



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 2 June 2006**

**10228/06**

**PE 190  
COHOM 102  
USA 47**

**NOTE**

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from : General Secretariat of the Council  
to : Delegations

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Subject : Report on the meeting of the Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners, held in Brussels on 30 May 2006

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The meeting was chaired by Mr COELHO (PPE-DE, PT) followed by Mr ÖZDEMİR (Verts/ALE, DE).

**I. Exchange of views on the Study from the Network of Independent Experts on Fundamental Rights presented by Mr De Schutte, representative of the Network**

Mr DE SCHUTTE presented the conclusions and recommendations made by the EU Network of Independent Experts on Fundamental Rights. The Network called for the European Parliament to clearly reaffirm its commitment to the principle of *non-refoulement*. He told the Committee that in a pending case<sup>1</sup> before the European Court of Human Rights, Lithuania, Portugal, Slovakia and the United Kingdom, which had been given leave to intervene in support of the Dutch Government's position, took the view that suspected terrorists might be expelled in conditions which, if the persons concerned did not represent such a serious threat to the community of the expelling State, would be in violation of Article 3 of the European Convention on Human Rights (ECHR). They were thus asking the Court to overrule its judgment in *Chahal v. the United Kingdom* from 1996, in

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<sup>1</sup> *Ramzy v. the Netherlands* (Appl. N° 25424/05)

which it established the absolute character of the principle of *non-refoulement*. Mr DE SCHUTTE stressed the importance of not overruling the latter judgment. He also underlined that diplomatic assurances must not replace case-by-case verification and that such assurances could not set aside the responsibility of the Member States. Furthermore, he underlined that in the following countries, the criminal laws did not explicitly make torture a crime: Austria, Denmark, Finland, Hungary, Latvia, Lithuania, Poland, Slovenia and Sweden. Instead, those States relied on traditional offence definitions, such as assault, ill-treatment or abuse of power in the criminal code. The Network also recommended that the Committee for the Prevention of Torture (CPT) as well as national monitoring bodies should be granted access to any place of detention within the Member States, including foreign military bases. Effective and independent investigations into past incidents of CIA rendition flights over the territory of EU Member States or landings of such aircraft on airfields of Member States should be carried out promptly. Mr DE SCHUTTE regretted that the Member States did not make use of the possibility provided for in Article 16 of the Chicago Convention to search aircraft of other contracting States on landing and departure. He stressed that all Member States of the Council of Europe had the obligation to make sure that human rights were respected throughout their territory. The Network recommended that the EU and the Member States should request assurances from the US that US public officials would not abuse international civil aviation regulations and would respect the principle of national sovereignty. They should also request explanations from the US Government concerning previous such incidents. Referring to Article 6 TEU, he stressed that a clear signal should be given to EU accession States that participation in illegal activities like extraordinary rendition flights and secret detention centres would not be tolerated by the EU.

To questions from Mr FAVA (PSE, IT) regarding the notion of extraordinary rendition, Mr DE SCHUTTE stressed that extraordinary rendition implied a risk of torture and arbitrary detention. He emphasised that the jurisdiction of a State covered its whole territory, and that according to the European Court of Human Rights, a country could not withdraw from the obligations it had according to the ECHR because of other multi- or bilateral treaties. To questions from Ms KLAMT (PPE-DE, DE) and Mr SZYMAŃSKI (UEN, PL) concerning proof of illegal CIA activities, Mr DE SCHUTTE replied that the Network's mandate was not the same as that of the Committee and that it had not tried to establish whether Member States had had knowledge of the activities or the degree of their cooperation with the CIA. He referred to the statement by Mr Davies, Secretary General of the Council of Europe, that one could no longer talk about

“alleged” renditions, but that these allegations had proven to be facts. Concerning American bases on the territory of EU Member States, Mr DE SCHUTTE said that the report of the Network had considered existing bilateral agreements. The problem was not the letter of those agreements, but the way they were interpreted. To a question from Ms MALMSTRÖM (ALDE, SE), Mr DE SCHUTTE confirmed that Contracting Parties now had a positive obligation to investigate a sufficiently strong allegation or suspicion of breaches of human rights. He said that it was certain that the legal systems of certain Member States were insufficient for the implementation of the UN Convention Against Torture (CAT) and that efficient monitoring mechanisms were lacking. On the relationship between the EU and the US, he said that an extradition agreement which covered transit of persons had been concluded on 26 June 2003. Article 12 of that agreement covered extradition procedures only and not extraordinary rendition, but Mr DE SCHUTTE considered this agreement an important signal about the dimension of the relationship between the EU and the US. To a question from Mr ÖZDEMİR about whether there was any need to modify the Chicago Convention, Mr DE SCHUTTE answered in the negative, but repeated that Article 16 of the Chicago Convention was currently not being properly applied. He committed himself to providing an answer in writing to the question of how to assess the call for a new legal basis for the fight against terrorism.

