



Chamber hearing concerning the secret “rendition” of two men suspected of terrorist acts

The European Court of Human Rights is holding a **Chamber hearing** today **Tuesday 3 December 2013** at **9.00 a.m.** in the cases of **Al Nashiri v. Poland** (application no. 28761/11) and **Husayn (Abu Zubaydah) v. Poland** (no. 7511/13).

The cases concern the “rendition” of two men suspected of terrorist acts to the CIA secret detention sites at which illegal interrogation methods were used.

The hearing will be broadcast from 2.30 p.m. on the Court’s Internet site (www.echr.coe.int). After the hearing the Court will begin its deliberations, which will be held in private. Its ruling in the case will, however, be made at a later stage.

The applicants in the two cases are: Abd Al Rahim Hussayn Muhammad Al Nashiri, a Saudi Arabian national of Yemeni descent who was born in 1965; and Zayn Al-Abidin Muhammad Husayn, also known as Abu Zubaydah, a stateless Palestinian, who was born in 1971 in Saudi Arabia. Both men are currently detained in the Internment Facility at the United States (US) Guantanamo Bay Naval Base in Cuba.

Mr Al Nashiri is the prime suspect of the terrorist attack on the US Navy ship USS Cole in the harbor of Aden, Yemen, in October 2000. He is also suspected of playing a role in the attack on the French oil tanker MV Limburg in the Gulf of Aden in October 2002. At the time of his capture, Mr Husayn was considered by the US authorities as one of the key members of the terrorist network Al’ Qaeda, who played a role in several terrorist operations, including planner of the 11 September 2001 attacks.

Both applicants allege that they were victims of “extraordinary renditions” by the US Central Intelligence Agency (CIA), that is, of apprehension and extrajudicial transfer to a secret detention site in Poland with the knowledge of the Polish authorities for the purpose of interrogation, during which they were tortured. Both men state that in December 2002 they were taken to Poland on board the same “rendition plane”.

Mr Al Nashiri submits that, having been captured in Dubai, the United Arab Emirates, in October 2002, and subsequently transferred to secret CIA detention facilities in Afghanistan and Thailand, he was brought to Poland in early December 2002. He was placed in a secret detention centre, where he stayed until early June 2003, when he was secretly transferred, with the assistance of the Polish authorities, to Morocco and, in September 2003, to the US Naval Base in Guantanamo Bay. He was subsequently transferred to two other sites before eventually being moved back to Guantanamo Bay.

According to Mr Al Nashiri, he was subjected to torture and ill-treatment while being held in unacknowledged detention in Poland. In particular, the so-called “waterboard technique” was used against him, which involves binding a detainee to a bench with his feet elevated above his head, placing a cloth over his mouth and nose and pouring water onto the cloth, thus producing the sensation of drowning and suffocation. He was also subjected to prolonged stress positions – kneeling on the floor and leaning back – and he was threatened with his family being abused if he did not comply and provide information. Mr Al Nashiri maintains that, when he was transferred from Poland, there was no attempt by the Polish Government to seek diplomatic assurances from the United States to avert the risk of his being subjected to further torture, incommunicado detention,

an unfair trial, or the death penalty when in US custody. The US Government brought charges against Mr Al Nashiri in June 2008 for trial before a military commission, but so far he has not been convicted and he remains in detention in Guantanamo Bay.

Mr Husayn submits that, having been seized in Pakistan in March 2002 and subsequently transferred to a secret CIA detention facility in Thailand, he was brought to Poland in early December 2002 where he was held in a secret CIA detention facility until September 2003. He was then taken to Guantanamo Bay and consecutively to several secret detention facilities in a number of countries before eventually being transferred back to Guantanamo Bay.

According to his submissions, Mr Husayn was subjected to various forms of abuse during his detention in Poland. Among other things, the “waterboard technique” was used against him and he was placed in a box and exposed to extreme noise. Following his transfer to Guantanamo Bay, he has not been charged with any criminal offence. The only review of his detention was carried out by a panel of officials of a US military tribunal in March 2007, which found that he was to remain in detention.

A criminal investigation in Poland against persons unknown concerning secret CIA prisons on Polish territory was opened in March 2008. It has been extended a number of times and remains pending. The authorities have not disclosed the exact terms of reference or the precise scope of the investigation.

According to Mr Husayn’s lawyers, communication with him is extremely restricted, making it impossible to pass on information or evidence directly from him to the European Court of Human Rights. The presentation of his case is principally based on publicly available sources.

