



Romania committed several rights violations due to its complicity in CIA secret detainee programme

The case **Al Nashiri v. Romania** (application no. 33234/12) concerned the applicant's allegations that Romania had let the United States Central Intelligence Agency (the CIA) transport him under the secret extraordinary rendition programme onto its territory and had allowed him to be subjected to ill-treatment and arbitrary detention in a CIA detention "black site". He also complained that Romania had failed to carry out an effective investigation into his allegations.

The applicant in the case, Abd Al Rahim Husseyn Muhammad Al Nashiri, is facing capital charges in the US for his alleged role in terrorist attacks.

In today's **Chamber** judgment¹ in the case the European Court of Human Rights held, unanimously, that there had been:

violations of Article 3 (prohibition of torture) of the European Convention on Human Rights, because of the Romanian Government's failure to effectively investigate Mr Al Nashiri's allegations and because of its complicity in the CIA's actions that had led to ill-treatment;

violations of Article 5 (right to liberty and security), Article 8 (right to respect for private life), and Article 13 (right to an effective remedy) in conjunction with Articles 3, 5 and 8,

violations of Article 6 § 1 (right to a fair trial within a reasonable time), and Articles 2 (right to life) and 3 taken together with Article 1 of Protocol No. 6 (abolition of the death penalty) because Romania had assisted in Mr Al Nashiri's transfer from its territory in spite of a real risk that he could face a flagrant denial of justice and the death penalty.

The Court had no access to Mr Al Nashiri as he is still being held by the US authorities in very restrictive conditions so it had to establish the facts from various other sources. In particular, it gained key information from a US Senate report on CIA torture which was released in December 2014. It also heard expert witness testimony.

The Court concluded that Romania had hosted a secret CIA prison, which had the code name, Detention Site Black, between September 2003 and November 2005, that Mr Al Nashiri had been detained there for about 18 months, and that the domestic authorities had known the CIA would subject him to treatment contrary to the Convention. Romania had also permitted him to be moved to another CIA detention site located either in Afghanistan (Detention Site Brown) or in Lithuania (Detention Site Violet), as found in another judgment delivered today **Abu Zubaydah v. Lithuania**, thus exposing him to further ill-treatment.

The Court therefore found that Mr Al Nashiri had been within Romania's jurisdiction and that the country had been responsible for the violation of his rights under the Convention.

It also recommended that Romania conclude a full investigation into Mr Al Nashiri's case as quickly as possible and, if necessary, punish any officials responsible. The country should also seek assurances from the United States that Mr Al Nashiri will not suffer the death penalty.

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.

Principal facts

The applicant, Abd Al Rahim Husseyn Muhammad Al Nashiri, is a Saudi Arabian national of Yemeni descent who was born in 1965 and is being held in the Internment Facility at the United States (US) Guantánamo Bay Naval Base in Cuba.

Mr Al Nashiri was one of the so-called “high-value detainees” (“HVD”) detained by the CIA at the start of the “war on terror” launched by President Bush following the 11 September 2001 attacks. He was seized in Dubai (the United Arab Emirates) in October 2002. He is notably suspected of an attack on the US Navy ship USS Cole in the harbour of Aden (Yemen) in 2000 and on the French oil tanker MV Limburg in the Gulf of Aden in 2002. US Military prosecutors brought capital charges against him in 2011 for his alleged role in the attacks. The proceedings against him are still pending.

The European Court established in Mr Al Nashiri’s first case ([Al Nashiri v. Poland](#) of 2014) that after his capture Mr Al Nashiri had been held in a CIA secret detention facility in Afghanistan and Thailand before being moved to another CIA “black site” in December 2002 in Poland. He was detained there until June 2003.

Mr Al Nashiri submitted in this case that in the following three years he was secretly transferred from Poland to five different CIA detention facilities, including Romania from April 2004 to October/November 2005. He was finally moved to Guantánamo Bay in September 2006.

According to Mr Al Nashiri, he was subjected to torture and other forms of ill-treatment prohibited by Article 3 of the Convention throughout his detention by the CIA.

He described his treatment in testimony in 2006 to the International Committee of the Red Cross (ICRC), and in partly declassified transcripts of evidence to the US military Combatant Status Review Tribunal in 2007.

It included interrogators hanging him upside down for almost a month; subjecting him to waterboarding; making him stand in a box for a week; slamming him into a wall; and keeping him in positions of stress.

He also alleged that he had been kept in continuous solitary confinement and incommunicado detention throughout his undisclosed detention. He had no knowledge of where he was being held and had no contact with persons other than his interrogators or guards.

