

Extraordinary Renditions: The Role of European Security Services in the Fight Against International Terrorism*

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The attacks of September 11 showed the global character of the terrorist threat against which numerous states and in particular the United States tried immediately to provide a remedy.¹

The U.S. Administration considered of vital importance in the war against terrorism the practice of extraordinary renditions, *i.e.*, the transfer of presumed terrorists captured and in custody of American officials² from a state to another state to be interrogated and allegedly tortured, without observance of international and national norms on extradition, deportation or transit of prisoners. According to recent inquiries conducted by the Council of Europe and European Parliament,³ the arrest by CIA agents takes place often in Europe, or in violation of state sovereignty or through the active or passive involvement of the security service of the state in which the kidnapping occurs. The transfer happens in states like Egypt, Jordan, and Syria, known to practice torture against detainees⁴ or even in the U.S. Guantanamo Base. Furthermore, some European states, such as Poland and Romania, are suspected to host in their territories centres of secret detention of victims of extraordinary renditions.⁵

The most important categories of legal transfer of a prisoner from a state to another state under international law and human rights law are deportation and extradition.⁶ Deportation is regulated by national law and consists in the expulsion from a country of a foreign individual whose presence is considered dangerous for the security of that country. Extradition is a formal and official procedure according to which a state can request and obtain from another state the surrender of a suspected or sentenced criminal, respectively, to subject him to trial or to punish

* This presentation is excerpted from Michele Nino, *The Abu Omar Case in Italy and the Effects of CIA Extraordinary Renditions in Europe on Law Enforcement and Intelligence Activities*, 78 (1 & 2) REVUE INTERNATIONALE DE DROIT PÉNAL 113 (forthcoming December 2007).

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¹ On the issue regarding post September 11th anti-terrorism measures in the U.S. see Steven W. Becker, *"Mirror, Mirror on the Wall...": Assessing the Aftermath of September 11th*, 37 VALPARAISO UNIVERSITY LAW REVIEW 563 (2003). As to the measures adopted by United Nations and European Union against terrorists, see Giuliana Ziccardi Capaldo & Michele Nino, *Globalization of Law Enforcement Mechanisms: Issues of Legality and Legitimacy*, in INTERNATIONAL CRIMINAL LAW, Volume II (M. Cherif Bassiouni ed., 3rd ed.) (forthcoming).

² See Opinion No. 363/2005 (European Commission for Democracy Through Law), Olivier Duthéillet de Lamothe, *Extraordinary Renditions: A European Perspective* (Oct. 11, 2006), available at <[http://www.venice.coe.int/docs/2006/CDL\(2006\)077-e.asp](http://www.venice.coe.int/docs/2006/CDL(2006)077-e.asp)>, para. 1, at 2.

³ See *infra*.

⁴ See The Center For Human Rights and Global Justice & New York University School of Law, *Torture By Proxy: International Law Applicable to "Extraordinary Renditions"* (Dec. 2005), available at <<http://www.nyuhr.org/docs/APPG-NYU%20Briefing%20Paper.pdf>>, at 6.

⁵ Committee on Legal Affairs and Human Rights, *Alleged Secret Detentions and Unlawful Inter-state Transfers Involving Council of Europe Member States Draft Report – Part II Explanatory Memorandum* (Rapporteur: Dick Marty) (June 7, 2006), available at <http://assembly.coe.int/CommitteeDocs/2006/20060606_Ejdoc162006PartII-FINAL.pdf>, paras. 56-75, at 16-19; Diana Priest, *CIA Holds Terror Suspects in Secret Prisons* (Nov. 2, 2005), available at <<http://www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644.html>>; Human Rights Watch, *Statement on U.S. Secret Detention Facilities in Europe*, available at <<http://hrw.org/english/docs/2005/11/07/usint11995.htm>>.

