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Italy/USA: Supreme Court orders re-trial of former high-level intelligence officials and upholds all convictions in Abu Omar kidnapping case

Amnesty International welcomed the ruling of the Italian Supreme Court (Court of Cassation) on 19 September 2012 in the proceedings regarding the unlawful abduction in Milan in February 2003 of Usama Mostafa Hassan Nasr (known as Abu Omar), who was subsequently transferred to Egypt by the US Central Intelligence Agency (CIA) where he was allegedly tortured. The ruling marks an important step toward accountability for human rights violations – including unlawful abduction and transfer, secret detention, enforced disappearance, and torture and other ill-treatment -- committed in the context of the US-led rendition and secret detention programmes.

The Supreme Court confirmed the convictions of 22 CIA agents, a US military official, and two Italian secret services operatives for the kidnapping of Abu Omar. The US nationals were all tried in their absence, which is permitted under Italian law, but not under international law. If the US nationals come within the jurisdiction of the Italian justice system, they must be granted a new trial before a different court in accordance with international law.

The Supreme Court also ordered the re-trial of two top-level officials of the Italian intelligence agency (formerly Servizio per le informazioni e la sicurezza militare or SISMI), its former head Niccolò Pollari and deputy head Marco Mancini; and of three other high-ranking officials, Giuseppe Ciorra, Luciano Di Gregori and Raffaele Di Troia. The cases against them were dismissed by the Milan Court of Appeal due to government claims that key evidence should not be disclosed as a matter of “state secrecy”.

The Supreme Court appears to have called into question the implementation by the Milan Court of Appeal of the 2010 Constitutional Court ruling on the definition and interpretation of the “state secrets” privilege. Former Italian governments have relied on broad claims of “state secrecy” in an apparent effort to shield intelligence officials and the Italian and US governments from accountability for human rights violations that occurred in the context of the US-led rendition and secret detentions programmes. The Milan Court of Appeal will now be required to reconsider the scope and limits of “state secrecy”, and how this would apply in the retrials of the former Italian intelligence officials.

The Supreme Court order for the re-trials sends an important signal regarding the use and interpretation of the “state secrets” privilege. Amnesty International has long maintained that “state secrecy” cannot be invoked by a government to shield it from embarrassment and/or accountability for human rights violations, including complicity in torture and other ill-treatment. Victims of such violations have a right to an effective remedy, including a right to have the truth about the violations they suffered disclosed and publicly acknowledged by the authorities. Society as a whole also has a right to know the truth about these human rights violations.

In keeping with the Court’s ruling, the sentences of all those convicted in the Abu Omar case must be implemented. As a result, the Italian government should immediately transmit warrants to the US government requesting the extradition of the CIA agents and US military official. If the US nationals were to be extradited to Italy, Amnesty International notes that, in accordance with international law, the US nationals convicted in absentia are entitled to a new trial before a different court and to the presumption of innocence in that new trial.

Amnesty International calls on the Italian authorities to ensure that any new prosecution of former Italian intelligence officials conforms with international fair trial standards and that the executive does not invoke “state secrecy” to shield the state or state actors from accountability and/or criminal liability for their alleged complicity in the US-led rendition and secret detention programmes.

Moreover, the Italian government should commence as a matter of urgency an independent, impartial, thorough and effective investigation into all aspects of Italy’s involvement in these CIA operations. A September 2012 European Parliament report urges all implicated EU member states to commence such a process in line with their absolute international legal obligation to carry out effective investigations into allegations of torture and other ill-treatment.

Amnesty International remains gravely concerned at the failure of the USA to ensure accountability and access to remedy for victims of the US-led rendition and secret detention programmes. As such, the USA remains in serious breach of its international legal obligations.

Background:

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 Milan 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 was to be examined in a separate appeals process.

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