According to the 2014 US Senate report on CIA torture, Mr Al Nashiri was subjected to rectal feeding at one point in 2004 when being held in Bucharest because he had tried to go on a hunger strike and in 2005 he was on the “verge of a breakdown”. A psychological evaluation released in 2013 stated that he was suffering from Post-Traumatic Stress Syndrome.

In November 2005 the *Washington Post* revealed that eastern European countries had hosted secret CIA prisons. The 2014 US Senate report on CIA torture stated that the Romanian authorities had closed Detention Site Black within hours of the newspaper’s revelations. In December 2005 *ABC news* confirmed that Romania was among the countries which had secretly held CIA high-value detainees, including Mr Al Nashiri.

Romania initiated a parliamentary inquiry in December 2005. It principally focused on whether a secret CIA prison had existed in the country, and whether there had been illegal transfer of detainees, suspicious movements of aircraft and possible participation of the domestic authorities in the scheme. A final report was issued in March 2007, answering in the negative to those questions.

A criminal investigation in Romania, launched in July 2012 following a complaint by Mr Al Nashiri, is still pending. No one who could be held responsible for Romania’s role in the rendition programme has been identified and no information from the investigation has been made public.

Complaints, procedure and composition of the Court

Mr Al Nashiri complained that Romania had enabled the CIA to detain him secretly on its territory, subject him to torture, various other forms of mental and physical abuse and incommunicado detention, thus denying him the possibility to contact his family or the outside world.

He also complained that Romania had allowed him to be transported to other CIA-run secret detention sites, exposing him to years of further similar treatment, a flagrantly unfair trial and a risk of the death penalty.

Lastly, he complained of the lack of a prompt and thorough investigation into his allegations.

Mr Al Nashiri relied on Article 2 (right to life), Article 3 (prohibition of torture), Article 5 (right to liberty and security), Article 6 (right to a fair trial within a reasonable time), Article 8 (right to respect for private and family life), Article 13 (right to an effective remedy) and Article 1 of Protocol No. 6 (abolition of the death penalty).

The application was lodged with the European Court of Human Rights on 1 June 2012.

Amnesty International and the International Commission of Jurists, the Association for the Defence of Human Rights in Romania – the Helsinki Committee, twelve media organisations, represented by Howard Kennedy Fsi LLP, and the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism submitted comments as third parties.

A fact-finding hearing was held on 28 June 2016 and a public [hearing](#) on 29 June 2016.

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

Linos-Alexandre **Sicilianos** (Greece), *President*,
Kristina **Pardalos** (San Marino),
Robert **Spano** (Iceland),
Aleš **Pejchal** (the Czech Republic),
Mirjana **Lazarova Trajkovska** (“the former Yugoslav Republic of Macedonia”),
Paul **Mahoney** (the United Kingdom) and,
Florin **Streteanu** (Romania), *ad hoc Judge*,

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

The Court first dealt with the Romanian Government’s argument that there was no evidence to prove Mr Al Nashiri’s allegations, and their doubts as to the credibility of the evidence and sources in the case.

The Court noted that it was not in a position to receive a direct account of the events from Mr Al Nashiri himself because he has had no contact with the outside world since October 2002, save the ICRC team in 2006, the military commission’s members and his US counsel. The case before it was therefore largely based on circumstantial evidence.

The evidence included, in particular, the 2014 declassified executive summary of the US Senate report on CIA torture, which detailed the activities of the CIA in the HVD programme in the years 2001-2009. The Court also reviewed Mr Al Nashiri’s testimony in the ICRC report and his statements to the Combatant Status Review Tribunal.

In addition, it took account of international inquiries, such as the three reports by Council of Europe Parliamentary Assembly rapporteur Dick Marty from Switzerland and redacted documents released by the CIA. It heard the testimony of Senator Marty, two experts on the CIA rendition programme,

Mr J.G.S., a lawyer and investigator who has worked with Senator Marty, and Mr Crofton Black, an investigator with the Bureau of Investigative Journalism and *Reprieve*, a British non-governmental organisation representing the interests of some of the detainees held in Guantánamo. It also heard Giovanni Claudio Fava, rapporteur for an inquiry carried out by the European Parliament, and relied on an affidavit by Thomas Hammarberg, the Council of Europe's Commissioner for Human Rights from 2006 to 2012.

The evidence included details of how detainees had been ill-treated, the movement of aeroplanes known to have been used by the CIA for rendition operations, how the CIA had paid foreign governments to host sites and how the programme had developed over the years.

In particular, the 2014 US Senate report on CIA torture provided information about the transfer dates and times, and the interrogation schedules of CIA detainees. It also spoke clearly of cooperation with the domestic authorities and of them being provided with millions of dollars for "support" for the CIA extraordinary rendition programme. The actual amount was redacted out of the report.