⁶ The other less important legal situations are transit and transfer of sentenced persons for the purposes of serving their sentence in another country. See Duthéillet de Lamothe, *supra* note 2, II, para. 1, at 6.

him. Another form of transfer not regulated by international law and human rights law is known as rendition, *i.e.*, the surrender or handing over of an individual from one jurisdiction to another.⁷ Rendition is not a recognized and defined legal concept, but it is a practice between states⁸ which under certain conditions can be deemed legal. In recent years, states have increasingly used this form of transfer to avoid the legal formalities of the extradition process⁹ or when they lack extradition relations.¹⁰ The nonexistence of international norms providing this type of transfer does not exclude in principle its legitimacy. Extraordinary rendition is the surrender or handing over of a person from a state to another state, outside the legal rules regarding extradition or deportation or not in conformity with the practice of legal rendition. This particular form of illegal rendition consists first in the kidnapping of a person suspected of involvement in terrorist activities by CIA agents in a territory of a state, by violating its sovereignty or with the consent of its agents or officials. The second phase consists in a transfer of the person arrested in states where it is possible to interrogate and allegedly torture him to get information.

Extraordinary renditions entail the violation of the non-refoulement principle, which provides the prohibition for the community of states to transfer or remove individuals to places where such persons risk being subjected to torture or other inhuman, cruel or degrading treatment. This principle is enshrined in the Convention against Torture,¹¹ Convention relating to the Status of Refugees¹² and the Charter of Fundamental Rights of the European Union.¹³ In some scholars' opinion, the principle of non-refoulement has acquired the status of *jus cogens*,¹⁴ *i.e.*, a "norm accepted and recognized by the international community of States ... from which no derogation is permitted".¹⁵ In our opinion this principle represents an extension of the norm which prohibits torture, and its non-derogable character is to be totally welcomed. It should be logically not admissible to recognize the absolute nature of the norm that bans torture¹⁶ and at the same time to deny this character to the norm whose objective is to avoid removals of persons who risk torture.

Furthermore, taking into account that they constitute inhuman and degrading activities and cause systematic violations of human rights and fundamental freedoms, extraordinary renditions could

⁷ See Cameron D. Findlay, *Abducting Terrorists Overseas for Trial in the United States: Issues of International and Domestic Law*, 23 TEXAS INTERNATIONAL LAW JOURNAL 1 (1998); GEOFF GILBERT, TRANSNATIONAL FUGITIVE OFFENDERS IN INTERNATIONAL LAW. EXTRADITION AND OTHER MECHANISMS (1998).

⁸ See Dutheillet de Lamothe, *supra* note 2, II, para. 1, at 6.

⁹ See Findlay, *supra* note 7, at 7.

¹⁰ See Joan Fitzpatrick, *Rendition and Transfer in the War Against Terrorism: Guantánamo and Beyond*, 25 LOYOLA OF LOS ANGELES INTERNATIONAL AND COMPARATIVE LAW REVIEW 457 (2003), at 457.

¹¹ Art. 3(2), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA Res. 39/46 (Dec. 10, 1984).

¹² Art. 33, Convention relating to the Status of Refugees (July 28, 1951).

¹³ Art. 19(2), Charter of Fundamental Rights of the European Union (Dec. 7, 2000), in OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES C 364/9 (Dec. 18, 2000).

¹⁴ See Jean Allain, *The Jus Cogens Nature of Non-Refoulement*, 13 INTERNATIONAL JOURNAL OF REFUGEE LAW 533 (2001).

¹⁵ Art. 53, Vienna Convention on the Law of Treaties (May 23, 1969).

¹⁶ See ICTY, Case IT-95-17/1-T, Prosecutor v. Anto Furundzija, Judgment of 10 December 1998, Trial Chamber, paras. 155-157. As to international instruments see Arts. 4(2), 7, International Covenant on Civil and Political Rights, GA Res. 2200 (XXI) (Dec. 16, 1966); Arts. 3, 15(2), European Convention for the Protection of Human Rights and Fundamental Freedoms (Nov. 5, 1950); Art. 5(2), 27(2), American Convention on Human Rights (Nov. 22, 1969). In doctrine see Erika De Wet, *The Prohibition of Torture as an International Norm of Jus Cogens and Its Implications for National and Customary Law*, 15 EUROPEAN JOURNAL OF INTERNATIONAL LAW 97 (2004).

be qualified as crimes against humanity. In particular they could configure the crime of enforced disappearance of persons,¹⁷ which is an offence provided by Article 7(1) of the Statute of the International Criminal Court.¹⁸

