



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 20 September 2006

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NOTE

from :	General Secretariat of the Council
to :	Delegations
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 14 September 2006

The meeting was chaired by **Mr Coelho** (PPE-DE, PT).

I. Exchanges of views with invited speakers

- (a) Exchange of views with **Mr Docke**, partner of Dr. Hannover and Partner, Bremen, lawyer for Mr Kurnaz

Mr Docke gave an account of how Mr Kurnaz, a Turkish citizen legally residing in Germany where he was born and had lived all his life, was arrested in Pakistan by Pakistani authorities sometime in late November 2001, transferred to US custody after a few days and taken to Guantánamo Bay in January 2002, where he stayed until the end of August 2006. The German foreign ministry had said that it could only give limited help, since Mr Kurnaz was not a German citizen. The US rejected communication with Germany with regard to Mr Kurnaz, since he was a Turkish citizen. Mr Docke considered that a good German diplomatic initiative was lacking. The Turkish government showed little interest in pressuring the US government over Mr Kurnaz's case and had never contacted Mr Docke. Mr Docke said that information from the German criminal investigation offices

concerning Mr Kurnaz's possible actions in Pakistan fighting for the Taliban had somehow been passed on to the US. It seemed as if the police had given the information to the Federal Criminal Police Office which had links with the FBI. Following intense debate in the US regarding Guantánamo Bay last year, Mr Docke had asked Chancellor Merkel to bring up the topic with the US, which she did this year. After little over 8 months of negotiations, Mr Kurnaz was released. However, the US had been ready to hand over Mr Kurnaz to Germany as long ago as in October 2002, but at the time Germany refused to take him back.

Answering questions from members of the Committee, **Mr Docke** said that there had been no justification for the release of Mr Kurnaz, and that the matter of whether a person was detained in Guantánamo Bay was decided completely arbitrarily. Asked why Mr Kurnaz had not been released as early as 2002, when the US had declared its willingness to release him, Mr Docke agreed with **Baroness Ludford** (ALDE, UK) that the matter of political will was crucial. **Mr Docke** thought that the increasing international criticism regarding Guantánamo Bay was the reason for the changed position of the German government. With regard to Mr Kurnaz's current legal status, Mr Docke said that he had first lost his right to residence in Germany, since he had been away from the country for more than six months without making an application to keep his right of residence. That right had, however, been reinstated.

(b) Exchange of views with **Ms Pinar**, lawyer for Mr Zammar's family

Mr Coelho told the Committee that Mr Zammar was a German citizen of Syrian origin. In the end of 2002 Mr Zammar was in Morocco, from where he was taken to Syria, where he had been imprisoned.

Ms Pinar had not heard any news about her client for a long time and did not know whether he was alive or not. Mr Zammar had flown to Morocco from Germany at the end of 2001 to divorce his wife. Investigations of his possible involvement in the 9/11 events were under way in Germany at the time, and were still ongoing. According to the information Ms Pinar had, Mr Zammar had been abducted in Morocco on 8 December 2001, taken by US officials to Damascus on 22 December and later transported to a Syrian military prison. From December 2001 to February 2002, Ms Pinar put a number of questions to Moroccan and German authorities about Mr Zammar's whereabouts. The German authorities said that they would do their utmost to help out. At the beginning of 2002 she found out that Mr Zammar was no longer in Morocco and obtained information that he had been