A careful reading of the report allowed the Court to conclude that the detention centre known as Detention Site Black, one of the places where Mr Al Nashiri had been held, was located in Romania.

Based on all the material, which was the result of extensive and meticulous work by experts and politicians of the highest integrity and competence, the Court concluded that it had been proved that a CIA secret detention centre had operated in Romania from September 2003 to November 2005 and that Mr Al Nashiri had been held there from April 2004 to at the latest November 2005.

Romania had known of the purpose of the CIA's activities on its territory and had cooperated. It must also have been clear such actions had threatened Mr Al Nashiri's rights.

Overall therefore, Mr Al Nashiri's allegations fell within Romania's jurisdiction and could make it answerable under the Convention.

Article 3 (inhuman and degrading treatment)

The Court subsequently found a violation of the **procedural aspect** of Article 3 because of deficiencies in both the parliamentary inquiry and criminal investigation in Romania.

The parliamentary inquiry had been limited in scope, failing to identify or hold to account Romanian officials who were possibly complicit in the CIA scheme, despite the fact that the Romanian Senate's investigation had overlapped with international inquiries whose findings pointed to a strong suspicion that a "black site" had existed in Romania.

The criminal investigation had similarly failed for the last five years to identify any individuals responsible for Romania's involvement in the scheme. Furthermore, the Court considered that the Romanian prosecution authorities should immediately have opened a criminal investigation in 2005 into the extremely grave allegations concerning their country, without waiting for a victim to bring a complaint. The long delay – seven years – in opening the criminal investigation meant that evidence had not been obtained in the aftermath of the closure of the "black site" in Romania, and important evidence such as flight data had even been erased.

On the **substantive aspect** of Article 3, the Court noted that Mr Al Nashiri had not been subjected to the harshest interrogation techniques in Romania, as described in his testimony to the Red Cross and the US military Combatant Status Review Tribunal. However, his prior suffering had to be taken into account when considering his detention in Romania because he would have been in constant fear of the previous cruel treatment being inflicted on him again. Indeed, the 2014 US Senate report on CIA torture confirmed that Mr Al Nashiri had been suffering from serious psychological problems as a result of his ill-treatment.

In any event, in Romania he had also had an extremely harsh detention regime, which, according to the 2007 ICRC report and the 2014 US Senate report on CIA torture, had as standard practice included blindfolding or hooding, solitary confinement, the continuous use of leg shackles and exposure to noise and light.

Such suffering amounted to inhuman treatment within the meaning of the Convention, which Romania had enabled by cooperating with the CIA. Moreover, it had allowed his rendition out of the country and exposed him to a foreseeable serious risk of further ill-treatment.

Article 5 (right to liberty and security)

Romania had enabled the CIA to transport Mr Al Nashiri in and out of the country and hold him in secret. Unacknowledged detention was a complete negation of the guarantees of the Convention and a serious violation of Article 5.

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

The interference with Mr Al Nashiri's rights had taken place in the context of fundamentally unlawful and undisclosed detention. There had been no justification for it under Article 8 and his rights under this provision had therefore been breached.

Article 13 (right to an effective remedy)

The Court observed that it had already found that the investigation into Mr Al Nashiri's allegations had fallen short of Convention standards. He had also had no effective remedy available to complain about violations of his rights. There had therefore been a breach of Article 13, in conjunction with Articles 3, 5 and 8.

Article 6 § 1 (right to a fair trial)

When Mr Al Nashiri had been transferred out of Romania, the authorities had to have been aware of widely expressed public concern that trials before the US military commission did not meet the most basic guarantees of a fair trial. Despite the real and foreseeable risk that he could face a flagrant denial of justice, Romania had assisted in his transfer from its territory, in breach of Article 6 § 1.

Articles 2 (right to life) and 3 and Article 1 of Protocol No. 6 (abolition of the death penalty)

Romania had enabled the CIA to transfer Mr Al Nashiri to the US military commission's jurisdiction where he had been indicted and was on trial and facing the death penalty. There had therefore been a violation of Articles 2 and 3 of the Convention taken together with Article 1 of Protocol No. 6.

Article 46 (binding force and implementation)

The outcome of the trial against Mr Al Nashiri still being uncertain, the Court considered that Romania should seek assurances from the US authorities that he will not suffer the death penalty. Furthermore, it recommended that Romania should clarify, where feasible, the circumstances in which Mr Al Nashiri had been brought to Romania, his treatment there and his removal, and bring to a close the criminal investigation as soon as possible. The investigation should also aim to identify and, where appropriate, punish those responsible.

Article 41 (just satisfaction)

The Court held that Romania was to pay Mr Al Nashiri 100,000 euros (EUR) in respect of non-pecuniary damage. He made no claim for costs and expenses.

The judgment is available only in English.

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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.