

Accountability for US torture: the long road to justice

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Last week in Washington: The American Society for International Law hosts a conference in a hotel on Capitol Hill, the political heart of the city. It's a meeting place for internationally orientated lawyers from government bodies, major commercial law firms, universities and human rights organizations. A number of podium discussions focus on human rights violations committed by the USA as part of the 'War on Terror' after 11 September 2001. I'm one of the speakers; our discussion is on court actions taken against the violations outside the USA.

Work is well underway in Europe. Serious investigations have been initiated in Western Europe and further afield, with Eastern European civil rights organizations taking action against their own states as well as against US actors. The USA made use of European territory in order to carry out its activities around the world, maintaining secret torture prisons in Poland, Lithuania and Romania and carrying out abductions in Italy and Macedonia. In some cases, the victims were European citizens, giving courts in Europe jurisdiction over the cases.

It took some time for Europe to admit to its role in these actions. For many years, unconditional allegiance to the USA and ignorance of the extent of the torture prevailed. The first steps were taken by the Council of Europe – a widely underestimated pan-European institution – and by the European Parliament as they began to publish key reports on the issue over a decade ago; this was followed by the establishment of national investigation committees in Sweden, Germany and the UK.

Important criminal investigations in Spain, Italy and Germany led to arrest warrants being issued for CIA agents involved in the abduction of German citizen Khaled El Masri and Egyptian citizen Abu Omar. Convictions were handed down in Italy where it is permitted – in a practice that raises rule of law issues – to conduct criminal trials in the absence of the accused. While arrest warrants issued by the district court in Munich have not yet been enforced, the proceedings have already had an impact: hundreds of CIA agents who worked in the transnational abduction and torture program are now avoiding travelling to Europe, at least under their real names, out of fear of arrest.

In a number of cases the European Court of Human Rights held that Poland and Macedonia were in breach of European law by assisting the CIA with torture and disregarding the reprovals that followed. One colleague from the USA spoke explicitly of her disappointment that many cases taken to US courts were swiftly dismissed. On what grounds? Secrecy and immunity. As a result, the task falls to us here in Europe.

Interesting developments are currently underway in Spain and France where former Guantánamo detainees and victims of torture are taking legal action. In Germany, federal prosecutors in Karlsruhe have been examining the issue since the publication of the US senate report on CIA torture in December 2014. They are also analyzing the criminal complaint submitted against former CIA head George Tenet and other suspects by the European Center for Constitutional and Human Rights (ECCHR).

We don't know if, in taking this action, we will be successful in securing some long overdue justice for the victims of torture. All we know for sure is that we owe it to them, and to the defense of the absolute prohibition of torture, to continue to try.