Some European states, although they repeatedly denied their involvement in the U.S. rendition practice and opposed inquiry into the presumed activities of their intelligence services, are considered to play a very important role to facilitate or assure the implementation of rendition programmes. In particular, striking cases of kidnapping of presumed terrorists were discovered in Europe and, consequently, regional organizations adopted measures to throw light on some suspect events and ascertain responsibilities. As to the European Union, the European Parliament by decision of 18 January 2006 has set up the Temporary Committee on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners (hereinafter TDIP) whose tasks are to verify whether CIA or other US agents or intelligence services of other third countries have carried out extraordinary renditions in Europe and whether such actions could be considered a violation of human rights norms. As to the Council of Europe, on 1 November 2005, the Parliamentary Assembly launched an investigation to find out the responsibilities as far as extraordinary renditions on European soil were concerned.

Representatives of European countries, in particular internal security services, in a few cases have been accused of having materially participated in the kidnapping of the suspected terrorists.¹⁹

On 17 February 2003 an Imam operating in Milan, Hassan Mustafa Osama Nasr, known as Abu Omar, who was an Egyptian citizen having been granted political asylum by Italy, was kidnapped in Milan and transferred to Egypt, via the U.S. Aviano Base and Ramstein in Germany.²⁰ Italian judges started an investigation aimed at identifying the responsibilities for the abduction. Initially, it seems that only CIA agents realized the illicit activity without the consent of the Italian authorities, by violating the international customary norm on state sovereignty and giving rise to U.S. liability. Subsequently, the evolution of the investigations led to particularly grave suspects in the Italian secret services. In essence, some representatives of SISMI, the Italian military intelligence agency,²¹ were considered to have actively cooperated in the kidnapping not only by giving CIA agents equipment and communication back up but also by materially participating in the Imam's abduction.²² On 5 December 2006 the Milan Public Prosecutor's Office requested that

¹⁷ See Council of Europe's Secretary General's Report Under Article 52 ECHR on the Question of Secret Detention and Transport of Detainees Suspected of Terrorist Acts, Notably by or at the Instigation of Foreign Agencies (Feb. 28, 2006) [hereinafter Secretary General's Report], available at <<https://wcd.coe.int/ViewDoc.jsp?id=976731&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>>, para. 71.

¹⁸ U.N. Doc. A/CONF.183/9, Rome Statute of the International Criminal Court (July 17, 1998), Art. 7(1)(i).

¹⁹ Amnesty International, *Partners in Crime: Europe's Role in US Renditions*, available at <[http://web.amnesty.org/library/pdf/EUR010082006ENGLISH/\\$File/EUR0100806.pdf](http://web.amnesty.org/library/pdf/EUR010082006ENGLISH/$File/EUR0100806.pdf)>, at 1.

²⁰ For a detailed reconstruction of the events see GUIDO OLIMPIO, *OPERAZIONE HOTEL CALIFORNIA* (2005).

²¹ The Servizio per le Informazioni e la Sicurezza Militare (SISMI), is the Italian military secret service which depends from Ministry of Defence. It has the task to defend the security of the Italian Republic from every kind of threat. The service operates abroad and deals with counter espionage activity.

²² See the phases of the investigation showed by the Milan's Public Prosecutor before the TDIP, *Verbatim Report* (Oct. 9, 2006), available at <http://www.europarl.europa.eu/comparl/tempcom/tdip/reports/20061009_verbatim.pdf>, especially at 2-4.

26 CIA agents, 8 Italian secret services agents (including SISMI's Director), and one journalist who were involved in Abu Omar's abduction be subject to trial.²³

The German government and intelligence services were also themselves considered to be involved in an extraordinary rendition case. On 31 December 2003, Khaled el Masri, a German citizen of Lebanese origins was arrested at the border between Serbia and the Former Yugoslav Republic of Macedonia (FYROM) and handed over by FYROM border police to the local secret services.²⁴ They detained and interrogated him for three weeks in a hotel in Skopje.²⁵ After that, he was handed over to CIA agents who transferred him to an Afghan prison where he was allegedly tortured for about four months.²⁶ Subsequently he was released in Albanian territory.²⁷ German authorities and secret services were suspected to be aware of the abduction and to facilitate its execution. The Parliamentary committee of inquiry, which had been set up in the Bundestag, and the Munich Public Prosecutor's Office opened enquires aimed at identifying the involvement of the German secret services and other official bodies, as well as the collusion between German authorities and CIA agents in the El Masri case.²⁸

