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Italy: Court Upholds Convictions in Abu Omar Kidnapping Case

The confirmation by the Milan appeals court of the 2009 convictions of US and Italian agents for their involvement in the abduction of Usama Mostafa Hassan Nasr (known as Abu Omar), represents another step forward in the effort to seek accountability for renditions in Europe. The Italian government's claims of "state secrecy", however, resulted in the dismissal of charges on appeal against five Italian high ranking intelligence officials.

Abu Omar, an Egyptian national who was residing in Italy, was abducted from a street in Milan in February 2003 and subsequently unlawfully transferred by the CIA from Italy to Egypt where he was held in secret and allegedly tortured.

On 15 December 2010, the appeals court affirmed the convictions of 25 individuals, including 22 CIA agents, a US military official, and two Italian intelligence operatives. The convictions on charges of kidnapping were increased from five to seven years of imprisonment for the 22 CIA agents and from eight to nine years for the US military official. The punishment for the two Italian intelligence operatives accused of aiding and abetting in the commission of a criminal offence was decreased from three years to two years and eight months.

Charges against five high-level officials of the Italian intelligence agency (formerly Servizio per le informazioni e la sicurezza militare or SISMI), including its former head Niccolò Pollari and deputy head Marco Mancini, were dismissed on appeal due to government claims that key evidence against the men should not be disclosed as a matter of "state secrecy". The appeal against the dismissal of charges against three US citizens who were granted diplomatic immunity in the trial court judgment will be examined in a separate appeals process.

The appeals court's recognition that Abu Omar suffered a grave injustice at the hands of US and Italian intelligence actors is another step forward in the effort to seek accountability in Europe for abuses in the context of the CIA rendition and secret detention programmes. The Italian courts have acknowledged that the chain of events leading to such serious abuses cannot go unanswered.

The Italian government and its officials, however, should not be able to use "state secrecy" as a shield to cover up human rights abuses. The government must engage in a full and fair accountability process even if its officials are embarrassed or even vulnerable to criminal charges for their actions.

The 23 convicted US officials were tried in their absence as their extraditions were never formally requested by the Italian government. Although Italian law allows for trials in absentia, international law requires that a person be present at his trial to hear the full prosecution case, put forward a defence, challenge the evidence, and examine witnesses. If they are apprehended in future, the US nationals convicted in absentia should be entitled to a new trial before a different court and to the presumption of innocence in that new trial. In November 2009, the Milan tribunal handed down the convictions of the 23 US and two Italian nationals, the first ever pronounced in relation to human rights violations committed in the context of the CIA rendition and secret detention programmes. The Italian Constitutional

Court had ruled in March 2009 that much of the evidence against particular defendants, particularly high-level officials in the Italian military intelligence service, was covered by the “state secrets” doctrine and could not be admitted at trial, which resulted in the charges against those officials being dismissed.

The prosecutor appealed the trial judgment in March 2010, and specifically challenged the interpretation and application of the “state secrets” privilege in the lower court and the scope of diplomatic immunity. The appeal proceedings commenced in October 2010 and the judgment was handed down on 15 December 2010.

The appeals court also affirmed the award of € 1 million and € 500,000 to Abu Omar and his wife respectively as compensation.

Both parties have the right to appeal to the Italian Supreme Court.

Amnesty International publications:

Report, Open Secret – Mounting Evidence of Europe’s Complicity in Rendition and Secret Detention, 15 November 2010 (EUR 01/023/2010)

Public Statement, Italy: Abu Omar: Italian authorities must cooperate fully with all investigations, 16 November 2006 (EUR 30/006/2006)

Media briefing, Italy: The Abu Omar case, 4 November 2009 (EUR30/012/2009)