

Extraordinary rendition: a human rights

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Introduction

The terrorist attacks of 9/11, 7/7 London bombings and the Madrid train bombings created a ‘culture of fear’ amongst people’s minds in Western societies, which was particularly reflected by state responses proclaiming a “war on terror”. A key tactic now increasingly used to further the progress of this “war on terror” is extraordinary rendition, where a person is abducted and transferred from one jurisdiction to another to be held in detention for interrogation. Although the extraordinary rendition program has been led by the US, a number of EU Members that are state parties to the extraordinary rendition may have provided support to facilitate the program. As much of the philosophy of human rights emerged through the French Revolution, the involvement of EU Member states in extraordinary rendition has some serious implications for the portrayal of Europe as a champion in safeguarding human rights. This essay will thus focus on how EU Member states might have been involved with US extraordinary rendition and the extent to which extraordinary rendition breaches Article 6 of the European Convention of Human Rights. Firstly, how extraordinary rendition has been defined, including the procedure that is used will be explored. This will be followed by identifying EU Member states who have facilitated extraordinary rendition and the prisoners that have been subjected to it. Finally, the recommendations made by the European Council will be explored to determine if any measures are needed to be taken by Member states to safeguarding human rights from extraordinary rendition.

According to Bassiouni (2010), the extraordinary rendition developed from a decision immediately following 9/11 as President Bush put the burden on the CIA to capture, detain terrorists across the world. However, Frankopan (2008) notes that the CIA was actually granted permission to use extraordinary rendition in a presidential directive authorised by Clinton in 1995. This suggests that the use of extraordinary rendition was not a result of terrorist attacks but rather its use increased dramatically in the aftermath of the attacks. There is common consensus that extraordinary rendition involves the abduction of an individual who is thereafter transferred from one jurisdiction to another to be held in detention for interrogation.

Frankopan defines extraordinary rendition as the handing over of a person to another jurisdiction for questioning and there is usually no link between the individual “ rendered” and the country he/she is sent to (2008, p. 408). Quite similarly, Duffy and Kostas explains that it “ involves the state sponsored abduction of a person in one country... and the extra-judicial transfer of that person to another country for detention and interrogation outside the normal legal system” (2012, p. 539). Sadat further defines it as a process where “ a detainee in custody of the CIA is handed over to a third party country for interrogation” (2007, cited in Bassiouni, 2010). While the latter two definitions acknowledge that state involvement is a key feature of extraordinary rendition, the last definition in particular recognises that extraordinary rendition is primarily carried out by the US.

The procedure of extraordinary rendition is a little more complex than suggested by these definitions. extraordinary rendition often involves a combination of arbitrary arrest, enforced disappearance, forcible transfer,

torture, and the denial of accessing impartial tribunals (Weissbrodt and Bergquist, 2006). This is confirmed by a “ Background Paper on CIA’s Combined Use of Interrogation Techniques” (2004). It outlines that after suspects are captured and transported to a ‘ Black site’, the rendition process is transitioned into interrogation which involves a range of practices from dietary manipulation, sleep deprivation, abdominal slaps, facial hold, water dousing stress positions and cramped confinement. Although extraordinary rendition is not explicitly found in the European Convention of Human Rights as a violation of human rights, this sheds light upon the fact that it does violate Article 6 of the European Convention of Human Rights because firstly, it violates Article 3(a) as victims are not formally charged with a crime in the country that they are abducted in (Weissbrodt and Bergquist, 2006) and therefore this denies victims access to the legal process. Secondly, one of the purposes of extraordinary rendition is to obtain evidence, through torture, in order to be used in courts (Coates, 2006, p. 20). As a result, although court proceedings may occur, it effectively does not allow for a fair trial because extraordinary rendition for the purpose of interrogation through torture implies that the suspects are guilty. This therefore violates Article 6 (2) of the European Convention of Human Rights which states everyone is presumed innocent until proven guilty. While novel ways may arise that challenge established international law, this analysis has proven that such situations can still be addressed by current human rights law to determine human rights abuses.

In recent times, it has arisen that while the US have driven the extraordinary rendition program, a number of EU Member states have been involved. A

recent report found that 54 governments other than the US participated in extraordinary rendition, of which 25 are EU Member States (Singh, 2013, p. 6). Since 1998, the US and the European Union had made an informal agreement that US flights can stop-over in transit at EU airports (Coates, 2006). As a result, EU Member states now stand accused to have allowed the use of airspace and airports by aircraft involved in flights for rendition (Cobain, 2013; Fisher, 2013). Allegations have further arisen that the CIA have taken control over former Soviet air bases in Poland as well as facilities in Romania for detaining suspects (Coates, 2006). It is thus questionable whether EU Member states have failed to uphold human rights in accordance to the European Convention of Human Rights as outlined above.

