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## 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 and decisions 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

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.

### Abu Zubaydah v. Lithuania

31 May 2018

This case concerned the applicant's allegations that Lithuania had let the United States Central Intelligence Agency (CIA) transport him onto its territory under the secret extraordinary rendition programme and had allowed him to be subjected to ill-treatment

and arbitrary detention in a CIA detention “black site”. He also complained that Lithuania had failed to carry out an effective investigation into his allegations.

In this case the Court had no access to the applicant as he was still being held by the US authorities in very restrictive conditions so it had to establish the facts from various other sources. In particular, it gained key information from a US Senate Committee report on CIA torture which was released in December 2014. It also heard expert witness testimony. The Court held that in the applicant’s case there had been **violations of Article 3** (prohibition of torture) of the Convention, because of the Government’s failure to effectively investigate his allegations and because of its complicity in the CIA’s actions that had led to ill-treatment, as well as **violations of Article 5** (right to liberty and security), **Article 8** (right to respect for private life), **and Article 13** (right to an effective remedy) **in conjunction with Article 3**. The Court noted in particular that Lithuania had hosted a secret CIA prison between February 2005 and March 2006, that the applicant had been detained there, and that the domestic authorities had known the CIA would subject him to treatment contrary to the Convention. Lithuania had also permitted him to be moved to another CIA detention site in Afghanistan, exposing him to further ill-treatment. The Court therefore that the applicant had been within Lithuania’s jurisdiction and that the country had been responsible for the violations of his rights under the Convention. The Court further recommended that Lithuania conclude a full investigation of the applicant’s case as quickly as possible and, if necessary, punish any officials responsible. It lastly held that the country also had to make further representations to the United States to remove or limit the effects of the violations of his rights.

### **Al Nashiri v. Romania**

31 May 2018

The applicant in this case was facing capital charges in the US for his alleged role in terrorist attacks. The case concerned his allegations that Romania had let the United States Central Intelligence Agency (CIA) transport him under the secret extraordinary rendition programme onto its territory and had allowed him to be subjected to ill-treatment and arbitrary detention in a CIA detention “black site”. He also complained that Romania had failed to carry out an effective investigation into his allegations.

In this case the Court had no access to the applicant as he was still being held by the US authorities in very restrictive conditions so it had to establish the facts from various other sources. In particular, it gained key information from a US Senate report on CIA torture which was released in December 2014. It also heard expert witness testimony. The Court held that in the applicant’s case there had been **violations of Article 3** (prohibition of torture) of the Convention, because of the Romanian Government’s failure to effectively investigate the applicant’s allegations and because of its complicity in the CIA’s actions that had led to ill-treatment. The Court also held that there had been **violations of Article 5** (right to liberty and security), **Article 8** (right to respect for private life), **and Article 13** (right to an effective remedy) **in conjunction with Articles 3, 5 and 8**. Lastly, it held that there had been **violations of Article 6 § 1** (right to a fair trial within a reasonable time) of the Convention, **and Articles 2** (right to life) **and 3** of the Convention **taken together with Article 1** (abolition of the death penalty) **of Protocol No. 6** to the Convention because Romania had assisted in the applicant’s transfer from its territory in spite of a real risk that he could face a flagrant denial of justice and the death penalty. The Court noted in particular that Romania had hosted a secret CIA prison, which had the code name, Detention Site Black, between September 2003 and November 2005, that the applicant had been detained there for about 18 months, and that the domestic authorities had known the CIA would subject him to treatment contrary to the Convention. Romania had also permitted him to be moved to another CIA detention site located either in Afghanistan (Detention Site Brown) or in Lithuania (Detention Site Violet), thus exposing him to further ill-treatment. The Court therefore found that the applicant had been within Romania’s jurisdiction and that the country had been responsible for the violation of his rights under the

Convention. It further recommended that Romania conclude a full investigation into the applicant's case as quickly as possible and, if necessary, punish any officials responsible. The Court lastly held that the country should also seek assurances from the United States that the applicant would not suffer the death penalty.

See also:

**Al-Hawsawi v. Poland**

16 October 2018 (Committee decision – strike out)

## Pending application

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**al-Hawsawi v. Lithuania (no. 6383/17)**

Application communicated to the Lithuanian Government on 30 January 2019

This case concerns the applicant's allegations that Lithuania has let the United States Central Intelligence Agency (CIA) transport him onto its territory under the secret extraordinary rendition programme and has allowed him to be subjected to ill-treatment and arbitrary detention in a CIA detention "black site".

The Court gave notice of the application to the Lithuanian Government and put questions to the parties under Articles 1 (obligation to respect human rights), 2 (right to life), 3 (prohibition of 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) and 13 (right to an effective remedy) of the Convention and under Article 1 (abolition of the death penalty) of Protocol No. 6 to the Convention.

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