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This Factsheet does not bind the Court and is not exhaustive

Secret detention sites

First so-called "rendition" case decided by the European Court of Human Rights

El-Masri v. "The former Yugoslav Republic of Macedonia"

13 December 2012 (Grand Chamber)

The case concerned the complaints of a German national of Lebanese origin that he had been a victim of a secret "rendition" operation during which he was arrested, held in isolation, questioned and ill-treated in a Skopje hotel for 23 days, then transferred to CIA (Central Intelligence Agency) agents who brought him to a secret detention facility in Afghanistan, where he was further ill-treated for over four months.

The European Court of Human Rights found the applicant's account to be established beyond reasonable doubt and held that "The former Yugoslav Republic of Macedonia" had been responsible for his torture and ill-treatment both in the country itself and after his transfer to the United States authorities in the context of an extra-judicial "rendition".

The Court held that there had been a **violation of Article 3** (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights, on account of the inhuman and degrading treatment to which the applicant had been subjected while being held in a hotel in Skopje, on account of his treatment at Skopje Airport, which amounted to torture, and on account of his transfer into the custody of the United States authorities, thus exposing him to the risk of further treatment contrary to Article 3. The Court also found a **violation of Article 3** on account of the failure of "The former Yugoslav Republic of Macedonia" to carry out an effective investigation into the applicant's allegations of ill-treatment.

The Court further held that there had been a **violation of Article 5** (right to liberty and security) of the Convention, on account of the applicant's detention in the hotel in Skopje for 23 days and of his subsequent captivity in Afghanistan, as well as on account of the failure to carry out an effective investigation into his allegations of arbitrary detention.

Lastly, the Court found a **violation of Article 8** (right to respect for private and family life) and a **violation of Article 13** (right to an effective remedy) of the Convention.

Recent judgments of the Court

Al Nashiri v. Poland and Husayn (Abu Zubaydah) v. Poland

24 July 2014

These two cases concerned allegations of torture, ill-treatment and secret detention of two men suspected of terrorist acts. Both applicants submitted that they had been held at a CIA "black site" in Poland. They maintained in particular that Poland had knowingly and intentionally enabled the CIA to hold them in secret detention in the Stare Kiejkuty facility, for six and nine months, respectively, without any legal basis or review and without any contact with their families. They complained that Poland had knowingly and intentionally enabled their transfer from Polish territory despite the real risk of further ill-treatment and incommunicado detention, allowing them to be transferred to a jurisdiction where they would be denied a fair trial. Finally, they complained that Poland

had failed to conduct an effective investigation into the circumstances surrounding their ill-treatment, detention and transfer from the Polish territory.

Having regard to the evidence before it, the Court came to the conclusion that the applicants' allegations that they had been detained in Poland were sufficiently convincing. The Court found that Poland had cooperated in the preparation and execution of the CIA rendition, secret detention and interrogation operations on its territory and it ought to have known that by enabling the CIA to detain the applicants on its territory, it was exposing them to a serious risk of treatment contrary to the Convention.

In both cases, the Court held that Poland had **failed to comply with** its obligation under **Article 38** (obligation to furnish all necessary facilities for the effective conduct of an investigation) of the Convention. It further held, in both cases, that there had been a **violation of Article 3** (prohibition of torture and inhuman or degrading treatment) of the Convention, in both its substantive and procedural aspects, a **violation of Article 5** (right to liberty and security), a **violation of Article 8** (right to respect for private and family life), a **violation of Article 13** (right to an effective remedy) and a **violation of Article 6 § 1** (right to a fair trial) of the Convention. As regards the first applicant, the Court lastly held that there had been **a violation of Articles 2** (right to life) **and 3 taken together with Article 1** (abolition of the death penalty) **of Protocol No. 6** to the Convention.

Nasr and Ghali v. Italy

23 February 2016[1]

This case concerned the "extraordinary rendition" – the abduction by CIA agents, with the cooperation of Italian nationals – of Egyptian imam Abu Omar, and his transfer to Egypt, followed by his secret detention there for several months. The applicant complained in particular of his abduction with the participation of the Italian authorities, the ill-treatment endured during his transfer and detention, the impunity enjoyed by the persons responsible on grounds of State secrecy, and the failure to enforce the sentences passed on the convicted US nationals owing to the refusal of the Italian authorities to request their extradition. Lastly, he and his wife – the second applicant – complained of a violation of their right to respect for private and family life, given that the first applicant's abduction and detention had resulted in their forcible separation for more than five years.

The Court held, with regard to the *first applicant*, that there had been a violation of Article 3 (prohibition of torture and inhuman or degrading treatment), a **violation of Article 5** (right to liberty and security), a **violation of Article 8** (right to respect for private and family life) and a **violation of Article 13** (right to an effective remedy) **read in conjunction with Articles 3, 5 and 8** of the Convention. With regard to the *second applicant*, it held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment), **of Article 8** (right to respect for private and family life) and **of Article 13** (right to an effective remedy) **read in conjunction with Articles 3 and 8**. In particular, having regard to all the evidence in the case, the Court found it established that the Italian authorities were aware that the first applicant had been a victim of an extraordinary rendition operation which had begun with his abduction in Italy and had continued with his transfer abroad. In the present case the Court held that the legitimate principle of "State secrecy" had clearly been applied by the Italian executive in order to ensure that those responsible did not have to answer for their actions. The investigation and trial had not led to the punishment of those responsible, who had therefore ultimately been granted impunity.

[1]. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.

Cases pending before the Court

Al Nashiri v. Romania (no. 33234/12)

Application communicated to the Romanian Government on 18 September 2012

The applicant in this case is the same as in the case *Al Nashiri v. Poland* (see above). In his application to the Court he complains that Romania, who he alleges knew and should have known about the rendition programme, the secret detention site within its territory in which he was held, and the torture and inhuman and degrading treatment to which he and others were subjected to as part of the process, knowingly and intentionally enabled the CIA to detain him, and has refused to date to properly acknowledge or investigate any wrongdoing. He also alleges that Romania enabled the CIA to transfer him from its territory despite substantial grounds for believing that there was a real risk that he would be subjected to the death penalty and further ill-treatment and incommunicado detention, and that he would receive a flagrantly unfair trial.

The Court communicated the application to the Romanian Government and put questions to the parties under Articles 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment), 5 (right to liberty and security), 6 (right to a fair trial), 8 (right to respect for private and family life), 10 (freedom of expression) and 13 (right to an effective remedy) of the Convention, and under Protocol No. 6 (abolition of the death penalty) to the Convention.

Abu Zubaydah v. Lithuania (no. 46454/11)

Application communicated to the Lithuanian Government on 14 December 2012

The applicant in this case is the same as in the case *Husayn (Abu Zubaydah) v. Poland* (see above). Before the Court, he claims in particular that he has been held and ill-treated in a secret detention facility alleged to have been located in Lithuania and run under the CIA rendition programme.

The Court communicated the application to the Lithuanian Government and put questions to the parties under Articles 3 (prohibition of torture and inhuman or degrading treatment), 5 (right to liberty and security), 8 (right to respect for private life) and 13 (right to an effective remedy) of the Convention.

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