

# HR HELSINKI FOUNDATION for HUMAN RIGHTS

kol. 1665/11

## Statement of the Helsinki on for Human Rights

May 25, 2011

On May 27, 2011, an official visit to Poland of the President of the United States of America, Barack Obama, commences. In reference to this upcoming event, the Helsinki Foundation for Human Rights ("HFHR") would like to highlight the issue of the alleged existence of secret facilities of the Central Intelligence Agency ("CIA") on the Polish territory where terrorist suspects were detained, interrogated and tortured. To date, this case remains unexplained, and as such, HFHR believes that it constitutes one of the most significant issues in US - Polish relations.

After the September 11, 2001 attacks, the President of the United States of America, George W. Bush, within the framework of the 'war on terror', approved a secret interrogation program. This program involved a considerable number of countries in all parts of the world where secret detention facilities were located in which terrorist suspects were tortured. It is commonly believed that such a secret prison was operated in, among others, Poland.

The above allegation created a strong likelihood that Poland was a place where basic human rights have been violated, against, *inter alia*, Article 40 of the Polish Constitution. According to this provision, using torture in all instances is illegal, since the prohibition of torture, inhuman or degrading treatment is absolute. There are no exceptions to this constitutional rule, e.g. in the form of *raison d'etat* that is commonly invoked in Poland as a justification for possible abuses. Therefore, no situation would be an excuse to torture anyone, even persons charged with terrorist activities. There is also no excuse for providing territory or facilities that officers of other states can use to torture, even if Polish officials were not involved.

The issue of countries' involvement in the secret rendition program has raised considerable interest in international bodies. In the wake of the November 2005 disclosures by The Washington Post and Human Rights Watch, it became the subject of two reports by Senator Dick Marty, published as a part of an investigation undertaken by the Parliamentary Assembly of the Council of Europe, the Report of the Temporary Committee of the European Parliament and the Report by the UN Special Rapporteurs, Manfred Nowak and Martin Scheinin. The findings of all international bodies confirmed that Poland hosted a secret CIA prison.

Furthermore, the issue has been under constant consideration of the other international bodies such as the Human Rights Commissioner of the Council of Europe and the UN Human Rights Committee as well as organizations - Amnesty International and Human Rights Watch. For instance, the Council of Europe's Human Rights Commissioner, Thomas Hammarberg, in June 2010, declared that the time has come to break the conspiracy of silence around the complicity of European governments in the human rights violations that have taken place during counter-terrorism actions since September 2001. The UN Human Rights Committee, in

addition, in its recommendations to states' governments has been underlining the importance of the issue. In 2010 it recommended that Poland should pursue an expedient, impartial, comprehensive and efficient investigation, the findings of which ought to be made public.

The investigation regarding Poland's involvement in the extraordinary rendition program, carried out by the V Department of the Appellate Prosecutor's Office, has been pending since 2008. According to information disclosed it concerns an abuse of power, while performing the role of the highest representative of Polish authority, by public officers (article 231 of the Polish Criminal Code).

Due to the multilevel and international character of the case, it is indispensable that Polish prosecutors are provided with legal assistance by American authorities under the Mutual Legal Assistance Treaty (MLAT). However, on October 7, 2009, the U.S. Department of Justice announced that no such assistance would be granted due to national security or other state interests and that they considered the case to be closed. The HFHR believes that the American authorities by denying the request made highly impossible clarification of the case in full and comprehensive way.

Moreover, such conduct appears to be *de facto* approved by the Government of Poland. On March 22, 2011, Polish prosecutors submitted another request for legal assistance to the U.S. Department of Justice under MLAT. In order for the investigation to be effective, there is a clear necessity of guaranteeing the observance of the MLAT. However, it appears that there is no political will of Polish authorities to support prosecutors' efforts. Taking into consideration the U.S. denial of 2009, without support of the highest state's bodies – the Prime Minister and the Minister of Foreign Affairs - obtaining legal assistance from the U.S. Department of State may be impossible to achieve.

Additionally, recently the prosecutor, Mr. Jerzy Mierzewski, was removed from the criminal investigation of secret CIA prisons – an investigation that is currently one of the most important investigations in Poland and which results may affect political elites. Mr. Waldemar Tyl, Deputy Appellate Prosecutor in Warsaw, replaced him.

The decision was highly surprising and confusing. Therefore, a serious doubt arises, first, as to whether the decision was politically motivated and whether it was connected with President Barack Obama's upcoming visit to Poland. Second, we are afraid that after the change of the leading prosecutor of the investigation the next step may be the discontinuance of the case. This was an issue in Lithuania, where recently the prosecutors dropped its investigation into alleged CIA prisons.

In the light of the above, the future of further political cooperation between Poland and the United States should be considered. A question arises as to its scope and shape in a situation where a case involving such serious violations of domestic and international law is still unexplained.

The situation deserves the highest consideration possible, since such a state of affairs has a detrimental effect on Polish significance in the international arena. There is more and more publicly accessible information indicating that Poland was complicit in the extraordinary renditions and the use of torture. Poland is obliged to provide a comprehensive explanation of such allegations and to hold accountable those responsible for abuses based on democratic principles and international obligations.

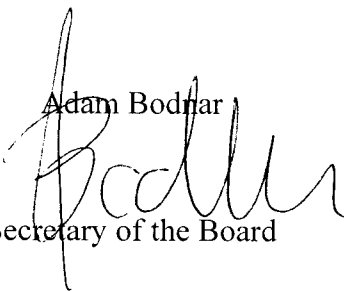
In our opinion if Poland wants to promote human rights and the rule of law among transitional democracies, e.g. Maghreb countries, it has to have a clear human rights record. Recently, the Polish Government made an official declaration regarding the Polish Presidency in the

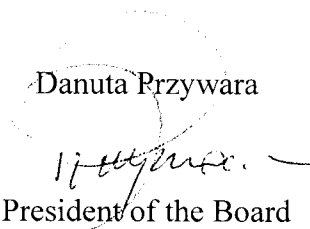
European Union. According to the Minister of Foreign Affairs, the presidency will be used to strengthen the image of Poland as a country for which the protection of human rights and the promotion of democracy are the most important principles. However, as long as the authorities do not undertake any efforts to contribute to the explanation of the case of CIA prisons in Poland, such statements will express empty declarations that do not reflect the actual problems or state of affairs.

In relation to the above, HFHR would like to emphasize that President Barack Obama's visit to Poland creates an extraordinary possibility to initiate a discussion on joint U.S. - Polish cooperation to clarify the case of the alleged existence of secret CIA prisons in Poland.

Therefore, HFHR appeals to the Polish Government to ask President Barack Obama for necessary assistance in the case. At the same time HFHR calls the President Barack Obama to provide all requested information crucial for explanation of these allegations.

On behalf of the Helsinki Foundation for Human Rights,

Adam Bodnar  
  
Secretary of the Board

Danuta Przywara  
  
President of the Board

