



Resolution 1562 (2007)¹

Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report

Parliamentary Assembly

1. The Parliamentary Assembly recalls its [Resolution 1507 \(2006\)](#) and [Recommendation 1754 \(2006\)](#) on alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states, and refers to the report of 12 June 2006² which revealed the existence of a “spider’s web” of illegal transfers of detainees woven by the Central Intelligence Agency (CIA) in which Council of Europe member states were involved, and expressed suspicions that secret places of detention might exist in Poland and Romania.
2. It now considers as established with a high degree of probability that such secret detention centres operated by the CIA have existed for some years in these two countries, though does not rule out the possibility that secret CIA detentions may also have occurred in other Council of Europe member states.
3. Analysis of the data on the movements of certain aircraft, obtained from different sources, including international air traffic control authorities, and supplemented by numerous credible and concordant testimonies, has enabled the places in question to be identified.
4. These secret places of detention formed part of the High-Value Terrorist Detainee (HVD) programme publicly referred to by the President of the United States on 6 September 2006.
5. Analysis of this programme, based on information obtained from many sources on both sides of the Atlantic, shows that detainees considered especially sensitive – including some of those mentioned by the President of the United States – were held in Poland. For logistical and security reasons, detainees considered to be less important were held in Romania.
6. The HVD programme was set up by the CIA with the co-operation of official European partners belonging to government services and kept secret for many years thanks to strict observance of the rules of confidentiality laid down in the NATO framework. The implementation of this programme has given rise to repeated serious breaches of human rights.
7. The detainees were subjected to inhuman and degrading treatment, which was sometimes protracted. Certain “enhanced” interrogation methods used fulfil the definition of torture and inhuman and degrading treatment in Article 3 of the European Convention on Human Rights (ETS No. 5) and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Furthermore, secret detention as such is contrary to many international undertakings, both of the United States and of the Council of Europe member states concerned.
8. The Assembly notes the fact that the concepts of state secrecy or national security invoked in different ways and with different consequences by many governments (Germany, Italy, Poland, Romania, Russian Federation in the Northern Caucasus, “the former Yugoslav Republic of Macedonia”, United States), make it more difficult to conclude judicial and/or parliamentary proceedings aimed at ascertaining responsibility for

1. Assembly debate on 27 June 2007 (23rd Sitting) (see [Doc. 11302](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Marty). Text adopted by the Assembly on 27 June 2007 (23rd Sitting).

2. [Doc. 10957](#)



rehabilitating and compensating the alleged victims of violations. In several countries (Germany, Italy, United States), legal issues pertaining to the limits of state secrecy and executive privilege are still pending before the highest national courts.

9. Information as well as evidence concerning the civil, criminal or political liability of the state's representatives for serious violations of human rights must not be considered as worthy of protection as state secrets. If it is not possible to separate such cases from true, legitimate state secrets, appropriate procedures must be put into place ensuring that the culprits are held accountable for their actions while preserving state secrecy.

10. The scope of the executive's reserved area, exempted by virtue of state secrecy and national security from parliamentary and judicial review under legislation or in accordance with practice dating from the worst period of the Cold War, must be reconsidered to take into account the principles of democracy and rule of law.

11. The Assembly is also anxious about the threats to European governments' freedom of action resulting from their covert involvement in the CIA's unlawful activities. The disclosure of the truth, necessary on grounds of principle, is also the best way of restoring the vital co-operation between secret services for the prevention and suppression of terrorism on a sound and sustainable basis.

12. Only Bosnia and Herzegovina and Canada, the latter an observer to the Council of Europe, have fully acknowledged their responsibilities with regard to the unlawful transfers of detainees.

13. The Romanian parliamentary delegation has shown a firm resolve to co-operate with the Assembly, but has itself encountered the government authorities' reluctance to shed all possible light on the CIA's questionable activities in Romanian territory.

14. In Italy, the trial of the kidnapers of Abu Omar runs into obstacles due to considerations of state secrecy. The Assembly is deeply perturbed by the proceedings brought recently against the Milan public prosecutors themselves for breach of state secrecy. It regards such proceedings as intolerable impediments to the independence of justice.

15. In Germany, the work of the Bundestag commission of inquiry is proceeding energetically. But the prosecutorial authorities, engaged in the hunt for the kidnapers of Khaled El-Masri, still meet with a lack of co-operation on the part of the American and Macedonian authorities. Khaled El-Masri still awaits the rehabilitation and redress of damages owed to him, in the same way as Maher Arar, the victim in a comparable case in Canada.

16. The Assembly solemnly restates its position that terrorism can and must be combated by methods consistent with human rights and the rule of law. This position of principle, founded on the values upheld by the Council of Europe, is also the one that best guarantees the effectiveness of the fight against terrorism in the long term.

17. The Assembly regrets the unwillingness of NATO to co-operate with the rapporteur and asks the parliaments and the governments of those Council of Europe member states which are also members of NATO to clarify fully the extent of the secret CIA flights and use of secret detentions in Europe.

18. The Assembly therefore calls upon:

18.1. the governments of all Council of Europe member states to:

18.1.1. make a full commitment that they will play no future part in allowing the transportation through their states, or the holding for any length of time, of any remaining detainees currently held at Guantánamo Bay;

18.1.2. make available to their national parliaments all relevant information held by them, including witness statements, relating to the role of the state in question in the practice of extraordinary rendition or the holding of prisoners in secret detention centres in their state, should they wish to conduct an inquiry;

18.2. the governments of all Council of Europe member states who did not respond to the request made by the rapporteur and the Parliamentary Assembly of the Council of Europe fully to explain their reasons for failing to co-operate;

- 18.3. the parliaments and judicial authorities of all Council of Europe member states to:
 - 18.3.1. elucidate fully, by reducing to a reasonable minimum the restrictions of transparency founded on concepts of state secrecy and national security, the secret services' wrongful acts committed on their territory with regard to secret detentions and unlawful transfers of detainees;
 - 18.3.2. ensure that the victims of such unlawful acts are fittingly rehabilitated and compensated;
 - 18.4. NATO to make public the additional components to the NATO authorisation of 4 October 2001 that have until now remained secret;
 - 18.5. the media to fully perform their role as champions of transparency, the search for truth, tolerance and of human rights and dignity;
 - 18.6. the competent authorities of all member states to implement the other proposals embodied in its [Resolution 1507 \(2006\)](#).
19. Finally, the Assembly reaffirms the importance of setting up within it a genuine European parliamentary inquiry mechanism.