligation to respect and protect the human rights of everyone within its territory. It bears responsibility for violations on its territory, even when committed by foreign agents. Sweden also has an obligation to investigate these violations, hold the perpetrators to account and provide reparation to Ahmed Agiza, Mohammed El Zari and their families.

On 18 June 2004 a Stockholm District Prosecutor decided not to institute a preliminary inquiry, saying there were no grounds for assuming that any criminal offence had been committed by Swedish police.<sup>143</sup> Subsequently, on 3 November 2004, the Prosecutor-Director at the Public Prosecution Authority in Stockholm, upon conducting a review of the District Prosecutor’s decision, confirmed the latter’s decision. Amnesty International considers that the investigations carried out to date have not been adequate, and that no one has been held accountable for the human rights violations that both men have suffered.

In addition, despite the Committee against Torture’s conclusion that Sweden had breached its obligations under the Convention with respect to the protection against *refoulement*, on several occasions Sweden has declared that it believes it has no responsibility for what happened to Ahmed Agiza and Mohammed El Zari in Egypt.

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<sup>140</sup> Op. cit., English summary of Mats Melin’s inquiry, p.20.

<sup>141</sup> UN Committee against Torture, *Agiza v. Sweden*, 24 May 2005, para.13.4.

<sup>142</sup> Op. cit., English summary of Mats Melin’s inquiry, p.25.

<sup>143</sup> Letter by Eva Jagander, Director of the Department for International Law, Human Rights and Treaty Law at the Swedish Ministry of Foreign Affairs of 18 August 2005, addressed to the UN Committee against Torture (redacted version available on file with Amnesty International).

Furthermore, the Swedish government withheld relevant information given by the Swedish ambassador in his report of his first visit,<sup>144</sup> which took place five weeks after the two men were sent back to Egypt. This information included their complaints of mistreatment.<sup>145</sup>

As the 7 June Marty report notes, “different aspects of the case need further investigation. This disguised extradition, without any possibility of appeal and judicial scrutiny, and the ill-treatment at Bromma Airport, still on the ground, under the eyes of Swedish officials, as well as the incomplete information provided to UN-CAT [UN Committee against Torture] are serious matters which require that the whole truth be exposed.”<sup>146</sup>

### *(c) Breaches of international law by Sweden*

Sweden has violated its obligations under international refugee law by failing to provide a fair and full asylum determination procedure, as well as under international refugee and human rights law by failing to respect the prohibition of *refoulement*.<sup>147</sup> Further, the Swedish authorities failed to grant the men an opportunity for an independent and effective review of

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<sup>144</sup> Swedish diplomats, including the Swedish ambassador to Egypt, conducted monthly visits, although none of them was held in private until July 2004. Ahmed Agiza told his mother that prior to the meeting with Swedish representatives he had been warned “don’t think that we don’t hear, we have ears and eyes”. UN Committee against Torture, *Agiza v. Sweden*, 24 May 2005, para.10.4. It has also been reported that the Swedish Embassy’s reports of the visits indicate that meetings have taken place in the office of the Prison Director, often in the presence of Egypt’s security service personnel, who appeared to be taking notes of what both men said.

<sup>145</sup> The UN Committee against Torture stated: “The Committee considers it appropriate to observe that its decision in the current case reflects a number of facts which were not available to it when it considered the largely analogous complaint of Hanan Attia where, in particular, it expressed itself satisfied with the assurances provided. The Committee’s decision in that case, given that the complainant had not been expelled, took into account the evidence made available to it up to the time the decision in that case was adopted. The Committee observes that it did not have before it the actual report of mistreatment provided by the current complainant to the ambassador at his first visit and not provided to the Committee by the State party... the mistreatment of the complainant by foreign intelligence agents on the territory of the State...” UN Committee against Torture, *Agiza v. Sweden*, 24 May 2005, para.13.5.

<sup>146</sup> Op. cit., 7 June Marty report, para. 243.

<sup>147</sup> The Committee noted that the obligation of *non-refoulement* encompasses a right to an effective remedy for its breach, requiring “an opportunity for effective, independent and impartial review of the decision to expel or remove, once that decision is made, when there is a plausible allegation” that *non-refoulement* issues arise. The Committee made clear that, like the obligation of *non-refoulement*, the right to such a review is not limited by national security concerns. On this basis, the Committee concluded that Sweden had violated the obligation of *non-refoulement*. UN Committee against Torture, *Agiza v. Sweden*, 24 May 2005.

the decision to expel them. Sweden has also violated the prohibition of torture or other ill-treatment by failing to prevent ill-treatment by foreign agents on its soil and on the plane.<sup>148</sup>

The Swedish authorities' handing over of Ahmed Agiza and Mohammed El Zari to the custody of US agents outside the rule of law makes Sweden complicit in their rendition to US custody.