imprisoned in Syria. Through the German Red Cross, his family managed to pass through a message to him in the Far-Filastin prison in 2004. They received a reply at the end of 2004. Ms Pinar contacted the director of the prison to arrange a visit. She was told that her demand would be processed, but she was never given the possibility to visit Mr Zammar. When she, in 2002, turned to the foreign ministry with the information that Mr Zammar had been transferred to Syria, she was told that it would be difficult for Germany to give any assistance in the case, since it was possible that Mr Zammar also had Syrian nationality. When Mr Zammar had been granted German citizenship, he had stated that he did not have Syrian citizenship. The German authorities were aware of the fact that according to Syrian law, if you had once been a Syrian citizen, you could not renounce that citizenship. The German authorities said that they were unable to help out since Mr Zammar had left Germany voluntary. Ms Pinar then underlined that Mr Zammar had left Germany to go to Morocco, and that he had not gone to Syria voluntarily. Thus, a German citizen had been illegally transferred to another country, which should be a matter of concern to the German authorities. She had continuous contacts with the German foreign ministry and the Federal Criminal Police Office without reaching any results. The foreign ministry stated that they had no knowledge of Mr Zammar's whereabouts. Ms Pinar had seen reports stating that the German embassy in the US had been requested by the US not to ask any questions about Mr Zammar's whereabouts. Ms Pinar told the Committee that German authorities had been in touch with the Syrian secret services and that they had been allowed to question Mr Zammar in the Syrian jail. According to Ms Pinar, six legal proceedings against Syrians in Germany were subsequently halted in return. Ms Pinar had been informed by the German government that German authorities had actually talked with Mr Zammar for several hours, but she had not received any more detailed information. According to Ms Pinar, the German government had not taken any political initiatives to secure Mr Zammar's release. She presumed that this was because Mr Zammar was still suspected of involvement in the 9/11 events.

Answering questions from the members of the Committee, Ms Pinar said that according to media reports, the German authorities had given information to US authorities about Mr Zammar's travelling dates, but she did not have any evidence of whether that was true or not. To a question on why Mr Zammar had not been taken to Guantánamo Bay, but kept in Syria, Ms Pinar, acknowledging that she did not have any evidence supporting her opinion, answered that she thought that it was probably because the German authorities had closer connections with the Syrian secret service than the US.

Mr Özdemir (Verts/ALE, DE) said that under German law, dual citizenship was not allowed, and if someone illegally held a second citizenship, that person would lose his/her German citizenship. However, if such a person was not at fault, he/she could keep the German citizenship. **Ms Pinar** presumed that the German foreign ministry was familiar with the situation as regards Syrian citizenship and was of the opinion that aspects other than the legal situation were involved.

Mr Chiesa (PSE, IT) had read in Der Spiegel that German officials had interrogated Mr Zammar in Damascus in November 2002 without telling his family, while at the same time the German ambassadors in Rabat and Damascus had intervened regularly to obtain information about the case, but that Syria had not cooperated. Mr Chiesa found these two different approaches by the German authorities interesting, and suggested that the Committee should hold an exchange of views with the author of the article.

With regard to actions by German courts in the case, **Ms Pinar** said that the courts of Hamburg or Karlsruhe were competent, and that she had written to them, but not received any reply. The next step would be to start a civil procedure, but the family feared that such measures would make things worse.

Asked about the possibility to ask for the extradition of Mr Zammar, on account of the investigations related to Mr Zammar's possible activities linked with Islamic cells, Ms Pinar said that while the investigation had not been closed, the degree of suspicion was not high enough for German authorities to ask for Mr Zammar's extradition. Ms Pinar did not have any corroborating evidence to confirm press reports stating that the US State Department had formally requested Germany not to exert pressure with regard to this case.

(c) Exchange of views with **Ms Longhi**, lawyer for Mr Britel

Ms Longhi told the Committee that her client Mr Britel, an Italian citizen who also held Moroccan citizenship, was dying in prison. In March 2002, he had been illegally arrested in Pakistan and questioned by the Pakistani security services. He was accused of carrying a false passport and was prevented from contacting the Italian embassy in order to prove that his Italian passport was authentic. He was transferred to the American intelligence services who questioned him. At the end of May 2002, he was illegally transferred to Morocco in an American plane. Taken to the DST (Morocco's domestic intelligence service) in Temara, he was detained incommunicado and tortured

until February 2003. He was then set free without any charges. In May 2003 he got a transit passport from the Italian Embassy in Rabat and went to a border post in northern Morocco, where he was arrested once again. He was taken to the Salé prison. He was prosecuted for forming an illegal group and sentenced to 15 years' imprisonment. After appeal in 2004, the sentence was reduced to 9 years.

