

Al Nashiri v. Romania

Committee of Ministers Briefing, 7 September 2021

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Summary

- Romania has **failed to implement** the Court's 2018 judgement in al Nashiri v. Romania
 - After conducting an **in depth fact-finding hearing**, the Court **held beyond reasonable doubt that Romania had hosted a secret CIA detention site** where Mr. al Nashiri was secretly detained and abused and required Romania to conduct an effective investigation into that matter.
 - But in March 2021, Romanian authorities dismissed the domestic investigation into Romania's hosting of a secret CIA detention center **claiming that "no detention center was identified" and that there was "no direct link between Romanian authorities and the HVD programme managed by the CIA."**
 - The Romanian government's eleventh hour submission only confirms that it has **no will to implement the Court's judgement** that required it to conduct an effective investigation.
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2020 Decision of the Committee of Ministers: A Summary

Individual measures

- Mr. Al Nashiri remains at risk of a **flagrant denial of justice** and of the **death penalty**. The Committee urged Romania to pursue “all possible means” to remove these risks.
 - The Committee was unable to satisfy itself that the **domestic investigation** (opened in 2012 in response to Mr. Al Nashiri’s criminal complaint) had made “concrete progress” or that it “fully took into account” the findings in the Court’s judgment.
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2020 Decision of the Committee of Ministers: A Summary

General measures

- Disapply the **statute of limitations** to the crime of torture “in all instances”.
 - Make “real and sustained efforts to **establish the truth** about what happened and how”.
 - Deliver an “unequivocal message at a high level as to the **absolute unacceptability of and zero tolerance** towards arbitrary detention, torture and secret rendition operations”.
 - Provide details about the measures envisaged to **acknowledge Romania’s responsibility** for the human rights violations in this case.
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Romania's Action Plan (2019)

- The Action Plan, submitted in April 2019, was at best pro forma, cursory, and has never been updated.
 - The Plan does not reflect the recent developments, including the closure of the criminal investigation and other aspects of Romania's failure to implement the Court's judgment.
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Current Situation: Investigation

- In March 2021, **ignoring the findings of the ECtHR about the secret CIA prison in Romania**, the Prosecutor **dismissed the domestic investigation** on the grounds of a lack of evidence. The decision was upheld on appeal.
 - **Inadequate and superficial investigation**: excessive delays, failure to interview key witnesses, failure to request relevant data, and inconsistent application of the standard of proof.
 - Contrary to international law, Prosecutor found that crimes of torture and deprivation of liberty would have been **time barred**. In any event, Romania cannot avail itself of the statute of limitations where its own inaction caused the delay.
 - No efforts have been undertaken to **inform the Romanian public** about the progress of the investigation.
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Current Situation:

No assurances from the United States

- **No binding assurances** from U.S. authorities that Mr. Al Nashiri will not be subjected to the death penalty and violations of fair trial procedures.
 - Attempts to seek diplomatic assurances from U.S. authorities have been **sporadic and superficial**.
 - **No explanation** as how Romania plans to further seek and obtain assurances from **the new Biden administration**.
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Current Situation: Ignoring the Court's findings, no acknowledgement/apology

- Romania has ignored the ECtHR's finding beyond reasonable doubt that Romania hosted a CIA black site where Mr. Al Nashiri was secretly detained. It has **not acknowledged its role in and responsibility** for the human rights violations that occurred in this case.
 - **No explanation** as of how and when Romania will issue a public acknowledgement.
 - The violations that Mr. Al Nashiri was and continues to be subjected to, as a result of Romanian authorities' actions and inactions, demand an **official apology**.
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Current Situation:

Removal of the statute of limitations for torture

- Recent amendments to the Criminal Code removed the statute of limitations for torture, but only **prospectively**.
 - The current prescription period for torture is **inconsistent with international law** because it does not apply from the time when the crime of torture occurred.
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Substantive Recommendations to Romania

- **Reopen the case** to undertake an effective and transparent domestic investigation.
 - Intensify efforts and find creative ways to seek binding **diplomatic assurances** from the U.S. authorities and disclose all communications to and from the U.S. government to Mr. Al Nashiri's counsel.
 - Issue an **official acknowledgement** and a **public apology**.
 - **Remove the statute of limitations** for torture "in all instances", including **retrospectively**.
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Procedural Recommendations to the Committee of Ministers

- **Monitor** the implementation of this case **more frequently**.
 - Issue an **interim resolution** deploring the failure to execute the Court's judgment and calling upon Romania to promptly pursue the named **substantive measures**.
 - Encourage all **relevant organs of the Council of Europe** to continue to press for the execution of the Al Nashiri judgment.
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