

## Europe and the CIA

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### Paying for torture

The CIA tortured suspected terrorists on Polish soil. The European Court of Human Rights is making Poland pay the damages

IN LATE 2002, Poland did its American allies a favour by allowing the Central Intelligence Agency to use a Polish military intelligence base in Stare Kiejkuty to interrogate suspected terrorists. It was a decision for which Warsaw would pay dearly. On February 17th the European Court of Human Rights (ECHR) denied Poland's appeal of a ruling of last year holding the country liable for the CIA torture of two detainees at the Polish base. The detainees, both Saudi citizens, are Abd al-Rahim al-Nashiri, accused of planning the bombing of the USS Cole, an American warship, in 2000, and an alleged senior al-Qaeda lieutenant known as Abu Zubaydeh. The court found that Poland had violated half a dozen articles of the European Convention on Human Rights, and had endangered Mr al-Nashiri's life by allowing his deportation to a country (America) where he is exposed to the death penalty, which is illegal in the EU.

Poland is now obligated to pay the two alleged terrorists \$262,000 in damages. More significantly, Warsaw must disclose details of the men's detention, and must seek diplomatic assurances from America that it will not subject Mr al-Nashiri to the death penalty. Poland is so far the only country to face judicial sanction for participating in the CIA's so-called rendition programme, under which suspected terrorists detained throughout the world were shipped to third countries for interrogation in the hopes of evading legal authority. But a comprehensive report by the Open Society foundation names 54 countries that took part, and two similar cases—against Romania and against Lithuania—are pending at the ECHR.

Poland put on a brave face in accepting the ECHR decision. Grzegorz Schetyna, the foreign minister, told a Polish news radio station that the fines would be paid because "we are a country that abides by laws." But it was clearly galling to the Polish government that it was being held liable for American torture, when the CIA officers who implemented that torture have got off without sanction. To drive the point home, one week before the ECHR ruling, the sole CIA employee prosecuted in connection with America's torture programmes was released from prison to serve the final three months of a 30-month sentence in house arrest. The former CIA officer, John Kiriakou, was jailed not for carrying out torture, but for blowing the whistle on it. Faced with prosecution under America's espionage act, he pled guilty to a lesser charge, after a 2007 television interview in which he denounced the CIA's use of waterboarding.

Barack Obama, America's president, says his country has now forsworn the abusive interrogation practices it carried out under his predecessor, George Bush. In a speech in August he owned up to those abuses in essentially the same terms used by Mr Kiriakou: "We did some things that were wrong. We tortured some folks. We did some things that were contrary to our values." The gravity of the abuses was made clear in a 499-page report on CIA torture practices released by America's Senate in December.

That report redacted the names of participating countries, but they are easy enough to identify. The section describing the interrogations in Poland paints a picture of a "rent-a-dungeon" deal. The Polish government was initially eager to co-operate in America's "war on terror", but later developed qualms and was persuaded to continue only at the price of \$15m in cash. The CIA refused Polish requests for a written memorandum of understanding. Assuming that the verbal-only deal meant they would enjoy confidentiality, the Poles were then infuriated in 2006 when Mr Bush admitted the programme existed: "[The Polish] officials were 'extremely upset' at the CIA's inability to keep secrets and were 'deeply disappointed' in not having had more warning."

Some of the programme's most infamous abuses occurred at the Stare Kiejkuty site. An inadequately trained CIA interrogator threatened Mr al-Nashiri with a gun and with a power drill, forced him to stand in stressful positions for days on end, and told him that his mother would be brought in and sexually abused in front of him. The CIA's own chief of interrogations sent an email to colleagues announcing he was retiring in protest over Mr al-Nashiri's treatment. The report concluded those interrogations produced no useful information for preventing terrorist attacks.

While Mr Obama says the CIA's use of torture will not be repeated, other American officials have been more equivocal. John Brennan, the CIA's current director, defended the agency in the aftermath of the Senate report's release, insisting it "did a lot of things right". Mr Brennan says there is no way of knowing whether the torture produced useful information, and has declined to rule out using so-called "enhanced interrogation techniques" in the future. Meanwhile, America has made no moves to hold CIA officers or any other public officials accountable for violating the international Convention Against Torture, which it has ratified.

Whether or not some future American government decides to resort to such methods again, any request for European cooperation would be a dead letter. America may have no interest in prosecuting its intelligence officers for torturing detainees, but the ruling against Poland has made it clear that European governments will be held responsible for abetting them. The idea behind the CIA's rendition programme was to escape legal

oversight by shipping detainees to third countries, where the application of both American and local laws would be contestable. The ECHR has shut down that avenue of escape, at least in Europe. The prospect of Polish taxpayers forking over hundreds of thousands of dollars to suspected al-Qaeda terrorists in compensation for torture by American intelligence agents may appear bizarre. But the underlying point is reflected in Mr Schetyna's statement: European countries, and their security agencies, need to respect the rule of law.