Both Mr Al Nashiri and Mr Husayn note, in support of their submissions, that the circumstances surrounding their extraordinary rendition have been the subject of various reports and investigations, including reports prepared by Swiss Senator Dick Marty, in 2006, 2007 and 2011, as rapporteur for the investigation conducted by the Parliamentary Assembly of the Council of Europe into allegations of secret detention facilities being run by the CIA in several Member States (the “Marty Reports”). The Marty Reports detail an intricate network of CIA detention and transfer in certain Council of Europe States. Among other things, the reports identify the secret detention centre in Poland as being located in the Stare Kiejkuty intelligence training base near the town of Szczytno in Northern Poland.

The submissions by Mr Al Nashiri and Mr Husayn are also based, in particular, on a report prepared by the CIA inspector general in 2004 on “counterterrorism detention and interrogation activities” between September 2001 and October 2003. The report, previously classified as “top secret”, was released by the US authorities in August 2009 with large parts being blackened out. It shows that Mr Al Nashiri and Mr Husayn fell into the category of “high value detainees” (HVD) – terrorist suspects likely to be able to provide information about current terrorist threats against the United States – against whom so-called “enhanced interrogation techniques” (EITs) were being used, which included the “waterboard technique”. The applicants’ submissions also refer to a 2007 report by the International Committee for the Red Cross on the treatment of “high value detainees” in CIA custody, based on interviews with 14 such detainees, including Mr Husayn, which describes the EITs.

Mr Al Nashiri’s and Mr Husayn’s complaints before the European Court of Human Rights relate to three principal issues: their torture, ill-treatment and incommunicado detention in Poland while in US custody; their transfer from Poland; and, Poland’s failure to conduct an effective investigation into the events. They maintain in particular that Poland 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 complain that Poland 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 complain that Poland failed to conduct an effective investigation into the circumstances surrounding their ill-treatment, detention and transfer from the Polish territory.

They rely in particular on Article 3 (prohibition of torture and inhuman or degrading treatment), Article 5 (right to liberty and security), Article 6 (right to a fair trial), Article 8 (right to respect for private and family life) and Article 13 (right to an effective remedy) of the European Convention on Human Rights. Mr Al Nashiri also invokes Article 2 (right to life) and Protocol No. 6 to the Convention (abolition of the death penalty) as regards his transfer from Poland.

Procedure

The applications were lodged with the European Court of Human Rights on 6 May 2011 and on 28 January 2013 respectively. In the case of *Al Nashiri v. Poland*, the Helsinki Foundation for Human Rights was granted leave to submit written comments as a third party (under Article 36 of the Convention); the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism was invited to submit comments as a third party. He was also invited to take part in the public hearing. In both cases, Amnesty International and the International Commission of Jurists were granted leave to jointly submit written comments as third parties. Prior to the public hearing on 3 December 2013, the Court held a fact-finding hearing on 2 December 2013 followed by a hearing with the parties. The hearings on 2 December 2013 were confidential and they were held *in camera*.

Composition of the Court

The case will be heard by a Chamber, composed as follows:

Ineta Ziemele (Latvia), *President*,
Päivi Hirvelä (Finland),
George Nicolaou (Cyprus),
Ledi Bianku (Albania),
Zdravka Kalaydjieva (Bulgaria),
Vincent A. de Gaetano (Malta),
Krzysztof Wojtyczek (Poland), *judges*,
Paul Mahoney (the United Kingdom),
Faris Vehabović (Bosnia and Herzegovina),
Robert Spano (Iceland), *substitute judges*,

and also Françoise Elens-Passos, *Section Registrar*.

Representatives of the parties

Government

Artur Nowak-Far, *Undersecretary of State in the Ministry of Foreign Affairs*,
Janusz Śliwa, *Deputy Prosecutor of Appeal, Krakow*,
Justyna Chrzanowska, *Agent*,
Aleksandra Mężykowska, *co-Agent*,
Katarzyna Górską-Łazarz, *Adviser*;

Applicants

Mr Al-Nashiri

Amrit **Singh**, Mikolaj **Pietrzak**, Rupert **Skilbeck** and Nancy **Hollander**, *Counsel*;

Mr Husayn (Abu Zubaydah)

Padraig **Hughes**, Bartłomiej **Jankowski**, Helen **Duffy** and Joseph **Margulies**, *Counsel*,
Crofton **Black**, *Adviser*.

Third parties

Ben **Emmerson**, *UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*,
Anna **Katulu**, *Adviser*.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.