Answering questions from the members of the Committee, Ms Longhi said that the Italian embassy in Pakistan had not been very helpful. The Italian embassy and consulate in Morocco and Pakistan had never refused her approaches, but her client had only received the same assistance as an Italian citizen charged with, for example, drugs-related crime. The Italian foreign service was represented at the trial. Ms Longhi considered that the Italian government should have done more, since the case of Mr Britel was not a “normal” case. The contacts with the embassy had been rather difficult. Mr Britel had asked to be taken to the airport after his release after the first detention, but the embassy had not helped him in that regard. He had then chosen to take the way via northern Morocco, since he was afraid of the Moroccan authorities. With regard to how Mr Britel was flown to Morocco from Pakistan, Ms Longhi said that the flight took 9 hours and that Mr Britel had been blindfolded and handcuffed during the flight. Ms Longhi stressed that while there had been newspaper articles identifying her client as a terrorist involved in the Casablanca attacks, he had not been charged for involvement in those attacks and was not considered a suspect. Mr Britel had been subjected to pressure by the Pakistani and US services, who asked him to cooperate in giving them information about Usama bin Laden. In Italy, Mr Britel had been suspected of planning public order disturbances, but was never charged or taken in custody for that. His computer had been seized by the prosecutor, but had been returned.

(d) Exchange of views with Mr Nowicki, former Kosovo Ombudsman (2000 - 2005)

In his introductory remarks, **Mr Nowicki** said that there had been thorough discussions about the remit of the Ombudsman office when it was established, but in the end it was decided that its jurisdiction would not cover the international military presence. However, even though his competence did not cover the military presence in Kosovo, he asked and was granted access to Camp Bondsteel. The main category of detainees at Camp Bondsteel were prisoners who had been detained on the basis of a decision by the KFOR commander. The prisoners had not been assisted by a lawyer, there had been no formal procedure for their detention, and there were no information about how long they would be detained. There were also a few other categories of detainees. Some

were placed in the camp by an administrative decision taken by the Special Representative of the UN Secretary General (SRSG) in Kosovo. During 2001, Mr Nowicki had had a big disagreement with the SRSG about the legality of the situation of these prisoners. The last category of detainees were persons who were temporarily kept in the camp while they were under criminal investigation, since there was no other place to detain them. The maximum number of detainees at any one time was around 100. In October 2001, the KFOR commander, French Lt. Gen. Valentin decided to review the cases of the KFOR detainees. Among the approximately 100 detainees, there were 12 or 15 persons who he said that he would not release at any price. Others were released. Mr Nowicki considered that since they were released so quickly once their cases were reviewed, there could not have been any reason to detain them. The detainees were mainly Albanians and Serbs. Mr Nowicki stressed that he had tried to influence the situation in spite of not having jurisdiction over the treatment of the KFOR detainees.

Answering questions from the members of the Committee, Mr Nowicki said that he had only been able to visit the camp once. From 2002, there were in practice no more detentions based on an executive order from the SRSG, since the judicial system had slowly started to work. After 2002 the only people kept in the camp were there by decision by the KFOR commander. Mr Nowicki repeated that he did not have jurisdiction over KFOR detainees, but that he raised the topic in every meeting with KFOR executives. During the period 2001-2002, while there was no full judicial system in place, there were international judges, who ought to have been involved in the decision to detain people. The SRSG decided to establish three military judges to have some judicial control of executive decisions. Mr Nowicki did not consider this enough. Mr Nowicki presumed that there were records of each detainee in Bondsteel, but did not have access to such records. Since March 2004 there had been no more detainees in the camp. The camp served KFOR as such, not just the American part of it. He did not know if there were any other detainees apart from Albanians and Serbs, and stressed that it was impossible to know, since there was no external control. He had no indication of other detention camps. The report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which had visited the camp would not be made public immediately. Mr Nowicki thought that the Red Cross had visited the camp, but did not have any details on that. With regard to any violations of human rights in the camp, Mr Nowicki stressed that the detention itself was illegal.