Mr HELMER (NI, UK) said that he was disheartened by the presentation of Mr De Schutte and expressed his deep concern about the rights of terrorists being protected more than ordinary citizens’ rights. He called for a re-examination of the ECHR, the current application of which he considered gave rise to perverse and totally unacceptable results. Mr ROGALSKI (ID, PL) expressed his support for Mr Helmer’s opinion. Ms KUDRYCKA (PPE-DE, PL) stressed the need to find a balance between human rights protection and the fight against terrorism. Mr DE ROSSA (PSE, IE) agreed with her on this point and, referring to the Birmingham Six, stressed that this balance had to be carefully maintained. Ms ROURE (PSE, FR) stressed that terrorism could not be fought with violence, but should be fought with the rule of law. To Ms KUDRYCKA’s question of whether Member States, after the events of 9/11, had taken measures to limit the protection of human rights, Mr DE SCHUTTE replied that while there had in fact been important changes of criminal procedures and rules governing searches and seizures as well as data retention, the current rules did in general comply with the ECHR. He also stressed that while the legal regime of human rights did provide possibilities for derogations from the rules in certain situations, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment was absolute. Mr GUARDANS (ALDE, ES) stressed that citizens in those countries who had experienced

dictatorship strongly supported a firm protection of human rights. He emphasised that it should not be possible to take away peoples' rights before their trial. The human rights of suspects had to be protected just as strongly as those of all citizens. He was surprised to hear that nine Member States did not have specific provisions on torture in their penal code and noted that the Member State currently holding the Presidency was one of them. To questions from Mr ROGALSKI, Mr DE SCHUTTE said that he did not think that old instruments should be renegotiated to restrict the rights of people suspected of terrorism. He thought that violation of human rights would lead to feelings of injustice and radicalisation of the situation. Instead, a scrupulous respect for human rights was necessary to prevent terrorism. Concerning cooperation with the US, Mr DE SCHUTTE stressed the need for any new instruments to be created within the framework of fundamental rights. Responding to comments from Mr DEMETRIOU (PPE-DE, CY), Mr DE SCHUTTE stressed that any cooperation with the US must be made in compliance with European values. He expressed his doubts over the current US administration sharing those values or the values of the international community. Ms LUDFORD (ALDE, UK) said that she was shocked over the state of play regarding the compliance of Member States' application of the CAT. Stressing that she did not want to separate new and old Member States, she wondered how the Copenhagen criteria were actually applied.

## **II. Consideration of amendments to the draft interim report**

187 amendments had been made to the draft interim report.

In his opening remarks, Mr FAVA said that there was general support for the Committee to continue its work throughout the mandate given to it. The amendments mainly focused on paragraphs 5-10. He underlined some of the amendments made by himself on behalf of his group. These included amendment 68 concerning Maher Arar, amendment 100 concerning the reliance by the Swedish Government on diplomatic guarantees, amendment 104 concerning the Bosnian case and the role of US SFOR soldiers of in that case, amendment 158 concerning Khalid El-Masri and the reluctance of FYROM authorities to confirm that he had been in Skopje and had probably been held there before being rendered to Afghanistan, and amendment 159 concerning the interpretation by the US government of the notion of torture. With regard to amendments made by other groups or members, he was willing to accept those that made clarifications or completed the text, and said that it would be possible to work out compromise amendments. He was less willing to accept

amendments referring to the fight against terrorism, in particular amendments 1 and 6, since the task of the Committee was not to investigate the instruments available for the fight against terrorism. He would prefer amendment 4, put by his own group, which stressed that the fight against terrorism could not be won by sacrificing the principles that terrorism sought to destroy, and that terrorism must be fought with legal means. Addressing Mr GAWRONSKI (PPE-DE, IT) and other members who had made amendments according to which there was still no clear evidence, he stressed that the Committee's task was not that of a Court of law, but that it had a political mandate. He said that there were clear indications from NGOs and institutional organs such as the Swedish Ombudsman, the Helsinki Committee, and the Human Rights Chamber for Bosnia and Herzegovina. Thus the information was consistent, and various sources had contributed to make up the full picture. He also disagreed with amendments 106 and 109 about the lack of evidence for detention centres, and underlined that such a conclusion could only be made once the Committee had finished its work at the end of its mandate. Addressing those Polish members who wanted to conclude the work of the Committee already in July, he said that it was too early to do so, and stressed that there was currently no preliminary or definite conclusions about Poland.

