

European Court orders damages for CIA torture victim

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In mid-December 2012, the European Court of Human Rights (ECHR) in Strasbourg awarded damages of €60,000 to Khaled El-Masri, a German citizen of Lebanese origin. The judges accepted that Macedonian security services had illegally seized El-Masri at the end of 2003, subjected him to abuse and finally handed him over to agents from the CIA.

The CIA then transported El-Masri to a secret prison in Afghanistan, where he was tortured and mistreated for months. The court saw this as a serious violation of the European Convention on Human Rights, to which the Republic of Macedonia has acceded.

Although only representatives of the Macedonian government were accused, the verdict has broader significance. For the first time the brutal intrigues of the US government and its European accomplices in the so-called “war on terror” have been condemned by an international court for breaching international laws.

Previously, all El-Masri’s attempts to find justice in Macedonia, Germany and the US had been systematically thwarted. Investigations, if they were conducted at all, were carried out reluctantly and half-heartedly; information was withheld by the investigating authorities citing “state secrecy”.

The ECHR regarded all aspects of El-Masri’s evidence as credible and supported by international investigations. His complaint that the measures taken against him, his handing over to CIA agents and the hindering of his attempts to seek legal redress breached the central articles of the European Convention on Human Rights was sustained in every point by the court.

Khaled El-Masri was arrested by security forces on his entry to Macedonia on December 31 2003, and then taken to a hotel in Skopje, where he was held for 23 days without access to the outside world and under constant surveillance by secret service agents. Although he was not physically mistreated by the Macedonian secret service agents, they threatened to shoot him if he attempted to leave the hotel.

On January 23, 2004, El-Masri was handcuffed and blindfolded, and taken to Skopje airport where he was handed over to masked CIA agents and abused physically and sexually. He was then forcibly taken onto a plane, thrown to the floor, chained and sedated.

Since this happened in the presence of Macedonian security officials the Strasbourg court judged that the Macedonian authorities were jointly responsible for the torture El-Masri suffered and guilty of breaching Article 3 of the European Convention, which prohibits torture as inhuman and degrading treatment.

Also, according to the judges, the Macedonian security forces were aware that the CIA plane would transport El-Masri to Afghanistan, since they had access to the flight plans. It must therefore have been clear to them that El-Masri would face further torture, they said.

In Afghanistan, El-Masri was taken to the infamous “Saltpit” prison, where he was further mistreated and questioned for extended periods. In May 2004, after four agonizing months, he was transported to Albania and then to Germany. The CIA had finally come to the conclusion that El-Masri was completely innocent and had been falsely detained.

The court in Strasbourg made the Macedonian government jointly responsible for the torture he suffered in Afghanistan. El-Masri was arrested on Macedonian territory, although there was neither an arrest warrant nor a valid extradition request from the US government. That El-Masri was detained in a hotel and his arrest was not logged was regarded by the court as additional proof of the illegality of the actions of the Macedonian authorities.

His illegal detention was regarded by the judges as a breach of the right to freedom and security of the person (Article 5) and—on the grounds of the illegitimacy of the measures taken against El-Masri—also as an illegal intervention into private and family life (Article 8).

The fact the charges against persons unknown within the Macedonian security services filed by El-Masri were not pursued and eventually rejected was evaluated by the judges in Strasbourg as the hindering of a valid legal complaint, i.e., a breach of Article 13.

The Macedonian government initially claimed that El-Masri’s papers had merely been checked in Macedonia on the suspicion they may be counterfeit. Later, he was said to have travelled to Kosovo.

The Strasbourg court possessed a written statement by the then Macedonian Interior Minister Hari Kostov, who confirmed

that El-Masri was arrested by the Macedonian security authorities, held in Skopje without contact to the outside world under the supervision of intelligence officials and was later handed over to a CIA team.

As well as El-Masri's evidence, the judges also based their verdict on the statement by the former Macedonian interior minister and primarily on inquiries conducted by Dick Marty, the special investigator of the European Council. Marty had produced detailed reports in 2006 and 2007 showing the involvement of various European states in the crimes organised by the CIA under the guise of the "war on terror". The case of Khaled El-Masri was characterised as a "documented transfer" as his transportation was well researched.