(e) Exchange of views with **Mr Moratinos**, Spanish Minister for Foreign Affairs

In his introductory remarks, **Mr Moratinos** stressed that upholding human rights was an absolute priority and that the only way to combat terrorism was to do so in strict compliance with the rule of law and with human rights. He considered it very important to clarify whether there had been any violation of human rights laws in EU Member States. Mr Moratinos gave an account of the measures taken by the Spanish government to investigate the allegations. All information that was available for the current government showed that there had not been any violation of any laws in Spain with regard to the matters under investigation. Mr Moratinos stressed that the Spanish government was prepared to give maximum support to any investigation about what had happened in Spain or elsewhere. The Spanish prime minister had appeared before the Spanish parliament with regard to the matter, as he had himself. Investigations were being carried out and contacts had been made with US representatives to obtain information about the matter. Mr Moratinos stressed his commitment to transparency in the investigations. He underlined that the Spanish government fully shared the temporary committee's concern to get to the bottom of the matter and pledged full support to the investigations carried out by the Council of Europe and the European Parliament's temporary committee. The cooperation with the Council of Europe and the EP Committee was a part of the task of finding the truth. The Spanish government had submitted two reports to the Council of Europe regarding the matter. Under Spanish law, the head of the Spanish intelligence service could only appear before the competent committee of the Spanish parliament, and he could therefore not appear before the European Parliament's temporary committee. Mr Moratinos could, however, inform the committee that the Spanish intelligence service had not found any evidence of crimes committed at CIA stopovers in Spain. There had never been any contacts between the Spanish security services and the US concerning the matter. Mr Moratinos had full confidence in the Spanish security services. With regard to CIA stopovers at Spanish airports, he said that it might be possible that Spain had been used for transit because 66 civilian flights, which were considered suspect owing to their unusual route, had been detected in Spain. However, in no case had it been established that illegal acts had been committed on Spanish territory. Mr Moratinos concluded by stressing the importance of the recently adopted UN Global Counter-Terrorism Strategy.

Asked why the Council had not made any statement on President Bush's admission of the existence of secret detention centres, Mr Moratinos said that there had been no formal meeting of the General Affairs Council or the European Council after President Bush's speech. He undertook to propose to the Council that it discuss the matter and express its concern. Members asked for details of specific

flights and several members asked about the possibility that Spanish airports worked as transit and staging points for renditions. Mr Moratinos firmly and categorically stated that the Spanish government, subject to what might be revealed by investigations under way, was not aware of any illegal activities regarding abductions, detentions or prisons holding detainees on its territory.

Asked by **Mr Salafranca** (PPE-DE, ES) if Article 7 would be applied if it was proven that there had been government knowledge or involvement in abductions/transport of prisoners or of detention centres, **Mr Moratinos** said that the facts had to be established before invoking that Article.

Mr Moratinos stressed that the Spanish government had expressed its rejection of the use of secret prisons. He underlined the importance of international cooperation and the global counter-terrorism strategy. He also emphasised the need for instruments to control civil aviation and that the EU and its Member States must adopt all the necessary instruments. In Spain, preparatory work was carried out for legislation under which any suspicious flight could be checked. Furthermore, to avoid anything similar happening again, it was important to raise public awareness.

Mr Guardans Cambó (ALDE, ES) considered that the main issue was not whether or not crimes had been committed on Spanish territory, but whether or not Spain had taken part in the extraordinary rendition programme by implicitly or directly allowing the use of its air space or airports for this programme.

Mr Romeva i Rueda (Verts/ALE, ES) considered that the crucial matter was the paradox of the admissions made by the US president, and the statements by European governments that they had no knowledge of the events. He considered that the constant denial of the EU and its Member States could damage their credibility.

Saying that all the flights referred to were civilian flights, **Mr Moratinos** stressed that these flights were covered by the Chicago Convention. Once such flights had received authorisation from Eurocontrol, they had a right to land at very short notice. If their stay at an airport exceeded a certain time limit, they would be subject to handling checks or other procedures. The handling companies had not seen any structural changes to the investigated planes. Nor had the behaviour of the crew raised any suspicions.

Some Members did not consider it plausible that Member State governments were ignorant of the activities, nor did they think that the intelligence services only started their investigations once the media reports were published. **Mr Moratinos** stressed that the media reports were the first information available.

