

# ECCHR! NEWSLETTER

EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS

No. 1 / 2008

Dear Sir or Madam,  
Dear Friends.

In March 2007, the European Center for Constitutional and Human Rights (ECCHR) was founded in Berlin. The organization itself is registered as an Association under German association law by the Berlin-Charlottenburg Regional Court and has received tax-privileged status.

The ECCHR is dedicated to advancing and protecting human rights via the instrumental legal means guaranteed by the Universal Declaration of Human Rights and other international and national laws and constitutions. The attorneys representing ECCHR are committed to using law creatively and effectively, in a capacity similar to that of the US-American civil rights movement - a positive force for social change.

After the initial set-up phase of the organization was complete, the ECCHR has sharpened its profile, taking part in several actions. This newsletter serves as means by which to present our work and to update you regularly on the current and future progress of our actions.

We would like to take the opportunity in our first edition of the ECCHR-Newsletter to sincerely thank our supporters for their confidence in our organization. Additionally, we would like to present our first projects in the three sectors in order of our highest priorities: Counter-Terrorism and Human Rights, Universal Jurisdiction, and Transnational Corporations and Human Rights.

Three council members govern ECCHR in compliance with German association law: Michael Ratner (President of the Center for Constitutional Rights, New York); Lotte Leicht (EU Director of Human Rights Watch, Brussels) and Hannes Honecker (Secretary General of the Republican Lawyers Association, Berlin).

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The Advisory Board of ECCHR is comprised of well-known experts including: Christian Harlang (Lawyer, Copenhagen and Chairman of the Board); Theo van Boven (Professor at the University of Limburg, and former UN Special Rapporteur for Torture); Reed Brody (Counsel and Spokesperson for Human Rights Watch in Brussels); Florian Jessberger (Professor of International and European Criminal Law, Humboldt University, Berlin); Barbara Lochbihler (Secretary General of Amnesty International Germany, Berlin) and Peter Weiss (Vice President of the Center for Constitutional Rights (CCR), New York).

Working alongside myself, as Secretary General in the ECCHR-Office established in January 2008 in Berlin, are the German-Polish jurist Kamil Majchrzak acting as office manager and the attorney Denise Bentele and Dr. Miriam Saage-Maaß who are responsible for the Transnational Corporations and Human Rights project.

Sincerely

*Wolfgang Kaleck, ECCHR Secretary General*

## Opening remarks by Michael Ratner

Although ECCHR has only recently opened its offices, it is off to a remarkable start and is already involved in some of the key human rights issues of today. The case filed on behalf of Mr. Khaled El Masri is demonstrative of the importance of ECCHR. But the organization's reach extends well beyond Germany spanning worldwide. This includes work in South America, as well as other in European countries and beyond. Human rights violations by transnational corporations, especially those in the extractive industries, will be an important element of ECCHR's work. I am proud to have been part of its founding and work alongside ECCHR and its Secretary General, Wolfgang Kaleck.

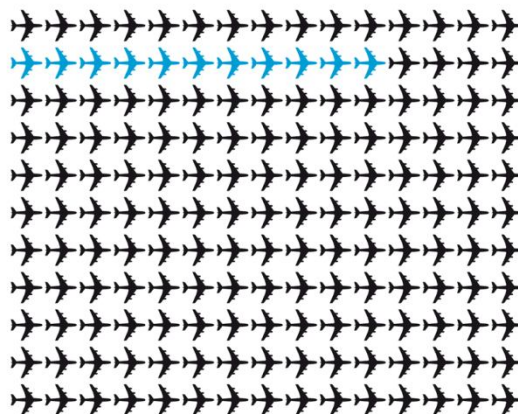
*Michael Ratner, President of the Center for Constitutional Rights (CCR)*

<http://ccrjustice.org/>

## Counter-Terrorism and Human Rights Publication of ECCHR Rendition- Brochure

ECCHR's work continues to be strongly dedicated to the juridical prosecution of human rights abuses committed during the so-called "War on Terror". Last October ECCHR organized a conference with Polish human rights groups in Warsaw (Poland) entitled: "Rendition, The War on Terror and Human Rights: A European Approach". The conference emphasized the logistical support provided by Eastern European countries to CIA rendition flights and in so doing, questioned the existence of secret prisons in Poland.