The case of El-Zari and Agiza, two asylum seekers, aroused several criticisms about the behaviour of the Swedish government and secret police (SÄPO), as well as the activities of CIA agents in foreign territory. The events also showed the inadequacy at the international level of the diplomatic assurances system.²⁹ On 18 December 2001, the Swedish Government issued a decision rejecting the asylum application by two Egyptians, El-Zari and Agiza, and ordering their deportation on grounds of security.³⁰ According that decision, on the same day the individuals were arrested by the Swedish police and handed over to American intelligence services, under diplomatic assurances that they would not risk torture or other ill-treatment. The Swedish Parliamentary Ombudsman, who opened a detailed investigation on the case, in his report strongly criticized the activities of the Swedish security police and affirmed that, despite the diplomatic assurances, the Egyptians were victims of inhuman treatment from the time they were subject to the custody of CIA agents in Stockholm airport until the end of the operation in Egypt.³¹

²³ See "Abu Omar, Chiesto Rinvio a Giudizio per Pollari e altre 34 persone" (Dec. 5, 2006), available at <<http://www.repubblica.it/2006/12/sezioni/cronaca/sismi-mancini-8/sismi-mancini-8/sismi-mancini-8.html>>.

²⁴ TDIP, Working Document No. 3 on Victims (Rapporteur: Giovanni Claudio Fava) (June 1, 2006), available at <http://www.europarl.europa.eu/comparl/tempcom/tdip/working_docs/pe374339_en.pdf>, at 2.

²⁵ TDIP, Verbatim Report (March 13, 2006), El Masri's Hearing, available at <http://www.europarl.europa.eu/comparl/tempcom/tdip/reports/20060313_verbatim.pdf>.

²⁶ See TDIP, Working Document No. 7 on Extraordinary Renditions (Nov. 16, 2006) (Rapporteur: Giovanni Claudio Fava), available at <http://www.europarl.europa.eu/comparl/tempcom/tdip/working_docs/pe380593_en.pdf>, at 22.

²⁷ See David Johnston & Don Van Natta, Rice Ordered Release of German Sent to Afghan Prison in Error (April 23, 2005), available at <<http://www.freerepublic.com/focus/f-news/1389650/posts>>.

²⁸ TDIP, Verbatim Report (July 10, 2006), Hearing of Martin Hofmann Munich Prosecutor in Charge of the Khaled El-Masri case, available at <http://www.europarl.europa.eu/comparl/tempcom/tdip/reports/20060710_verbatim.pdf>.

²⁹ On this issue see Benjamin Ward, *A Fig-Leaf for Torture. The Use of Diplomatic Assurances in the OSCE Region*, 11 OSCE YEARBOOK 179 (2005); Gregor Noll, *Diplomatic Assurances and the Silence of Human Rights Law*, 7 MELBOURNE JOURNAL OF INTERNATIONAL LAW 104 (2006).

³⁰ See Marty, *supra* note 5, para. 153, at 37.

³¹ Mats Melin (Chief Swedish Parliamentary Ombudsman), A Review of the Enforcement by the Security Police of a Government Decision to Expel Two Egyptian Citizens, Adjudication No. 2169-2004 (March 22, 2005), available at <http://www.jo.se/Page.aspx?MenuId=106&MainMenuId=106&Language=en&ObjectClass=DynamX_SFS_Decision&Id=1662>.

