Alleged transportation and illegal detention of prisoners in European countries by the CIA: follow-up of the European Parliament TDIP Committee report

2012/2033(INI) - 02/08/2012 - Committee report tabled for plenary, single reading

The Committee on Civil Liberties, Justice and Home Affairs adopted an initiative report by Hélène FLAUTRE (Greens/EFA, FR) on alleged transportation and illegal detention of prisoners in European countries by the CIA (follow-up of the European Parliament TDIP Committee report).

Members recall that **Parliament has condemned the US-led CIA rendition and secret detention programme** involving multiple human rights violations, including unlawful and arbitrary detention, torture and other ill-treatment, violations of the non-refoulement principle, and enforced disappearance.

They recall that a Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners was established and that it has documented the **use of European airspace and territory by the CIA**, and that Parliament has since repeated its demand for full investigations into the collaboration of national governments and agencies with the CIA programme.

Members recall, furthermore, that Parliament has repeatedly and strongly condemned illegal practices including ‘extraordinary rendition’, abduction, detention without trial, disappearance, secret prisons and torture, and has demanded full investigations into the alleged degree of involvement of some Member States in collaboration with US authorities, notably the CIA, including involvement on EU territory. They underline that the **purpose of this resolution is to follow up politically the proceedings of the Temporary Committee** and to determine whether there is a clear risk of a serious breach of the principles and values on which the European Union is based.

Members recall that counter-terrorism strategies can be effective only if they are conducted in strict compliance with human rights obligations, in particular the right to due process. They reiterate that respect for fundamental rights is an essential element in successful counter-terrorism policies. They believe that only genuine grounds of national security can justify **secrecy** but that in no circumstance does state secrecy take priority over inalienable fundamental rights. They also underline that special procedures ought not to be applied to persons suspected of terrorism and that everyone must be able to benefit from all the guarantees included in the principle of a fair trial as laid down in Article 6 of the European Convention on Human Rights.

Once again, Members condemn the practices of extraordinary rendition, secret prisons and torture and call on the Member States to respond to the formal obligation incumbent upon them to investigate serious human rights violations connected with the CIA programme. They recall in passing the **the commitment of Member States and of the EU to investigate European involvement in the CIA programme.**

Accountability process in the Member States: Members highlight their concerns regarding the obstacles encountered by national parliamentary and judicial investigations into some Member States' involvement in the CIA programme. They urge those Member States which have not fulfilled their positive obligation to conduct independent and effective inquiries to investigate human rights violations, taking into account all the new evidence that has come to light, as well as to investigate whether there are **secret prisons on their territory**.

Romania, Poland and even Lithuania, all of which would appear to have been the theatre of operations of this type on their territory, undertook inquiries which concluded no evidence could be found to demonstrate it. They are called to persevere with their investigations so as to honour their commitment in view of the new evidence provided by Eurocontrol (flight plans) which has come to light. Other Member States such as Finland, Denmark, Portugal, Italy, the United Kingdom, Germany, Spain, Ireland, Greece and Cyprus to disclose all necessary information on all suspect planes associated with the CIA and their territory. Member States are called upon, in the light of the increased cooperation and exchange of information between their secret intelligence and security agencies, to ensure full democratic scrutiny of those agencies and their activities through appropriate internal, executive, judicial and independent parliamentary oversight.

Response of the EU institutions: once again, Members regard it **as essential that the EU condemn all abusive practices in the fight against terrorism**, including any such acts committed on its territory, so that it can not only live up to its values but also advocate them credibly in its external partnerships. They recall that the Council has never formally apologised for having violated the principle enshrined in the Treaties of loyal cooperation between the Union institutions when it incorrectly attempted to persuade Parliament to provide deliberately shortened versions of the minutes of the meetings of COJUR (the Council Working Group on Public International Law) and COTRA (the Council Working Party on Transatlantic Relations) with senior North American officials…an apology is therefore awaited from the Council whereby it acknowledges, for once and for all, **Member States' involvement in the CIA programme** and the difficulties encountered by Member States in the context of inquiries.

