

European Court Rules Against CIA Torture

The European Court of Human Rights has found unanimously for Khaled el-Masri, the German citizen kidnapped by the CIA. The ruling is the first to find that standard CIA techniques constitute torture, writes James O'Neill

The European Court of Human Rights (ECHR) has delivered an historic judgment on 13 December 2012 in the case of Lebanese born German citizen Khaled el-Masri.

El-Masri was on a holiday trip to Macedonia in December 2003 when he was seized by Macedonian authorities acting at the behest of the United States. He was held incommunicado in Skopje for 23 days during which time he was sodomised, beaten, tortured and threatened with being shot if he tried to leave.

He was then handed over to the CIA and "rendered" to the CIA's notorious "Salt Pit" prison outside of Kabul in Afghanistan. There he was furthered tortured.

The Americans eventually realised that they had abducted an innocent man. The then Secretary of State Condoleezza Rice ordered his release. This order was ignored for a further six weeks. At the end of May 2004, instead of being returned to Germany, el-Masri was flown – blindfolded, earmuffed and chained to his seat – to Albania. There he was dumped by the roadside in that country's lawless mountain regions.

Rather than being killed, as might have been expected, el-Masri managed to return to Germany where he made a complaint to the German police. Their criminal investigation established that el-Masri was telling the truth, in part from the residue of drugs found in his system. Before charges could be brought however, the German authorities aborted their investigation following pressure from the US government.

El-Masri's attempts at legal redress in the US were unsuccessful. The US government succeeded in having his lawsuit dismissed on "state secrets" grounds. This defence has been used on numerous occasions in the US to block proceedings brought by other litigants who have suffered rendition, detention without trial, torture and deprivation of their habeas corpus rights. The US government never responded to el-Masri's allegations in a substantive way. In 2007 the US Supreme Court upheld the dismissal of his claim without a trial or evidence being tested.

The ECHR unanimously found in el-Masri's favour, holding that the techniques applied to him by both the Macedonians and the Americans amounted to torture. This is the first time that a senior court of competent jurisdiction has publicly held that the standard techniques used by the CIA on its prisoners amounted to torture.

The court found that el-Masri's evidence was corroborated from a number of sources. These included the German criminal investigation (before it was aborted under

political pressure), investigations by the European Parliament (2006) and the Council of Europe (2006 and 2007), as well as leaked US diplomatic cables. The latter source confirmed that the US government was actively complicit in attempts to block any criminal investigation of the el-Masri case. / continued

The US government has yet to apologise to el-Masri even though it has publicly admitted that a mistake was made. Neither has el-Masri been offered compensation nor access to rehabilitation for the ongoing traumas he suffers from as a consequence of his experiences. Both steps are obligatory under the Convention Against Torture.

The court did order Macedonia to pay el-Masri €60,000 damages, but this is modest in relation to what was inflicted upon him, which the court unanimously found was in breach of the Macedonian Criminal Code, the Vienna Convention on Consular Relations, the International Covenant on Civil and Political Rights, and the International Convention for the Protection of all Persons from Enforced Disappearance.

With this important precedent now established there are likely to be further complaints and evidence of official wrongdoing. A Council of Europe investigation in 2007 found that at least 14 European countries, including Poland and the United Kingdom, were part of a "spider web" of rendition operations.

While the US is highly unlikely to ever hold its officials criminally accountable for this and other breaches of international law, this may not hold true for other European countries. Italy's highest court has recently upheld the convictions of Italian and American officials involved in a different rendition case.

The ECHR judgment makes clear that it expects proper investigations and prosecutions should now follow. The court rightly upheld the rights of an individual to be free from well-documented human rights abuses over the claims by a state for "states secrets privilege", "national security" or the "need for secrecy".

This rejection of a state's claims to impunity from scrutiny and accountability may well be the most important result of this landmark case.

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