Nevertheless, El-Masri had been previously frustrated by all the courts in which he sought justice. Immediately following his return to Germany, El-Masri contacted a lawyer and sought to initiate a series of legal cases.

In the US, a suit filed by the American Civil Liberties Union (ACLU) against CIA Director George Tenet (1997-2004) and other CIA agents was rejected by the courts in December 2005. This was then upheld by the Supreme Court in October 2007, which ruled that the "state interest in protecting state secrets" outweighed "the individual claim for justice by El-Masri".

In December 2008, the state prosecutor's office in Skopje rejected El-Masri's legal complaint against unknown Macedonian judicial officials.

The behaviour of German law enforcement authorities was particularly disgraceful. Despite the involvement of the Munich state attorney's office in the case and a parliamentary committee of inquiry, as well as a mountain of evidence, no charges have been filed in Germany to the present.

The then-German Interior Minister Otto Schily (Social Democratic Party, SPD), who was informed about the case by the American ambassador Dan Coats, has remained silent to the present day. In 2005, Justice Minister Brigitte Zypries (SPD) said that "everything constitutionally possible was done to resolve the case". Before that, Federal Prosecutor Kay Nehm had rejected that the case fell within the jurisdiction of the attorney general on the legally dubious grounds the El-Masri case was not one of "political abduction".

But even that was not enough and the Munich public prosecutor had since effectively branded El-Masri as a criminal, ordering his surveillance. The phones of his lawyer Manfred Gnjjidic were tapped for months, breaching the constitutionally enshrined lawyer-client privilege.

The Munich state attorney's office, which had received an official legal complaint from El-Masri in 2004, finally issued an arrest warrant against 13 CIA agents at the beginning of 2007. But this was never served, since the federal government refused to lodge an extradition request with the American authorities. Berlin wanted to avoid straining relations with Washington under all circumstances, and therefore thwarted all El-Masri's attempts to seek justice.

The diplomatic cables from the US embassy in Berlin in January/February 2007, published by WikiLeaks, show the compliance of the German authorities in covering up the crimes against El-Masri. For example, the then-deputy US ambassador John Koenig warned the German government that it should carefully weigh up the consequences to bilateral relations when issuing international arrest warrants.

In December 2010, a Cologne court finally dismissed El-Masri's lawsuit against the federal government that had sought to enforce the extradition warrants against the CIA agents. As far as the German judiciary was concerned, the case was now at an end.

El-Masri also met a wall of silence at the parliamentary committee of inquiry, which until 2009 had been investigating the involvement of the German Secret Service in the Iraq war and German participation in the crimes of the US secret service.

Although the committee's final report came to the conclusion that El-Masri's presentation of the case was credible, it did not accept there had been any German involvement. In fact, the committee had been denied access to many files, on the grounds it might damage "state secrets". Thus evidence of the involvement of German security forces in the mistreatment and transportation of El-Masri could not be pursued.

Nevertheless, members of the Free Democratic Party (FDP), then in opposition, found that the German government shared responsibility. Hellmut Königshaus (FDP) said in 2007 about the El-Masri case: "It is unacceptable that the federal government prevents the prosecution of serious crimes against a German citizen only for reasons of political expediency."

In the final report, the FDP demanded that the government provide access to all files and information to the investigating authorities, and "support the German victims of the practice of rendition receiving damages from the culprits."

But no sooner had the FDP joined the Merkel government in 2009, taking over the justice ministry, than their previous words proved to be just lip service. The minister responsible, Sabine Leutheusser-Schnarrenberger (FDP), has not lifted a finger to ensure that the wrongs done to Khaled El-Masri are acknowledged as such in a court of law.

While the German government has publicly condemned the illegal abductions, in practice it tolerated them or even collaborated with Washington. With the Strasbourg judgement, the systematic violation of basic democratic rights by the United States and its European allies has finally been acknowledged for the first time in a court of law.



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