



The CIA's abduction and extrajudicial transfer to Egypt of the imam Abu Omar infringed the applicants' rights under the Convention

In today's **Chamber** judgment¹ in the case of [Nasr and Ghali v. Italy](#) (application no. 44883/09) the European Court of Human Rights held, unanimously, that there had been:

– with regard to Mr Nasr:

a violation of **Article 3 (prohibition of torture and inhuman or degrading treatment)** of the European Convention on Human Rights,

a violation of **Article 5 (right to liberty and security)** of the European Convention,

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**

– with regard to Ms Ghali:

a violation of **Article 3 (prohibition of torture and inhuman or degrading treatment)**,

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 and 8**

The case concerned an instance of extrajudicial transfer (or “extraordinary rendition”), namely the abduction by CIA agents, with the cooperation of Italian officials, of the Egyptian imam Abu Omar, who had been granted political asylum in Italy, and his subsequent transfer to Egypt, where he was held in secret for several months.

Having regard to all the evidence in the case, the Court found it established that the Italian authorities were aware that the 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.

The Court had already held in previous cases (*El-Masri v. “The former Yugoslav Republic of Macedonia”* [GC], ECHR 2012; *Al Nashiri v. Poland*, no. 28761/11, 24 July 2014; and *Husayn (Abu Zubaydah) v. Poland*, no. 7511/13, 24 July 2014) that the treatment of “high-value detainees” for the purposes of the CIA’s “extraordinary rendition” programme was to be classified as torture within the meaning of Article 3 of the Convention.

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.

Principal facts

The first applicant is Osama Mustafa Hassan Nasr, also known as Abu Omar, who was born in 1963. The second applicant is Nabila Ghali, who was born in 1968. Both are Egyptian nationals. Mr Nasr, a

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

member of the group Jama'a al-Islamiya – an Islamist movement regarded by the Egyptian government as a terrorist organisation – had lived in Italy since 1998. He became an imam and settled in Milan in July 2000. He was granted political asylum in February 2001 and married Ms Ghali in October of that year.

Mr Nasr was suspected, among other offences, of conspiracy to commit international terrorist acts, and his links to fundamentalist networks were investigated by the Milan public prosecutor's office. The investigations concluded in June 2005 when the investigating judge made an order for Mr Nasr's pre-trial detention. On 6 December 2013 the Milan District Court convicted Mr Nasr of membership of a terrorist organisation.

On 17 February 2003, while he was walking down a street in Milan, Mr Nasr was abducted and taken to the Aviano air base operated by USAFE (United States Air Forces in Europe), where he was put on a plane bound for the Ramstein US air base in Germany. From there he was flown in a military aircraft to Cairo. On his arrival he was interrogated by the Egyptian intelligence services about his activities in Italy, his family and his trips abroad. Mr Nasr was detained in secret until 19 April 2004 in cramped and unhygienic cells. He was taken out of his cell at regular intervals and subjected to interrogation sessions during which he was ill-treated and tortured.

On 19 April 2004 Mr Nasr was released. He maintained that he had been released because he had given statements in accordance with the instructions he had received and on condition that he did not leave Alexandria and remained silent about his experiences in prison. In spite of this condition, Mr Nasr telephoned his wife to let her know that he was safe. He also submitted a statement to the Milan public prosecutor's office in which he described his abduction and torture. Approximately 20 days after his release, Mr Nasr was rearrested and detained. He was released on 12 February 2007 without charge but was prohibited from leaving Egypt.

On 20 February 2003 Ms Ghali had reported her husband's disappearance to the police. The Milan public prosecutor's office immediately started an investigation into abduction by a person or persons unknown. The Milan police department dealing with special operations and terrorism (the "Digos") was put in charge of the investigation. In February 2005 it submitted a report on the investigation to the public prosecutor's office. All the information obtained in the investigation confirmed Mr Nasr's version of events with regard to his abduction and his transfer to the Aviano US air base and subsequently to Cairo. It also established that 19 US nationals had been involved in the events, including members of the United States diplomatic and consular corps in Italy. The investigators also found that the CIA chief in Milan at the time, Robert Seldon Lady, had played a key role in the events.