Subsequently, the ECCHR organised a practitioner's workshop in Berlin and held a public conference together with the Republican Lawyers Association (Republikanischer Anwältinnen- und Anwälteverein) and Amnesty International. In December 2007, ECCHR held another conference in



**CIA- »EXTRAORDINARY RENDITION« FLIGHTS,  
TORTURE AND ACCOUNTABILITY –  
A EUROPEAN APPROACH**

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collaboration with the Danish Jurist organisation *Retsikkerhedsfonden*, in Copenhagen, at which several top-level attendees joined. Those included the former social democratic Minister of Foreign Affairs and Minister of Justice, as well as the Investigator of the Council of Europe Gavin Simpson and Wolfgang Kaleck from the ECCHR.

The outcome of these intensive meetings has been recently published in the brochure entitled "»Extraordinary Rendition« Flights, Torture and Accountability – A European Approach". The publication is available for a 5 EUR charge through the ECCHR office.

## **Common Press Conference with the American Civil Liberties Union (ACLU) and the Open Society Justice Initiative (OSJI) in the El Masri case**

As part of its efforts to clarify and prosecute concrete human rights violations, the ECCHR supports Mr. Khaled El Masri in his complaint against the Federal Republic of Germany at the Administrative Court in Berlin. Mr. El Masri was abducted by the CIA in December of 2003 and subsequently tortured.

The complaint was presented in a press conference in the "Haus der Demokratie und Menschenrechte" (House of Democracy and Human Rights) in Berlin on June 9, 2008. Attending the conference were ECCHR Secretary General, Wolfgang Kaleck, the complainant's authorized proxy attorney Sönke Hilbrans (Berlin) and Manfred Gnjidic (Ulm) as well as the attorneys Filip Medarski (Skopje, Macedonia), Ben Wizner and Steven Watt (American Civil Liberties Union - ACLU) and Darian Pavli (Open Society Justice Initiative - OSJI), all three experts from the USA.

The complaint submitted to the Administrative Court in Berlin by ECCHR appeals to the Federal Government and requests they issue an extradition warrant against the USA concerning the 13 CIA Agents suspected to have "rendered" Mr. Khaled El-Masri in 2003.

On January 31, 2007 the District Court in Munich issued arrest warrants for the 13 CIA agents because of a strong suspicion of aggravated assault and deprivation of personal freedom.

On September 22, 2007 the Federal Minister of Justice declared that she would not demand extradition from the United States.

The federal government currently refuses legal remedies to victims of torture, as guaranteed by Art. 2 I, 19 IV and 20 III of the German Constitution. Moreover, the government continues to avoid clarification and judicial persecution of crimes

against International Criminal Law, the persecution of disappearance of individuals, and especially, of torture. The criminal acts that Mr. El Masri has been subjected to are not acceptable interventions according to the rule of law no matter the outcome of the complaint.

This criminal action against Mr. El Masri is not a singular case. In fact, the CIA has conducted a secret program known as "Extraordinary Rendition" since 2001. In cooperation with the US-government, the CIA uses this secret information program to transfer foreign citizens suspected of terrorist acts for detention and interrogation in other countries especially to those countries where US and international human rights standards do not apply. Experts estimate that since September 11, 2001 several hundred individuals have fallen victim to the rendition-program.

Wide media coverage followed the filing of this complaint. Heribert Prantl, head of the national politic department at the "Süddeutsche Zeitung" expressed scepticism suggesting that in cases such as this, it is probable that foreign politics overwhelm the quest for justice; although in his commentary he is quoted as expressing some cautious optimism: "Nevertheless, the complaint has pedagogical value. It teaches us that the third power is only a small power when it concerns great politics." It is on us to change this.