Sweden bears responsibility for the human rights violations suffered by the two men in Egypt, including their alleged torture or other ill-treatment in custody and the unfair trial of Ahmed Agiza.<sup>149</sup> Sweden has also breached its obligation under the Convention against Torture on the effective right of individual communication to the Committee against Torture, and its obligation to cooperate with the Committee.

Sweden has an obligation to investigate all of these violations, hold any perpetrators to account, and to provide reparation to Ahmed Agiza and Mohammed El Zari and their families.

*Amnesty International calls on the Swedish authorities to:*

- Immediately establish an independent investigation with a view to determining the criminal responsibility, including the dereliction of duty, of those individuals directly or indirectly involved in the failure to prevent the ill-treatment of Ahmed Agiza and Mohammed El Zari at the hands of US agents both at Bromma Airport and on the plane, as well as with a view to determining any criminal responsibility on the part of US agents in the treatment of Ahmed Agiza and Mohammed El Zari.
- Investigate the exact role played by the Swedish authorities in the transfer of Ahmed Agiza and Mohammed El Zari to US custody with a view to determining any criminal responsibility.
- Press for the Egyptian authorities to: establish an independent and impartial investigation into the allegations that Ahmed Agiza and Mohammed El Zari were tortured or otherwise ill-treated; grant Ahmed Agiza, if he is not to be released, a new trial before an independent and impartial civilian court in proceedings that meet internationally recognized fair trial standards; and grant Ahmed Agiza unfettered access to his lawyers, regular family visits and appropriate and adequate medical care.
- Ensure that adequate reparation is provided to Ahmed Agiza and Mohammed El Zari and others whose human rights have been violated, including when the determination of such violations is made by an international or regional body or mechanism such as the Committee against Torture.

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<sup>148</sup> Article 7 of the ICCPR and Article 3 of the ECHR, and the UN Convention against Torture. Sweden ratified the ICCPR in 1971, the ECHR in 1952 and the Convention against Torture in 1986.

<sup>149</sup> The Swedish authorities have acknowledged that Ahmed Agiza's re-trial failed to live up to the assurances that Sweden had sought from Egypt, and that indeed he did not receive a fair trial. See, for example, the remarks made by Hans Dahlgren, Sweden's State Secretary for Foreign Affairs (Vice Foreign Minister), to *Swedish TV4* Kalla Fakta Program: "The Broken Promise", 17 May 2004.

- Lift the expulsion order prohibiting Ahmed Agiza from returning to Sweden for 10 years. Ensure that Mohammed El Zari and, upon his release, Ahmed Agiza, be permitted to enter Sweden, where Ahmed Agiza can be reunited with his family. In addition, both men should be allowed to apply for asylum in Sweden, if they so choose, and their application should be assessed in a full and fair asylum determination procedure.

- Do not seek or accept diplomatic assurances or similar bilateral agreements as a way of circumventing the prohibition of *refoulement*.

## **6: The United Kingdom and the case of Bisher Al-Rawi and Jamil El-Banna**

*"It is your government, Britain, the MI5, who called the CIA and told them that you and Bisher were in Gambia and to come and get you...Britain sold you out to the CIA."*

Jamil El-Banna's statement to his lawyer referring to what his interrogators in Gambia allegedly said to him.

On 8 November 2002 Bisher Al-Rawi and Jamil El-Banna flew from the UK to Gambia to set up a peanut processing business. Bisher Al-Rawi, an Iraqi national, had been living with his family in the UK since 1983; Jamil El-Banna, a Jordanian national, had arrived in the UK in 1994 and was given indefinite leave to remain in the UK as a refugee.<sup>150</sup>

On their arrival at Banjul Airport in Gambia, they were arrested by the Gambian National Intelligence Agency (NIA). Bisher Al-Rawi's brother, Wahab Al-Rawi, a UK national who had gone to the airport to meet them, was also arrested, as was another UK national, Abdullah El Janoudi, with whom they had travelled to set up the business.

After initial questioning by NIA agents at the NIA headquarters in Banjul on the purpose of their visit to Gambia, their interrogation was apparently taken over by US agents. The four men were held in several undisclosed locations in Banjul during this time. One of the men was reportedly threatened by US agents and told that unless he co-operated he would be handed over to Gambian police who would beat and rape him.