Although further exploration is required to determine the total number of victims, the report by Open Society Justice Foundation found that at least 136 individuals have been subjected to extraordinary rendition (Singh, 2013, p. 30). Victims that were subjected to extraordinary rendition with the support of EU Member states include: Ahmed Agiza who had sought asylum in Sweden had been apprehended by Swedish Security Police to be handed over to CIA agents to be transported to Egypt; and Abu Omar, an Egyptian national, who was captured in Italy, flown to Germany and thereafter to Egypt (Coates, 2006; Singh 2013). In both cases as well as others, the victims experienced torture (Singh 2013). This suggests there is a strong correlation between the practice of extraordinary rendition and torture. However, torture will not be explored in depth in this essay.

However, the cases of Khaled El-Masri v The Former Yugoslav Republic of Macedonia and Abdulkhakov v. Russia are the very few cases that have reached the European Court of Human Rights where judgements have been reached. In the former case, El-Masri was seized by security officers in Macedonia and handed over to CIA agents at the Skopje airport where he was beaten. He was then transferred to a prison in Egypt. The European Court of Human Rights found that Macedonia had violated Article 3, 5, 8 and 13 of the European Convention of Human Rights because of the use of torture, arbitrary detention, and a lack of effective remedies in respect to these violations respectively.

Similarly, in Abdulkhakov v. Russia, Abdulkhakov, a Uzbek refugee, was abducted in Moscow in 2009 and transferred to Tajikistan because the Uzbek authorities are charging him for involvement with an extremist organisation. The European Court of Human Rights found that Russia had violated Article 3, Article 5 (1)(f), Article 5 (4) and Article 34 of the European Convention of Human Rights because of the transfer to Tajikistan, arbitrary detention, length of proceedings and the failure to provide a review of the detention.

In both cases, the Court had granted compensation to the applicants in the range of 30 000 – 60 000 Euros. In addition, it was recognised that extraordinary rendition had occurred in the sense that extra-judicial transfers had taken place. Only in the former case was it explicitly stated that the victim was subjected to extraordinary rendition. In both of these cases however, Article 6 of the European Convention of Human Rights was not considered. This suggests that neither the applicants nor the European Court

regarded that the victims' ordeal in extraordinary rendition violated their rights to a fair trial.

While the European Court of Human Rights has acknowledged the use of extraordinary rendition within European borders, there is still a dire need for the European Council to agree upon the recommendation made by the Open Society Justice Foundation's report (Singh, 2013) for European Member states to stop providing support to the US in its program and put pressure upon them. Fox (2012) observes that no action at all has been taken by the European Council to determine the involvement of member states. This suggests that there is a lack of commitment in Europe to ensuring human rights are safeguarded in processes of extraordinary rendition.

Despite this, several measures can be taken by Member states to begin protecting human rights where extraordinary rendition takes place. The report by Open Society Justice Foundation recommends that states should cease any involvement in the US' extraordinary rendition program as well as disclose information related to extraordinary rendition including the identities of the victims and the extent to which they have been harmed. The report not only further advises that investigations should be conducted in order to identify officials who were involved in the abuses, but also develop safeguards to ensure counter-terrorism programs comply with international human rights standards (Singh, 2013). This could include monitoring flights and transits through airspace in Europe and increase transparency of the way that terrorist suspects are dealt with.

Conclusion

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To conclude, under the guise of a “ war on terror”, Western states, including within Europe, have increased the use of extraordinary rendition to serve their own political agenda. The lack of response from European governments to investigate allegations, and the European Council which represents them, suggests that the use of extraordinary rendition is needed to fight a global enemy. As there is no doubt extraordinary rendition violates human rights such as enforced disappearance, torture as well as the right to a fair trial as guaranteed by Article 6 of the European Convention of Human Rights, we are therefore in a situation where the increased use of extraordinary rendition is a cause for concern. In particular, extraordinary rendition does not allow for suspects to be formally charged with a crime and in effect denies them access to legal process. It further devalues the concept that all are innocent until proven guilty, which is stressed in the European Convention of Human Rights. This also means that there is no likelihood of suspects receiving a fair trial. However, while many European member states have been identified as facilitating the US’ extraordinary rendition program, very few cases have reached the European Court of Human Rights and concluded with a judgement. In the cases considered in this essay, Article 6 was not considered at all and therefore was regarded as being violated. This has strong implications for guaranteeing access to a legal course for justice within domestic law. It suggests that it has been accepted that the right to a fair trial can be compromised completely in order to ensure national security and this remains to be encouraged as those in power as well as the public remain complacent. Other cases against Poland, Italy, Lithuania and Romania in relation to extraordinary rendition are being considered by the

Court and currently judgements on these are pending. Although exploring such case-law is beyond the scope of this essay, perhaps these will prove that extraordinary rendition is indeed a violation of Article 6 of the European Convention on Human Rights.

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