See also: "CIA- »Extraordinary Rendition« Flights, Torture and Accountability – A European Approach", download at:

<http://www.ecchr.eu/analysis.html>

## Universal Jurisdiction

### Rumsfeld Case in France

On May 21, 2008 the ECCHR launched an open letter to France's Minister of Justice, Madame Rachida Dati, in association with the International Federation for Human Rights (FIDH), its member organizations in the United States, the Center for Constitutional Rights (CCR) and in France, the «Ligue française des droits de l'Homme et du Citoyen» (LDH).

In this letter, the organisations request that Dati use her influence with the Public Prosecutor of the Paris Appeals Court to ask that he withdraw his decision of February 27, 2008 granting former U.S. Secretary of Defence, Donald Rumsfeld immunity from criminal jurisdiction for acts of torture. The letter was also sent to Mr. Bernard Kouchner, France's Minister of Foreign Affairs.

On October 25, 2007, the plaintiff organizations filed a complaint before the Paris District Prosecutor against Rumsfeld on the occasion of his private visit to Paris. The complaint alleged that Rumsfeld, in violation of the Convention against torture, ratified by France and implemented in French legislation, is responsible for directly and personally crafting, while also issuing orders, to the use of "harsh" interrogation techniques that constitute torture.

The complaint is based on the detailed preliminary work of the CCR and ECCHR during the German Rumsfeld cases. The dossier consisting of several hundred pages of evidence also alleges that such techniques were implemented under Rumsfeld's supervision, notably at Guantánamo and Abu Ghraib, and that starting in 2002, he personally managed to participate in several torture sessions of terrorist suspects.

The Paris Prosecutor dismissed the complaint and granted Rumsfeld immunity, purportedly basing his decision on an opinion drafted by the French Ministry of Foreign Affairs. The plaintiffs

had, without success, contested the dismissal of the complaint before the Public Prosecutor- a higher authority.

The open letter addressed to Justice Minister Dati demonstrates that the prosecutors' opinion fails to articulate any valid legal justification for the personal immunity of Rumsfeld, a former Secretary of Defence; it ignores the principle stating that there is no immunity for international core crimes like torture; and alleges that by granting immunity to former officials for like crimes that the decision contradicts the very purpose of the French legislation implementing the provisions of the Convention against Torture.

It is "to avoid an application 'à la carte' of the fight against impunity" that the plaintiff organizations have chosen now to refer the matter to France's Minister.

See also:

[http://ecchr.eu/newsreader\\_en/items/there-is-no-immunity-for-torture.html](http://ecchr.eu/newsreader_en/items/there-is-no-immunity-for-torture.html)

In this context, it is worth noting that the ECCHR is in the process of appealing the dismissal of the criminal complaint against Rumsfeld in Germany and has been working to do so since October 30, 2007. This lawsuit is pending at the Appellate Court in Frankfurt/Main.

For more see:

<http://www.ecchr.eu/documentations.html>

## Transnational Corporations and Human Rights

### Book on “Transnational Corporations on Trial”

Wolfgang Kaleck and Dr. Miriam Saage-Maaß presented a study in April on the accountability of Transnational Corporations and their role in Human Rights abuses. This study, which was compiled for the Heinrich-Böll-Foundation, examines four current cases in which European Corporations are on trial for their activities in Latin America.

More specifically, it deals with a cellulose plant run by the Finnish corporation Botnia in Uruguay. The plant is the object of a dispute between Argentina and Uruguay and the conflict has drawn intense interest and opposition from within civil society. Another conflict addressed in the study focuses on the controversy between Brazil and the European Union (EU) regarding Brazil's imposition of an import ban on retreaded tires before the Dispute Settlement Body of the World Trade Organization (WTO).

The authors of the study also closely examine a case that looks at labour conditions in sewer factories in the metropolis of Buenos Aires. This case concerns mostly Bolivian female workers who produce sportswear and are employed without legal residence permit status. Such products are being sold under European brands like Puma, Adidas and Le Coq Sportif.