Wahab Al-Rawi and Abdullah El Janoudi were released without charge on 5 December 2002 and returned to the UK. Bisher Al-Rawi and Jamil El-Banna were held incommunicado for over a month in Banjul and questioned by US agents about their alleged links with al-Qa'ida. At some date before 23 January 2003 both men were secretly transferred to the US airbase in Bagram in Afghanistan via Kabul. Their transfer took place before they

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<sup>150</sup> Bisher Al-Rawi's relatives living in the UK are all UK nationals, as are Jamil El-Banna's five young children.

were allowed to consult a lawyer, before any independent review of any evidence against them, and despite the fact that a habeas corpus petition on their behalf was pending in the High Court in Gambia. After approximately one month in Bagram they were transferred to Guantánamo Bay where they have remained ever since.

### **The UK's role**

*“This case, which concerns two British permanent residents arrested in Gambia in November 2002 and transferred first to Afghanistan and from there to Guantanamo (where they still are) is an example of (ill-conceived) cooperation between the services of a European country (the British MI5) and the CIA in abducting persons against whom there is no evidence enabling them to be kept in prison lawfully...”*

Dick Marty, Rapporteur of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe<sup>151</sup>

On 2 November 2002, six days before they flew to Gambia, Bisher Al-Rawi, Jamil El-Banna and Abdullah El Janoudi had been arrested at London's Gatwick Airport just before they tried to board a flight to Gambia. They were questioned under the Terrorism Act 2000 for two days by UK authorities about their alleged association and involvement with international terrorism.

They were detained because a suspect device – an apparently modified battery charger – was found in Bisher Al-Rawi's luggage. However, they were eventually released without charge and told they were free to travel to Gambia.

In late 2002 it was revealed that Bisher Al-Rawi and Jamil El-Banna had been questioned or otherwise contacted by the UK authorities on other occasions since 11 September 2001, including during visits to their homes, but had not been charged with a criminal offence.

From November 2002, when Amnesty International first learned of the case, the organization repeatedly raised its concerns about the treatment of Bisher Al-Rawi and Jamil Al-Banna with the UK authorities, asking in particular what role, if any, they had played in the men's unlawful transfer to US custody. The UK authorities did not respond.

In 2006, however, the UK's involvement in the detention, and possibly the rendition, of Bisher Al-Rawi and Jamil El-Banna was confirmed by a series of revelations in the course of a judicial review by the High Court of England and Wales. The grounds for bringing the cases included the UK government's refusal to petition the US authorities for the release of Jamil El-Banna and Bisher Al-Rawi, or make any representations on their behalf.<sup>152</sup> During the court case, documents were disclosed by a member of the UK security services, identified

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<sup>151</sup> Op. cit., 7 June Marty report, para.163.

<sup>152</sup> On 4 May the High Court found that the two men had failed to establish that the UK authorities were under any obligation to petition their US counterparts for the men's release. An appeal against the judgment will be heard in late July 2006.

only as “Witness A”, which confirmed that the UK security services had kept Bisher Al-Rawi and Jamil El-Banna under surveillance in the period up to their departure for Gambia. The documents also confirmed Jamil El-Banna’s earlier statement to his lawyer that two UK intelligence agents had gone to his house about 10 days before he travelled to Gambia and told him that they knew about his planned trip. When Jamil El-Banna had asked them if he was allowed to go, they told him he was.

The High Court also heard how the UK security services had provided information to a country other than Gambia whose identity was not disclosed. Amnesty International considers that, in the circumstances, the only logical conclusion to draw is that this other country was the USA. The Court concluded:

*“The fact of the matter, however, is that information was undoubtedly given to Gambians about the proposed movements of the claimants; and the surrounding circumstances suggest that either directly or indirectly this information came into the hands of the United States authorities.”*

The judgment disclosed that in a letter dated 9 February 2006 the UK authorities stated: “any suggestion of complicity on the part of the British authorities in the detention of Mr Al Rawi and Mr El Banna is denied.” Another letter from the UK authorities dated 16 February 2006 stated that neither the UK Foreign and Commonwealth Office nor the Home Office – as opposed to the security and intelligence agencies, as highlighted in the judgment – were complicit in the detention of Bisher Al-Rawi and Jamil El-Banna.

