



VOICES

European Court Probes for Truth on CIA's Secret Prison in Poland

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A U.S. military commission this week begins another session of pretrial hearings in the case of Guantánamo prisoner Abd al-Rahim al-Nashiri, a Saudi national who faces a possible death sentence arising from his alleged involvement in the 2000 attack on the U.S.S. Cole and other acts. The hearing, held in part behind closed doors, will review al-Nashiri's requests for foreign government information relating to his arrest, detention and rendition. At the same time, on the other side of the Atlantic, the European Court of Human Rights has demanded that Poland turn over records ([/press-releases/european-court-wants-answers-poland-cia-black-site-case](#)) relating to al-Nashiri's detention in a secret CIA prison there.

The European court's demand comes in the context of a lawsuit brought on al-Nashiri's behalf ([/litigation/al-nashiri-v-poland](#)) last year by the Open Society Justice Initiative. The lawsuit challenges Poland's collaboration with the CIA's secret detention, torture and rendition of al-Nashiri on Polish soil. Last week, the European Court communicated al-Nashiri's application to the Polish government—a significant step forward for his case, as only about ten percent of all cases brought before the court make it to this stage.

In communicating the case, the court issued a detailed statement of facts and list of questions to the parties, an indication that it is giving Mr. al Nashiri's claims the consideration they deserve. As set forth in al-Nashiri's application to the Court, during his detention in a secret CIA prison in Poland from about December 5, 2002 until June 6, 2003, U.S. interrogators subjected him to mock executions with a power drill as he stood naked and hooded; racked a semi-automatic handgun close to his head as he sat shackled before them; held him in "standing stress positions;" and threatened to bring in his mother and sexually abuse her in front of him.

The European Court pointedly asks: "In the period from 5 December 2002 to 6 June 2003 was the applicant detained in a secret facility in Poland?" It requests the Polish government to confidentially "supply materials showing on which grounds the applicant was granted injured person status" in a criminal investigation into CIA prisons pending in Poland since March 2008. (al-Nashiri was granted victim status in this investigation in late 2010). The Court also asks whether and on the basis of what evidence the fact of al-Nashiri's detention in Poland has been established in that investigation, and asks the government to confidentially supply "a document on setting up and running a secret CIA prison on Polish territory prepared by the Polish authorities," if such a document exists. (Recent news reports indicate the existence of such a document (<http://www.thenews.pl/1/10/Artykul/103222,CIA-agreement-touted-as-evidence-in-%E2%80%9Cblack-sites%E2%80%9D-case>) signed by the Polish authorities, but not by their U.S. counterparts).

In stark contrast to the straightforward questions posed by the European Court, al-Nashiri's motions before the Guantánamo military commission are being heard under extraordinary secrecy. Fourteen media groups have opposed the prosecution's proposal (<http://www.miamiherald.com/2012/07/13/2894381/media-opposes-guantanamo-hearing.html>) to close portions of the hearings. The defense's requests for foreign government information relating to al-Nashiri's arrest, detention and rendition are classified and have not been made publicly available. But the U.S. government's replies to those motions are available in redacted form on the military commission's website. The replies indicate that the motions are for "Discovery Of Information In The Possession Of [Redacted] And The United States Relating To The Arrest, Detention And Rendition Of Mr. Nashiri." The Government's replies also each contain a section arguing that the "U.S. Government Cannot Compel a Foreign Government To Produce Information," and that "military commissions cannot compel a foreign government to produce information or documents." The section concludes by saying


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that “any request seeking to compel information from a foreign government should be denied.” As such, the motions appear to relate to the defense’s request for information in the possession of a foreign government concerning al-Nashiri’s arrest, detention, and rendition.

In light of the secrecy surrounding al-Nashiri’s military commission proceedings, the public may never know for sure which foreign governments are the subject of the pending motions or how these motions will ultimately be resolved. (In addition to Poland, al-Nashiri was secretly detained by the CIA in Thailand and Romania among other locations). Al-Nashiri cannot speak publicly about his torture or secret detention in Poland, as everything he says is deemed to be presumptively classified. Moreover, neither the U.S. nor the Polish government has acknowledged his secret detention, torture and rendition on Polish territory. Indeed, the U.S. government has refused to disclose the locations of any of its secret prisons overseas. In addition, U.S. courts have dismissed civil cases brought by rendition victims without ever reaching the merits of their claims. Therefore, the prospects for airing the full truth about al-Nashiri’s torture, secret detention and rendition seem dim to say the least.

The only ray of light in this depressing state of affairs is the European Court’s recent intervention in al-Nashiri’s case. In posing questions on the merits of the case to the parties and requiring Poland to supply relevant documents, the European Court has already moved far beyond what U.S. courts have afforded rendition victims. Although these initial indications are positive, we must wait to see how the al-Nashiri case unfolds. One can only hope that the European Court will be more effective at upholding the universal norm against torture than U.S. courts have been.

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