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MINISTERS' DEPUTIES

Decisions

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9 March 2022

1428th meeting, 8-9 March 2022 (DH)**H46-21 Al Nashiri group v. Poland (Application No. 28761/11)**

Supervision of the execution of the European Court's judgments

Reference document

CM/Notes/1428/H46-21

Decisions

The Deputies

1. recalling that in these judgments the European Court established Poland's responsibility under the Convention on account of the authorities' knowledge of and involvement in the implementation of the CIA "High-Value Detainee Programme" and found serious violations of several Convention rights by Poland in the context of "extraordinary rendition" operations which enabled the United States authorities to bring the applicants illegally under United States jurisdiction;

As regards individual measures

2. recalling further, with the deepest concern, that the consequences of the violations of the Convention for the applicants have not been remedied, particularly as Mr Al Nashiri remains at risk of the death penalty in the proceedings before a United States military commission, and Mr Abu Zubaydah continues to be detained indefinitely and without charge since 2002, without any safeguards against arbitrary detention;

3. expressing their utmost concern at the lack of any response to the Committee's previous decision, strongly reiterated their call to the Polish authorities for a clear and consistent strategy to intensify their diplomatic efforts and exhorted them to resume their diplomatic action without delay and exhaust every possible avenue to make it effective, including engaging with the United States at a higher level;

4. firmly reiterated moreover their calls for the authorities to envisage, in addition to their diplomatic efforts, other avenues which would enable them to seek the relief refused so far by the United States administration, such to intervening as *amicus curiae* in any relevant proceedings pending in the United States, including the *habeas corpus* proceedings

- brought before the United States federal courts on behalf of Mr Abu Zubaydah; strongly encouraged the Polish authorities to liaise with the applicants' counsels in the United States to determine what courses of action could be usefully pursued to this end;
5. noted, in respect of the other risk identified by the Court as regards Mr Al Nashiri, of a flagrant denial of justice due to the possible use of evidence obtained through torture or other forms of ill-treatment in the applicant's trial, the United States Government's recent statement that it will not seek admission, at any stage of that trial, of any of Mr Al Nashiri's statements made while he was in the CIA custody; invited the Polish authorities to enquire with their United States counterpoints on the exact scope and consequences of this development as regards the elimination of that risk and inform the Committee accordingly;
6. noted that the prosecutorial decision to partially discontinue the domestic investigation was upheld in court and that the decision to suspend the remaining part, pending the outcome of the request for legal assistance submitted by the Polish authorities to the United States, is now being reviewed by the courts;
7. expressing deep concern at the lack of information on the details of the prosecutorial and court decisions partially discontinuing the investigation, strongly urged the authorities to reconsider their position and submit them in full copy, on a confidential basis if need be, or indicate in sufficient detail the reasons justifying them and explain, on this basis, how the investigation carried out so far has complied with their Article 46 obligation to adopt, insofar as feasible, timely, adequate, and sufficient measures to ensure the maximum possible reparation for the procedural violations;
8. as regards the decision to suspend the remaining part of the investigation, requested the authorities to keep the Committee informed about the outcome of the relevant court proceedings and of their request for legal assistance submitted to the United States; emphasised, as means to advance their investigation, the importance for the Polish authorities to thoroughly explore every relevant avenue for co-operation with member and non-member States alike and with international institutions or bodies and to lend their support to initiatives of other member States concerned aimed at promoting effective international co-operation in this context;
9. reiterating the crucial importance of maintaining a sufficient degree of public scrutiny over this investigation and its results, considered that a more proactive approach is called for in informing the public about the relevant developments and invited therefore the authorities to inform the Committee about the steps taken to this end;
10. as regards the payment of just satisfaction to Mr Abu Zubaydah, noting that his representative has filed a motion to obtain release of the funds from the domestic court's deposit, invited all the authorities involved to continue to co-operate with the applicant's representative and with the Secretariat, if necessary, to ensure that the just satisfaction is placed at the applicant's disposal without further delay; invited the authorities to keep the Committee informed about the relevant developments;
11. recalling once more that the United States has observer status with the Council of Europe and as such shares its ideals and values, and that this status and such values encourage co-operation, again strongly urged the United States authorities to reconsider

their position and to provide all the necessary assurances and assistance, legal and other, or take other equivalent measures;

As regards general measures

12. as regards the measures required to strengthen democratic oversight over the intelligence services, noted the additional information about the competences of the Committee for National Security and Defence Affairs, but expressed concern that these elements do not clarify whether and how its establishment increases scrutiny over the high-level decision making in this area and, more generally, how this measure has addressed the deficiencies diagnosed in the existing system following the audit initiated by the Minister-Coordinator of Special Services; requested again the authorities to provide clarifications on these points;

13. recalling once more their previous decisions and calls made therein, expressed their utmost concern at the lack of any information attesting developments in the adoption of the other measures necessary to guarantee non-repetition of the violations found, including that of Article 38 in relation to the communication with the Court, and again exhorted the authorities to heed to these calls without any further delay;

14. requested the authorities to submit information on all the remaining questions by 15 September 2022 at the latest and decided to resume consideration of these cases at their 1451st meeting (December 2022) (DH); instructed the Secretariat, in the absence relevant and comprehensive information on these questions, attesting concrete progress in the execution of the judgments, to prepare a draft interim resolution for their consideration at that meeting.

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