On 23 March 2005 the public prosecutor requested the pre-trial detention of 19 US nationals, including Mr Lady, who were suspected of involvement in planning and carrying out the abduction. The Milan investigating judge ordered the pre-trial detention of a further three US nationals. All 22 were declared "fugitives". In November and December 2005 the prosecutor in charge of the investigation requested the principal public prosecutor to ask the Ministry of Justice to seek the extradition of the accused on the basis of a bilateral agreement with the United States and to request Interpol to initiate an international search for them. On 12 April 2006 the Minister of Justice informed the prosecuting authorities that he had decided not to seek the extradition of the 22 accused US nationals or to have an international wanted notice issued concerning them.

The second phase of the investigation related to the involvement of Italian nationals, including State agents. During the investigation it transpired that two senior officials of the SISMI (the Italian military intelligence agency) had been aware of the CIA's plan to abduct Mr Nasr and of possible SISMI involvement. A journalist, Mr Farina, was also implicated, having allegedly attempted to lay false trails for the investigators at the request of SISMI agents.

In July 2006 the Prime Minister stated that the information and documents requested by the public prosecutor's office were covered by State secrecy and that the conditions for lifting that secrecy were not met. In a judgment of 18 March 2009 the Constitutional Court held that the interests protected by State secrecy took precedence over any other interests guaranteed by the Constitution, and pointed out that the executive was invested with discretionary powers to assess the need for secrecy in order to protect those interests. The Constitutional Court specified that these powers were exempt from review, including by the Constitutional Court, and emphasised that it was not its task to examine the reasons for having recourse to State secrecy. Numerous items of evidence in the ongoing proceedings were therefore declared confidential and unusable.

On 4 November 2009 the Milan District Court delivered a judgment in which it found that Mr Nasr's abduction had been planned and carried out by CIA operatives on the basis of a decision taken at political level; that the abduction had been carried out without the knowledge of the Italian authorities also engaged in investigating Mr Nasr at that time; and that the fact that authorisation had been given by very senior CIA officials suggested that the operation had been staged with the knowledge or even the tacit consent of the Italian authorities, although it had not been possible to further investigate the evidence existing in that regard for reasons of State secrecy.

Lastly, 22 CIA operatives and high-ranking officials, and one US army officer, were convicted *in absentia* of Mr Nasr's abduction and were given prison sentences of between six and nine years. Two members of the SISMi were found guilty of obstructing the investigation and sentenced to three years' imprisonment. The convictions of the former head of the SISMi and his deputy, and those of the three former SISMi members, were quashed by the Court of Cassation on grounds of State secrecy. The US nationals were also ordered to pay damages to the applicants in an amount to be determined in civil proceedings. The District Court provisionally awarded one million euros (EUR) to Mr Nasr and EUR 500,000 to Ms Ghali. The applicants have received no compensation to date, nor have the Italian authorities sought the extradition of the convicted US nationals.

Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security), 6 (right to a fair trial) and 13 (right to an effective remedy) of the Convention, Mr Nasr complained of his abduction, in which the Italian authorities had been involved, of the ill-treatment to which he had been subjected during his transfer and detention, of the fact that those responsible had been granted impunity owing to the application of State secrecy, and of the fact that the sentences imposed on the convicted US nationals had not been enforced because of the refusal of the Italian authorities to request their extradition. Lastly, both applicants alleged, among other violations, a breach of Article 8 (right to respect for private and family life) in that Mr Nasr's abduction and detention had resulted in their forced separation for over five years.

The application was lodged with the European Court of Human Rights on 6 August 2009.

Judgment was given by a Chamber of seven judges, composed as follows:

George Nicolaou (Cyprus), *President*,
Guido Raimondi (Italy),
Päivi Hirvelä (Finland),
Ledi Bianku (Albania),
Nona Tsotsoria (Georgia),
Paul Mahoney (the United Kingdom),
Krzysztof Wojtyczek (Poland),

and Françoise Elens-Passos, *Section Registrar*.

Decision of the Court

Article 3 (prohibition of torture and inhuman or degrading treatment)

Regarding the investigation and trial

The Court began by observing that the domestic courts had conducted a detailed investigation that had enabled them to reconstruct the events. The evidence that had ultimately been disregarded by the courts on the ground that the Constitutional Court had found it to be covered by State secrecy had been sufficient to convict the accused. The Court went on to note that the information implicating the SISMi agents had been widely circulated in the press and on the Internet; it therefore found it difficult to imagine how invoking State secrecy had been apt to preserve the confidentiality of the events once the information in question had been disclosed. In the Court's view, the executive's decision to apply State secrecy to information that was already widely known to the public had resulted in the SISMi agents avoiding conviction.