In the opinion of the TDIP, extraordinary renditions presumably also concerned the activities of British intelligence services in Al-Rawi and El-Banna case.³² Finally other investigations have been opened in other European countries. In Spain, the Palma de Majorca Public Prosecutor's Office started an inquiry in order to establish if the local airport was used by CIA agents with the cooperation of Guardia Civil for executing extraordinary renditions.³³ In Switzerland, an investigation was opened by the Confederal Prosecutor's Office to verify possible violations of Swiss law in Abu Omar's abduction.³⁴

Internal security services represent a fundamental resource for modern societies in order to protect national security and democratic order.³⁵ However, the activities of these services if not well controlled can give rise to several problems, such as the abuse of powers and human rights violations.³⁶ The acts committed outside the rule of law and without legal and democratic criteria do not allow an effective and adequate cooperation between intelligence services belonging to multiple states, by weakening their potential powers and frustrating the efforts of international community in the fight against terrorism.

Several European states established various forms of control over their secret services (administrative, parliamentary, judicial and other forms of control such as ombudsman)³⁷ in order to guarantee that their activities be compatible with the rule of law and fundamental rights of individuals. On the one hand, the majority of the states provides controls of governments³⁸ (or other administrative bodies)³⁹ on services' activities, which are thus under the responsibility of

³² Working Document No. 7, *supra* note 26, at 18; *see also* Marty, *supra* note 5, para. 163, at 39.

³³ Committee on Legal Affairs and Human Rights, "Alleged Secret Detention Centres in Council of Europe Member States" Information Memorandum (Rapporteur: Dick Marty) (Nov. 22, 2005), available at <http://assembly.coe.int/CommitteeDocs/2005/20051122_EJDoc52rev2.pdf>, para. 12, at 2.

³⁴ *See* Marty, *supra* note 5, para. 232, at 51.

³⁵ *See* Doc. 8301, Report of the PACE Committee on Legal Affairs and Human Rights, Control of Internal Security Services in Council of Europe Member States (March 23, 1999) (Rapporteur: György Frunda) [hereinafter Internal Security Services Report], Introduction.

³⁶ *Id.*

³⁷ For a detailed analysis and exhaustive reconstruction of various forms of existing control mechanisms over security services in European States, *see* Council of Europe's Secretary General's Supplementary Report Under Article 52 ECHR on the Question of Secret Detention and Transport of Detainees Suspected of Terrorist Acts, Notably by or at the Instigation of Foreign Agencies (June 14, 2006) [hereinafter Secretary General's Supplementary Report], available at <<https://wcd.coe.int/ViewDoc.jsp?id=1010167&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>>, paras. 12-43.

³⁸ *See* Reports presented to the Secretary General of the Council of Europe by: Armenia (Apr. 6, 2006), at <<http://www.coe.int/t/E/Com/Files/Events/2006-CIA/annexes2/Arm%E9nie.pdf>>, at 1; Luxembourg (Apr. 6, 2006), at <<http://www.coe.int/t/E/Com/Files/Events/2006-CIA/annexes2/Luxembourg.pdf>>, at 2; Latvia (Apr. 7, 2006), at <<http://www.coe.int/t/E/Com/Files/Events/2006-CIA/annexes2/Lettonie.pdf>>, at 4; Slovenia (Apr. 7, 2006), at <<http://www.coe.int/t/E/Com/Files/Events/2006-CIA/annexes2/Slov%E9nie.pdf>>, at 1; The Former Yugoslav Republic of Macedonia (Apr. 3, 2006), at <<http://www.coe.int/t/E/Com/Files/Events/2006-CIA/annexes2/FYROM.pdf>>, at 1; Ukraine (Apr. 7, 2006), at <<http://www.coe.int/t/E/Com/Files/Events/2006-CIA/annexes2/Ukraine.pdf>>, at 3; Bosnia and Herzegovina (Apr. 4, 2006), at <<http://www.coe.int/t/E/Com/Files/Events/2006-CIA/annexes2/Bosnie%20herzegovine.pdf>>, at 1; Georgia (Apr. 6, 2006), at <<http://www.coe.int/t/E/Com/Files/Events/2006-CIA/annexes2/Georgie.pdf>>, at 5-6; Estonia (Apr. 4, 2006), at <<http://www.coe.int/t/E/Com/Files/Events/2006-CIA/annexes2/Estonie.pdf>>, at 1; Croatia (Apr. 7, 2006), at <<http://www.coe.int/t/E/Com/Files/Events/2006-CIA/annexes2/Croatie.pdf>>, at 2; Malta (Apr. 3, 2006), at <<http://www.coe.int/t/E/Com/Files/Events/2006-CIA/annexes2/Malte.pdf>>, at 3; United Kingdom (April 7, 2006), at <<http://www.coe.int/t/E/Com/Files/Events/2006-CIA/annexes2/United%20Kingdom.pdf>>, at 1.