The Court stated:

*“Whether the British authorities knew that the result of disseminating this information was that the claimants would be detained, by the United States authorities, and more importantly removed to Afghanistan and then Guantanamo Bay, is another matter. We have insufficient evidence to make any positive finding to that effect, in the face of the denials, albeit somewhat carefully worded...”*

The Court also heard how the UK security service had passed on information to the other country to the effect that the “suspicious” item found in the men’s luggage was a possible “improvised explosive device”. However, the UK security services failed to inform the other country – to which they had already provided information about Bisher Al-Rawi and Jamil El-Banna – that they had examined this device already and that it had been shown to be a modified battery charger, commercially available in an unmodified form.<sup>153</sup>

In addition, it was revealed that the UK security services had communicated to the other country: a) the reasons for their interest in Jamil El-Banna and Bisher Al-Rawi – that they suspected the men were associated with international terrorism; b) the fact that the men

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<sup>153</sup> The 7 June Marty report notes: “The conclusion to the charger episode – that it was indeed a ‘harmless device’ – was communicated to the [UK] Ministry of Foreign Affairs by MI5 in a telegram of 11 November 2002. Unfortunately, there is no evidence that this information was ever conveyed to the CIA. The allegations concerning this ‘device’ reappeared in their ‘trial’ before the CSRT (Combatant Status Review Tribunal) as ‘evidence’ that they were ‘enemy combatants’” (para. 167).

intended to travel to Gambia; and c) that they had boarded the flight to Gambia, giving details of their arrival time.

These revelations are entirely consistent with the accounts given by Bisher Al-Rawi, Jamil El-Banna and their families since 2002 about the involvement of UK agents in their arrest in Gambia.

In a statement to the Court, Wahab Al-Rawi said that when he asked for the UK High Commissioner to be notified of his detention, one of the Gambian officials laughed and said: "It was the British who told us to arrest you."

Clive Stafford-Smith, the lawyer representing Jamil El-Banna, says that when he was allowed to see his client in Guantánamo Bay, Jamil El-Banna told him:

*"My interrogator asked me, 'Why are you so angry at America? It is your government, Britain, the MI5, who called the CIA and told them that you and Bisher were in Gambia and to come and get you. Britain gave everything to us. Britain sold you out to the CIA'."*

In the course of the hearing, it was also stated that Bisher Al-Rawi, at the request of the UK security services, had agreed to inform them about someone who was in hiding and whom the authorities suspected of involvement with international terrorism. It was revealed that the UK security services had promised Bisher Al-Rawi that they would assist him if he found himself in any difficulty. No such assistance has been forthcoming.

Following these and other revelations in the High Court on the first day of the hearing, the UK authorities agreed to petition their US counterparts to seek the release of Bisher Al-Rawi and his return to the UK.

In the face of continuing silence or obfuscation by the UK authorities about the role they played in this case, it remains unclear whether the UK actually asked the US authorities to detain the two men or simply helped them to do so. It is clear that the UK was instrumental in the detention itself, which was "largely triggered or at least influenced" by messages about the men's background and travel plans sent by UK authorities in November 2002.<sup>154</sup> The UK would also have been complicit in the rendition of the two men and the resulting human rights violations if the UK authorities were or should have been aware that the provision of information on the two would lead to their rendition. Such violations could include: the right to recognition everywhere as a person before the law;<sup>155</sup> the right to access to a court; the right to liberty and security of person;<sup>156</sup> the right to an effective remedy;<sup>157</sup> and the right not to be

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<sup>154</sup> Op. cit., 7 June Marty report, para. 176.

<sup>155</sup> Article 16 of the ICCPR, which the UK ratified in 1976.

<sup>156</sup> Article 9 of the ICCPR and Article 5 of the ECHR, which the UK ratified in 1951.

<sup>157</sup> Article 2 of the ICCPR and Article 13 of the ECHR.

subjected to torture or other ill-treatment.<sup>158</sup> These rights are enshrined in the ICCPR and ECHR as well as the Charter of Fundamental Rights of the European Union.<sup>159</sup>

*Amnesty International calls on the UK authorities to:*

- Establish a full, independent and impartial investigation into the UK's involvement in the detention and rendition of Bisher Al-Rawi and Jamil El-Banna with a view to establishing, among other things, any specific responsibilities of UK agents for the human rights violations suffered by the two men as a result.
- Make immediate representations to their US counterparts for the return of the two men to the UK unless they are promptly charged with a recognizably criminal offence and tried without any further delay; the proceedings should comply fully with international fair trial standards and exclude the possibility of the imposition of the death penalty.
- Keep the men's families fully informed.
- Ask the US authorities to establish an independent and impartial inquiry into the rendition of the two detainees and bring to justice anyone responsible for abuses against them.
- Guarantee that on return to the UK, Bisher Al-Rawi and Jamil El-Banna are afforded at least the same status as they enjoyed before their rendition, and are not subsequently sent anywhere where they would be at risk of torture or other ill-treatment.

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<sup>158</sup> Article 7 of the ICCPR and Article 3 of the ECHR.

<sup>159</sup> Charter of Fundamental Rights of the European Union, Official Journal C 364, 18 December 2000, pp.1-22.