The **Council** is invited to:

- give its full support to the truth-finding and accountability processes in the Member States by formally addressing the issue at JHA meetings;
- hold hearings with relevant EU security agencies, in particular Europol, Eurojust and the EU Counter-terrorism Coordinator, to clarify their knowledge of Member States' involvement in the CIA programme and the EU's response;
- guarantee respect for human rights in intelligence-sharing, and a strict delimitation of roles between intelligence and law-enforcement activities ;
- exclude, as a basis for the extradition or deportation of persons deemed to threaten national security, reliance on unenforceable diplomatic assurances where there is a real risk of subjection to torture or ill-treatment or of a trial using evidence thus extracted.

The **relevant authorities**, for their part, are invited:

- not to invoke state secrecy in relation to international intelligence cooperation in order to block accountability and redress;
- to ensure that a strict distinction is made between the activities of intelligence and security services, on the one hand, and law enforcement agencies, on the other.

Noting its initiatives in response to Parliament’s recommendation, Members call on the **Commission** to:

- facilitate and support human-rights-compliant mutual legal assistance and judicial cooperation between investigating authorities and cooperation between lawyers involved in accountability work in Member States;
- ensure that important information is exchanged;
- adopt within a year a framework, including **reporting requirements for Member States**, for monitoring and supporting national accountability processes, including guidelines on human-rights-compliant inquiries;

- in the light of the institutional deficiencies revealed in the context of the CIA programme, to adopt measures aimed at strengthening the EU's capacity **to prevent and redress human rights violations at EU level and to provide for the strengthening of Parliament's role**;
- propose measures for permanent cooperation and exchange of information between the European Parliament and parliamentary committees for the oversight of intelligence and security services of the Member States in cases which indicate that joint actions by Member States' intelligence and security services have been undertaken on EU territory;
- put forward proposals for developing arrangements for democratic oversight of cross-border intelligence activities in the context of EU counter-terrorism policies.

Implications for the fight against terrorism and effects on the respect for human rights: Members reaffirm that the international fight against terrorism and bilateral or multilateral international cooperation in this area, including as part of NATO or between intelligence and security services, must be conducted only with full respect for human rights and fundamental freedoms and with appropriate democratic and judicial oversight. They urge that **foreign special services'interference in the affairs of sovereign EU Member States** must not recur in the future and that the fight against terrorism must be conducted with full respect for human rights, fundamental freedoms, democracy and the rule of law.

Recalling the importance of certain international texts, Members call on the Union to ensure that its Member States, associates and partners (in particular those covered by the Cotonou Agreement) which have agreed to host former Guantanamo detainees actually afford them full support as regards living conditions, efforts to facilitate their integration into society, medical treatment, etc.

Furthermore:

- NATO and the US authorities are invited to conduct their own investigations, to cooperate closely with EU and Member State parliamentary or judicial inquiries on these issues;
- the US, given the cardinal role of the transatlantic partnership and of the United States' leadership in this area, is called upon to investigate fully, and secure accountability for, any abuses it has practised, to ensure that relevant domestic and international law is applied fully ;
- President Obama is urged to honour the pledge he made in January 2009 **to close the Guantanamo Bay detention facility**, to allow any detainee who is not to be charged to return to his or her home country or to go to another safe country as quickly as possible.

According to Members, any detainees who are not to be charged but cannot be repatriated owing to a real risk of torture or persecution in their home country to be given the opportunity of resettlement in the US under humanitarian protection and afforded redress. Once again, Members call on the US authorities to repeal the power of indefinite detention without charge or trial under the NDAA.

Lastly, Members indicate they are determined to continue fulfilling the mandate given to it by the Temporary Committee to assess the extent to which the recommendations adopted by Parliament have been followed up. They request the Council, the Commission, the European Ombudsman, the governments and parliaments of the Member States, of the candidate states and of the associated countries, the Council of Europe, NATO, the United Nations and the Government and two Houses of Congress of the United States to keep Parliament informed of any development that may take place in the fields falling within the remit of this report.