As to the convicted US agents, the Court noted that the Government had acknowledged never having sought their extradition. According to the Government, they had issued European arrest warrants and a single international arrest warrant against Mr Lady, which had yielded no results. Furthermore, the President of the Republic had pardoned three of the convicted persons, including Mr Lady, who had received a heavier sentence because of the extent of his responsibility in the extraordinary rendition operation.

The Court noted that in spite of the efforts of the Italian investigators and judges, which had identified the persons responsible and secured their convictions, the latter had remained ineffective owing to the attitude of the executive. The legitimate principle of "State secrecy" had clearly been applied in order to ensure that those responsible did not have to answer for their actions. Accordingly, the investigation and trial had not led to the punishment of those responsible, who had ultimately been granted impunity.

The Court therefore took the view that the domestic investigation had not satisfied the requirements of the Convention. Accordingly, there had been a violation of the procedural aspect of Article 3 of the Convention.

Regarding the inhuman and degrading treatment

It was beyond doubt that Mr Nasr's abduction had entailed the use of techniques that must have caused him emotional and psychological distress. His ensuing detention, including his transfer by plane to an unknown destination, had undoubtedly placed Mr Nasr in a situation of complete vulnerability, and he had undeniably lived in a permanent state of anxiety owing to his uncertainty about his fate. In fact, in his statement to the Milan public prosecutor Mr Nasr had given details of the circumstances surrounding his abduction and his detention in Egypt and the treatment to which he had been subjected, and in particular the violent interrogation sessions. The Court had previously held that similar treatment of "high-value detainees" for the purposes of the CIA's extraordinary rendition programme was to be classified as torture within the meaning of Article 3 of the Convention².

In view of the fact that the Italian authorities had been aware of the extraordinary rendition operation carried out in the context of the CIA's high-value detainee programme, and had actively cooperated with the CIA during the initial phase of the operation – Mr Nasr's abduction and his transfer abroad – the Court considered that those authorities had known or should have known that this would place him at a real risk of ill-treatment. In those circumstances, the likelihood of a violation of Article 3 had been particularly high and should have been considered as inherent in the

2. *El-Masri v. "The former Yugoslav Republic of Macedonia"* [GC], ECHR 2012; *Al Nashiri v. Poland*, no. 28761/11, 24 July 2014; and *Husayn (Abu Zubaydah) v. Poland*, no. 7511/13, 24 July 2014.

Mr Nasr's transfer. Accordingly, by allowing the CIA to transfer Mr Nasr outside the country, the Italian authorities had exposed him to a serious and foreseeable risk of ill-treatment and of conditions of detention contrary to Article 3 of the Convention.

Under Articles 1 and 3 of the Convention the Italian authorities had had a duty to take the appropriate measures to ensure that the persons within their jurisdiction were not subjected to torture or to inhuman or degrading treatment or punishment. This had not been the case, and the respondent State had to be considered directly responsible for the violation of the first applicant's rights under this head, as its agents had failed to take the measures that would have been necessary in the circumstances of the case to prevent this situation from occurring. The State's responsibility in this regard was all the greater since Mr Nasr had been granted refugee status in Italy.

In the Court's view, by allowing the US authorities to abduct the first applicant, the Italian authorities had knowingly exposed him to a real risk of treatment contrary to Article 3 of the Convention. There had therefore been a violation of the substantive aspect of Article 3 of the Convention.

Regarding the violation of Article 3 in the case of Ms Ghali

As acknowledged by the Italian courts, Ms Ghali had suffered significant non-pecuniary damage as a result of her husband's disappearance, especially on account of the sudden interruption of their married life and the damage to her psychological well-being and that of her husband. The unjustified conduct of the Italian authorities and the suffering caused to Ms Ghali as a result had been regarded by the Italian courts as sufficiently serious to warrant an award of 500,000 euros in damages.