³⁹ *See* Reports presented to Secretary General of Council of Europe by: Cyprus (Apr. 6, 2006), at

national governments and directly answerable to them.⁴⁰ On the other hand, only a few countries attribute to the judiciary important oversight functions on services' acts that could violate fundamental rights and freedoms.⁴¹ Furthermore, in some states the institution of parliamentary committees is provided,⁴² but their powers are often not exactly defined.⁴³ Some states also provide other forms of controls, such as ombudsman⁴⁴ or independent commissioners.⁴⁵ As to the functions, in several cases intelligence activities are not well distinguished from law enforcement activities.⁴⁶ Although in several countries some form of supervision exists, however, it is not possible to verify exactly if current mechanisms of control can efficiently guarantee the compatibility of services' activities with the protection of fundamental freedoms.⁴⁷ Furthermore the practice of extraordinary renditions in European countries where various controls exist and the governments' tendency to hide activities of their intelligence services demonstrate that in several European states these controls, be they of governmental or any other form, -as also reminded by the Council of Europe's Secretary General- appear to be inadequate and are such to endanger the protection of individual freedoms.

It is thus to be hoped that European states reform their intelligence systems following certain guidelines. For allowing security services to act in respect of the rule of law and to cooperate to intensify efforts in the struggle against terrorism, it is necessary at the national level for the provision of a complete and democratic control on their activities by all internal organs (parliament, executive and judiciary), in particular attributing a key role to the judiciary.⁴⁸ This

<<http://www.coe.int/t/E/Com/Files/Events/2006-CIA/annexes2/Chypre.pdf>>, at 3 (Institution of Commissions of Inquiry by Council of Ministers); Greece (Apr. 7, 2006), at <<http://www.coe.int/t/E/Com/Files/Events/2006-CIA/annexes2/Gr%E8ce.pdf>>, at 1 (Hellenic Authority for the Information and Communication Security and Privacy and Hellenic Data Protection Authority are bodies which control that services' activities be respectful of privacy of the individuals).

⁴⁰ See Secretary General's Supplementary Report, *supra* note 37, para. 29.

⁴¹ See Reports presented to the Secretary General of the Council of Europe by: Moldova (Apr. 4, 2006), at <<http://www.coe.int/t/E/Com/Files/Events/2006-CIA/annexes2/Moldavie.pdf>>, at 3; Norway (Apr. 7, 2006), at <<http://www.coe.int/t/E/Com/Files/Events/2006-CIA/annexes2/Norv%E8ge.pdf>>, at 2; Georgia Report, *supra* note 38, at 1, 7; Latvia Report, *supra* note 38, at 3; Ukraine Report, *supra* note 38, at 3.

⁴² Reports presented to the Secretary General of the Council of Europe by: Denmark (April 2006), at <<http://www.coe.int/t/E/Com/Files/Events/2006-CIA/annexes2/Danemark.pdf>>, at 2; Italy (April 5, 2006), at <<http://www.coe.int/t/E/Com/Files/Events/2006-CIA/annexes2/Italie2.pdf>>, at 1; Romania (April 5, 2005), at <<http://www.coe.int/t/E/Com/Files/Events/2006-CIA/annexes2/Roumanie.pdf>>, at 2; United Kingdom Report, *supra* note 38, at 2; Bosnia and Herzegovina Report, *supra* note 38, at 2; Croatia Report, *supra* note 38, at 3; Georgia Report, *supra* note 38, at 4; Latvia Report, *supra* note 38, at 3; Luxembourg Report, *supra* note 38, at 3; Moldova Report, *supra* note 41, at 3; Slovenia Report, *supra* note 38, at 1; Macedonia Report, *supra* note 38, at 1; Ukraine Report, *supra* note 38, at 3.

⁴³ See Secretary General's Supplementary Report, *supra* note 37, para. 29.