With regard to the statement made by US President Bush on 6 September 2006, **Mr Moratinos** emphasised that while Mr Bush had admitted the existence of secret detention centres, he had not specifically mentioned Europe in that context, and considered that speculation on the topic should be avoided. He underlined that the US last Friday in the UN General Assembly had supported the text concerning the need to protect human rights in the fight against terrorism.

Asked about government documents concerning the flights, **Mr Moratinos** said that all the analyses and documents had already been sent to the Council of Europe and that they were public. To the question of whether the Council had ever directly or indirectly contacted the US administration regarding the issue, Mr Moratinos told the committee that Mr Jack Straw had sent a letter to the US administration on behalf of the Council in 2005 and received a reply from US Secretary of State, Ms Rice.

Asked whether Spain had a secret agreement concerning the fight against terrorism with the US, signed after 9/11, **Mr Moratinos** answered in the negative and said that any such agreement would have had to be submitted to the parliament for ratification.

Ms In't Veld (ALDE, NL) wondered why the Council, knowing about Guantánamo Bay and Abu Ghraib would give the US administration the benefit of the doubt when the Council of Europe did not do so. **Mr Moratinos** stressed that the EU and all its Member States were concerned, and that they had firmly and categorically rejected Guantánamo Bay and Abu Ghraib. He undertook to raise the matter in the Council the following day, and concluded by saying that there was a great deal of uproar and indignation in the EU over the events and that it was clear that the EU was a defender of human rights, freedom and justice.

II. Debate on the statement of US President Bush on 6 September 2006

After a proposal by **Ms In't Veld** to have a debate regarding the statement made by President Bush on 6 September 2006 concerning the events of 11 September 2001, it was decided to have a debate with regard to the statement.

Mr Coelho said was happy about the statement which meant that the EP did right to establish the temporary committee to look into, inter alia, the existence of secret detention centres.

Mr Gawronski (PPE-DE, IT) said that while there was proof of the existence of detention centres, the proof had not been discovered by the European Parliament's temporary committee. He did not consider that the statement of Mr Bush could justify the work of the Committee. Instead, Mr Bush had made his statement as a result of public pressure. Furthermore, Mr Gawronski noted that Mr Bush had not acknowledged any fault or apologised, but that prisons would be used again if needed. Mr Gawronski considered that the fact that elections were approaching in the US had influenced Mr Bush's decision to admit the existence of detention centres. The problem now was to establish where the detention centres were situated. Mr Gawronski considered that any missions by the temporary committee to Romania, Poland or Bulgaria would have to wait until Mr Bush had said whether the detention centres were situated in Europe or not.

Mr Fava (PSE, IT) was grateful that the existence of the detention centres had been admitted, but was upset over the US administration having lied for months. Furthermore, he noted that the prisons were still operating. Mr Fava was critical of the silence by the Commission and the Council with regard to the statement.

Many members of the Committee stressed that Member States must state what they knew about the centres and that the geographical location of the centres had to be established. Furthermore, it was stressed that the Council and the Commission must react strongly to the statement.

Several members raised the possibility of considering applying Article 7 TEU. **Mr Lambrinidis** (PSE, IT) recalled that Commissioner Frattini had stated that if secret detention centres existed, it would be possible to invoke Articles 6 and 7 TEU.

Mr Catania (GUE/NGL, IT) stressed that Mr Bush had admitted a criminal practice, and considered that European governments must have known about it, since the US administration had consistently maintained that the US had not acted in breach of the national sovereignty of European countries.

Ms Kudrycka (PPE-DE, PL) considered that focus should be on how international law could regulate the existence of detention centres, not on where they were situated. In response to that, **Ms Gomes** (PSE, PT) stressed that international law prohibited this kind of centre.

Baroness Ludford stressed that not only the existence of secret detention centres, but also the involvement of European governments in the rendition program, which had also been acknowledged by Mr Bush, should be considered.

Mr Salafranca stressed that the EU had always been a strong defender of human rights. He underlined that the Committee could not work on assumptions and hints, but must work on finding hard evidence. While it was regrettable, it must be remembered, as stated by Mr Solana and Mr De Vries, that the EU did not have the power to investigate the matters.

III. Time and place of next meeting

25 September 2006, 21:00, in Strasbourg

For further information: Ms Cavallin (phone: 8134)