Mr COELHO, while stressing that too many amendments could lead to difficulties in producing a coherent text, considered that it would be possible to find a good compromise.

Mr PIRKER (PPE-DE, AT), stressed the need to find out facts and concrete evidence. While the hearings had shown that the Committee was carrying out its mandate in a serious way, allegations and presumptions were still being made. He found the text vague although it was serious. He reminded the Committee of the statements made by Mr Solana and Mr De Vries, according to which there was still no proof of the allegations, and wanted these statements to be included in the report as facts deriving from the hearings (see amendment 155). Wondering what the point was of continuing the work if tangible results could not be reached, he was doubtful that it would be responsible for the Committee to continue its work throughout its 12-month mandate.

Ms SEGELSTRÖM (PSE, SE) was very pleased with the draft report, but noted that there was an inconsistency in the language. She had found a mix of political and legal language, which made the message unclear, and wanted this to be corrected.

Mr ROMEVA I RUEDA (Verts/ALE, ES), wanted to rule out the general application of the notions of alleged and presumed. He said that there was evidence for the flights, and that the issue was to what extent the EU governments had been involved or had known about the events. He stressed that the Committee was not a group of detectives, but a political forum in which to ask questions. Due to

what he perceived as unsatisfactory answers in many cases, he stressed the need for the Committee to continue its work. His group wanted there to be a reference not only to torture, but also to cruel, inhuman and degrading treatment (amendment 119), and wanted the Council to adopt a common position against the use by Member States of diplomatic assurances, since such assurances were not always credible (amendment 132). He stressed the need to attribute responsibility for what had happened, and deeply regretted the lack of cooperation from the Council and the Member States in the Committee's work (see amendment 181). He could not accept the view that there was no proof of the allegations, and considered that the Council as well as the Member States were now obliged to investigate the matter. His group also wanted amendments on Guantánamo Bay (amendments 183 and 184).

Mr CATANIA (GUE/NGL, IT) thought that certain members were trying on the one hand to extend the fight against terrorism to all possible fields, including justification of human rights violations, and on the other to take legitimacy away from the Committee. He shared the view of the rapporteur that the Committee should continue its work and that its powers were institutional and political, not the powers of a court of law, and considered that there was ample political proof. The view that there was no proof should be clearly rejected. He stressed that clear conclusions could be made concerning the case of Maher Arar, as well as the Bosnian and Swedish cases. He considered it inconceivable that the governments had been unaware of what had happened. In his opinion, while there was a need for final clarification, everything already pointed to cooperation. In this context he mentioned the visit to Washington where the people the delegation had talked with had confirmed that the US had acted in agreement with Member States. That was the meaning of the statements that the US had never violated the national sovereignty of European countries.

Mr SZYMAŃSKI stressed that while he fully agreed that the Committee was not a court of law, it was not totally free to base its conclusions on political evaluations, but should base its work on truth and facts. If a political debate was wanted, it should be held in the plenary. He said that there was proof that US and European intelligence services worked closely together, and that there might have been breaches of the Chicago Convention. Saying that this implied violations of human rights would be to go too far from a logical point of view. There were in fact very few credible cases. The Swedish case was one of them. He was opposed to paragraph 4 of the draft interim report, referring to "serious" violations of human rights and that such violations had happened on "several occasions", and said that it was not even certain that there had been torture. He considered Maher Arar, a person having a double life, less credible than Mr Solana and Mr De Vries, and said that if the report went too far, the credibility of the Committee would be lost.

Mr MASIP HIDALGO (PSE, ES) compared the denial of the events with the denial of the Holocaust. He did not consider the contributions of Mr Solana and Mr De Vries very valuable, since they had only stated that they lacked competence on the matter. He agreed with those who wanted the Committee to continue its work throughout its 12-month mandate, and said that while the Committee was not a judicial authority, its members did have judicial experience.

Mr VOGGENHUBER (Verts/ALE, AT) stressed the need for the debate to be as open as possible and said that suspicions had been solidified and multiplied during the work of the Committee.

Mr FAVA concluded by saying that while he respected the opinions of all members, he could not respect the prejudices of some. Addressing in particular Mr SZYMAŃSKI, he drew the attention of the members to paragraphs 8-10 in the draft interim report, and stressed that the Swedish case had actually been confirmed by the Swedish government, and that the case of Maher Arar had been investigated by three commissions. He said that there was not a word in the draft interim report for which evidence lacked.

Mr SZYMAŃSKI repeated that there was no proof of several cases, that, while there had been many CIA flights, there was no proof of violations of human rights, and that a breach of the Chicago Convention was not proof of such violations.

### **III. Time and place for next meeting**

12 June 2006 at 19:00 in Strasbourg

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*For further information: Ms Cavallin (phone: 8134)*