

**EXECUTION OF THE JUDGEMENT  
OF THE EUROPEAN COURT OF HUMAN RIGHTS OF 24  
JULY 2014 IN THE CASE OF  
AL NASHIRI V. POLAND  
(APPLICATION NO. 28761/11)**

**Advocate Mikołaj Pietrzak  
Counsel for the Applicant**

## **Summary of the findings of the Decision of the Committee of Ministers taken in December 2020 (CM/Del/Dec(2020)1390/H46-16)**

- The consequences of the violations of the Convention have not been remedied, as Mr Al Nashiri remains at risk of a flagrant denial of justice in the proceedings before the military commission and at risk of the death penalty.
- The Polish Authorities should engage in a more effective dialogue with the US authorities to establish a clear and consistent strategy to intensify their diplomatic efforts.
- The Committee urged the Authorities to respond without further delay to the Committee's previous calls for details of the charges put forward in the criminal investigation.
- The Polish Authorities were called on to clarify how establishment of Council of Ministers' Committee for National Security and Defence Affairs will increase democratic oversight over the intelligence services.
- Lack of a clear message from the Authorities at high level to the intelligence and security services as to the absolute unacceptability of and zero tolerance towards arbitrary detention, torture and secret rendition operations.

## Summary of the current situation – facts

Mr. Al Nashiri was captured by U.S. forces in 2002. He remains imprisoned at the Internment Facility in the US Guantánamo Bay Naval Base in Cuba.

- **Criminal investigation**

- On 11 March 2008 the Polish investigation was opened.
- On 30 November 2020 the prosecutor decided to partially dismiss the criminal investigation - effectively absolving all Polish authorities, officials and officers who were engaged in the operation of the CIA's secret prison of responsibility, including the one person who has faced charges to date.
- The prosecutor's decision has not been made public and important parts of the decision remain completely classified.
- On 7 September 2021 the Court is going to examine the Applicant Counsel's complaint against the prosecutor's decision.
- On 26 February 2021 the prosecutor issued a decision suspending the rest of the investigation while waiting for a response from the U.S. authorities to the prosecutor's mutual legal assistance request.

- **Diplomatic assurances**

- In its 2014 judgment in the *Al Nashiri* case, the ECtHR explicitly ordered the Polish government to remove the risk of death penalty "as soon as possible" by "seeking assurances from the US authorities that he will not be subjected to the death penalty".
- The Polish Authorities apparently made some efforts to obtain diplomatic assurances. Nevertheless, without success.
- The Authorities refused to provide the Applicant's Attorney with any detailed information in this regard, including copies of the correspondence with the US authorities.

- **Changes in legislation concerning supervision over secret services**

## Key shortcomings and continuing violations concerning execution of the judgment

- **Criminal investigation**
  - The Polish authorities have failed to conduct an effective investigation and failed to provide details of measures taken to acknowledge Poland's role in and responsibility for the human rights violations identified in the Judgment.
  - The criminal investigation is inconclusive, untransparent and ineffective.
  - The Polish authorities should acknowledge the unlawful detention and torture of Mr. Al Nashiri and the state's role in the CIA's secret rendition program. The prosecutor issued already two decisions on partial dismissal of the case. Both decisions are based on established facts. Important part of their reasonings remain classified.
- **Diplomatic assurances**
  - The Polish authorities have failed to effectively seek diplomatic assurances
  - The Authorities refused to provide the Applicant's Attorney with any detailed information in this regard, including copies of the correspondence with the US authorities.
- **Changes in legislative on supervision over secret services**
  - Legislative changes are not effective and did not increase effective control over activities of the special services.

## Recommendations for the Committee of Ministers

- Monitor this case more frequently.
- **Issue an interim resolution** deploring the failure to execute the Court's judgments and calling upon Poland to promptly pursue the following common measures:
  - a. **Undertake effective and transparent domestic investigations.**
  - a. **Seek reliable, specific, and binding diplomatic assurances from the U.S. authorities.**
  - b. **Issue an official acknowledgement** that Poland hosted a secret CIA prison on its territory **and public apologies** to Mr. Al Nashiri for the abuse he endured.

## Recommendations for the Committee of Ministers

**Encourage all relevant organs of the Council of Europe to continue to press for execution of these cases**, including the offices of the Commissioner for Human Rights, the Parliamentary Assembly, the PACE Rapporteur for Execution of Judgments, and the Secretary General. In particular, **request the Secretary General to diplomatically engage with the new U.S. administration** in order to obtain assurances that Mr. Al Nashiri will not be at risk of the death penalty and/or a flagrant denial of justice.