⁴⁴ See Reports presented to Secretary General of Council of Europe by: Andorra, at <<http://www.coe.int/t/E/Com/Files/Events/2006-CIA/annexes2/Andorre.pdf>>, at 2; Sweden (Feb. 20, 2006), at <<http://www.coe.int/T/E/Com/Files/Events/2006-cia/Sweden.pdf>>, at 6; Croatia Report, *supra* note 38, at 4; Macedonia Report, *supra* note 38, at 1; Ukraine Report, *supra* note 38, at 3; Cyprus Report, *supra* note 39, at 4; Malta Report, *supra* note 38, at 2.

⁴⁵ See Report presented to the Secretary General of the Council of Europe by Portugal (Apr. 6, 2006), at <<http://www.coe.int/t/E/Com/Files/Events/2006-CIA/annexes2/Portugal.pdf>>, at 3; Malta Report, *supra* note 38, at 2; Denmark Report, *supra* note 42, at 3; United Kingdom Report, *supra* note 38, at 2.

⁴⁶ See Secretary General's Report, *supra* note 17, para. 41; Secretary General's Supplementary Report, *supra* note 37, paras. 18, 29.

⁴⁷ See Secretary General's Supplementary Report, *supra* note 37, para. 29.

⁴⁸ See Report of the Council of Europe's Venice Commission, Internal Security Services in Europe (March 7, 1998), available

could guarantee the correct application of law and could reduce the possibility of human rights violations. Reforms should base themselves on the following issues: distribution of financial resources, attribution of a fundamental role to the judiciary and transparency of services' activities where possible.

Security services' activities must be regulated by clear and detailed laws that are respectful of European states' Constitutions⁴⁹ and international law, especially human rights law and *jus cogens* norms. In particular, the laws by defining secret services powers should balance the collective right to national security with the individual one to protection of human dignity.

A very important issue as to services' activities concerns the distribution of financial resources, in particular the budget at their disposal. Their financing should be clearly regulated by law and should come by governmental resources to the exclusion of non-institutional bodies.⁵⁰ This organization should exclude the influence of external organs and could secure uniformity and coherence of the services' work.

Internal services' activity must be coordinated with the activity of other organs involved in the fight against terrorism. This to prevent the duplication of work and the frustration of the judiciary's efforts, as it happened in the Abu Omar case. In so acting, it should be possible to reach a better cooperation between internal services and the judiciary and to obtain the help of foreign intelligence services which could provide important information for the success of counter-terrorism operations. Furthermore, the judiciary should play an essential role in countries where services' functions consist not only in intelligence activities and gathering information but also in the exercise of coercive powers. In this case the risk of human rights violations is very high, so that judges should monitor the services' acts by directly assuming the direction of some phases of investigations and giving authorizations where necessary.⁵¹ In this regard laws should provide the guarantee of the transparency of the services' activities where possible. In fact in some cases it is evident that they must operate swiftly and secretly to protect national interests. The secrecy should be admitted in exceptional cases, where it is proved that publicity could jeopardise the security of states. Finally two other topics regarding parliaments and governments' controls are noteworthy. First, each parliament should not only issue adequate laws but should have an appropriately functioning specialised committee to guarantee effective control over services' acts.⁵² Second, the current governmental controls should be intensified, in any case by avoiding services becoming politicised organs, in order to allow them to carry out their functions objectively and impartially. It is thus necessary that internal services operate exclusively in the national interest protecting public order, without satisfying particular interests of certain governments.

In our opinion it is to be hoped that within the Council of Europe a Convention on security services could be prepared, taking into account the valuations just made.

at <[http://venice.coe.int/docs/1998/CDL-INF\(1998\)006-e.asp](http://venice.coe.int/docs/1998/CDL-INF(1998)006-e.asp)>, at paragraph II.A.1.

⁴⁹ *Id.*, at paragraph I.B.

⁵⁰ See Internal Security Services Report, *supra* note 35, Guidelines (A) (v).

⁵¹ *Id.*, Explanatory Memorandum, para. 29.

⁵² Council of Europe Parliamentary Assembly Recommendation 1713, Democratic Oversight of the Security Sector in Member States (June 23, 2005), (i) (b).