Furthermore, the uncertainty, doubt and apprehension felt by Ms Ghali over a lengthy and continuous period had caused her severe mental suffering and distress. Like Mr Nasr's disappearance, the prolonged period during which Ms Ghali had been left without any news of her husband was attributable to the domestic authorities. In the Court's view, Ms Ghali had been subjected to treatment proscribed by Article 3. With regard to the investigation and trial, as the Court had already found that these had not led to the punishment of those responsible, there had also been a violation of Article 3 in Ms Ghali's case.

Article 5 (right to liberty and security)

The unlawful nature of Mr Nasr's detention had been established by the domestic courts, which found that he had been subjected from the outset to unacknowledged detention in complete disregard of the guarantees enshrined in Article 5 of the Convention; this constituted a particularly serious violation of his right to liberty and security. The detention of terrorist suspects under the programme of renditions set up by the US authorities had already been found in similar cases to be arbitrary³.

The Court had already found under Article 3 that Italy had been aware of Mr Nasr's transfer outside the country in the context of an extraordinary rendition and that the Italian authorities, by allowing the CIA to abduct Mr Nasr in order to transfer him to Egypt, had knowingly exposed him to a real risk of treatment contrary to Article 3. The Court maintained those findings and considered them to be applicable in the context of Article 5. It concluded that Italy's responsibility was engaged with regard both to Mr Nasr's abduction and to the entire period of detention following his handover to the US authorities. There had therefore been a violation of Article 5 of the Convention in that regard.

Article 8 (right to respect for private and family life)

In view of its findings concerning the responsibility of the respondent State under Articles 3 and 5 of the Convention, the Court took the view that the State's actions and omissions also engaged its responsibility under Article 8 of the Convention. In the light of the facts as established, the Court

3. *El-Masri v. "The former Yugoslav Republic of Macedonia"* [GC], ECHR 2012; *Al Nashiri v. Poland*, no. 28761/11, 24 July 2014; and *Husayn (Abu Zubaydah) v. Poland*, no. 7511/13, 24 July 2014.

considered that the interference with the first applicant's exercise of his right to respect for his private and family life had not been "in accordance with the law". There had therefore been a violation of Article 8 of the Convention.

The Court was of the view that Mr Nasr's disappearance, which was attributable to the Italian authorities, also amounted to interference with Ms Ghali's private and family life. As that interference had not been in accordance with the law, there had also been a violation of Article 8 of the Convention with regard to Ms Ghali.

Article 13 (right to an effective remedy) read in conjunction with Articles 3, 5 and 8

The Court had established that the investigation carried out by the national authorities – the police, the prosecuting authorities and the courts – had been deprived of its effectiveness by the executive's decision to invoke State secrecy. The Court had demonstrated that the State's responsibility was engaged on account of the violations of the applicants' rights under Articles 3, 5 and 8 of the Convention.

In the Court's view, the applicants should have been able to avail themselves of practical and effective remedies capable of leading to the identification and punishment of those responsible, to the establishment of the truth and to an award of compensation. In view of the circumstances already examined, the Court could not consider that the criminal proceedings had been effective within the meaning of Article 13 with regard to the complaints under Articles 3, 5 and 8.

As the Government themselves acknowledged, it had not been possible to use the evidence covered by State secrecy; likewise, a request for the extradition of the convicted US agents had proved futile. As to the civil consequences, the Court considered that, in view of the circumstances, any possibility for the applicants to obtain damages had been virtually ruled out.

There had therefore been a violation of Article 13 read in conjunction with Articles 3, 5 and 8 in Mr Nasr's case and a violation of Article 13 read in conjunction with Articles 3 and 8 in the case of Ms Ghali.

Article 6 (right to a fair trial)

The Court considered that this complaint covered the same ground as the applicants' complaint under the procedural limb of Article 3, in so far as it related only to one specific aspect of proceedings which the Court had already found not to satisfy the criterion of effectiveness for Convention purposes. The Court therefore deemed it unnecessary to examine this complaint separately under Article 6.

Article 41 (just satisfaction)

The Court held that Italy was to pay 70,000 euros (EUR) to Mr Nasr and EUR 15,000 to Ms Ghali in respect of non-pecuniary damage and EUR 30,000 to the applicants jointly in respect of costs and expenses.

The judgment is available only in French.

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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.