The final case deals with the violent conflict between the Brazilian landless movement and a private militia as a result of genetically modified corn crops overseen by the Swiss agrobusiness, Syngenta.

The presented study opens non-jurists to the existing sanction mechanisms at a national and international level employed against corporations violating human rights. Wolfgang Kaleck and Miriam Saage-Maaß conclude their study stating that international law as well as national jurisdic-

tions offer only limited possibilities to litigate human rights violations or environmental damages caused by transnational corporations.

The authors confirm that a narrow view concentrating only on judicial proceedings and single cases distract from the important social, political and economic aspects of such proceedings and their impact on the society as a whole. Despite the aforementioned restrictions, the authors assume judicial proceedings to be a separate opportunity by which to clarify the scope of liability and to sanction transnational corporations for human rights violations they commit.

The right to full transparency regarding human rights abuses and sanctions against violators of human rights are the primary themes of this study. The study contributes significantly to the understanding of the opportunities and limitations of transnational litigation in the field of human rights. The globalisation of universal human rights standards and the transnational organisation of the human rights movement have also added to the potential for success in these areas.

A 30 page English summary will be published in the near future. In mid May of 2008, the study was presented in a Spanish translation on the 3rd alternative summit in Lima (Peru).

The German version of the study is available online at: <http://ecchr.eu/studies.html>

### Participation at Conferences

In April of 2008 Wolfgang Kaleck participated at the Annual Meeting of the American Society for International Law (ASIL). There he spoke at a panel discussion alongside another ECCHR board member, Peter Weiss (Center for Constitutional Rights). The panel discussed efforts undertaken in Germany and France since 2004 against the former Secretary of Defense Donald Rumsfeld and others involved in the torture of prisoners of war –specifically those held in the Abu Ghraib prison and the prisoners camp Guantánamo (both of which the US Government is responsible).

This struggle for justice has even been dramatized in major film productions and book publications. The latest film by Oscar award-winning director Errol Morris, "Standard Operating Procedure" addresses cases where grave human rights violations have been committed by the US. This film was shown at the 59<sup>th</sup> International Film Festival in Berlin in February 2008. The topic was also the center of a new book by the British attorney Philippe Sands, "Torture Team: Rumsfeld's Memo and the Betrayal of American Values".

The book focuses on the torture of Mohamed Al Qahtani, yet another torture victim and participant in the criminal complaint issued by the ECCHR in Germany. The text depicts the many months of his imprisonment at Guantanamo. Al Qahtani is another torture victim who has participated in the criminal complaint issued by the ECCHR in Germany.

In May 2008, a study on accountability of Transnational Corporations and their role in Human Rights abuses was presented at the 3rd alternative summit in Lima/Peru to the official EU-Latin America Summit. The ECCHR has offered, in cooperation with the Center for Constitutional Rights (CCR), a workshop on the responsibility of corporations for human rights abuses.

## **Announcements: Conference on Transnational Corporations and Human Rights, October 2008**

On October 9 and 10, the ECCHR will host a conference in Berlin, in cooperation with the German organisations 'Brot für die Welt' and 'Misereor', on the topic of "Transnational Corporations and Human Rights".

The risks to human rights will be broadly presented during an opening speech concerning the impact of globalisation on global economic and social relations. This introduction intends to analyse the political, economic and social causes and

the implications of human rights violations committed by transnational corporations. The scope of legal accountability of corporations and the state's responsibility concerning human rights violations perpetrated by corporations will be the main topics for discussion.

The discussion will be based within three domains (extractive industries, inhuman conditions of work and child labour, rights to water and nutrition). In working groups, the participants will theoretically and practically analyse the potential for and limitations of accountability and the legal responsibility of transnational corporations for addressing human rights violations.

A non-public, practitioners' workshop will also be offered before the conference. This event will feature European and US-American lawyers associated with the ECCHR-network who are experienced in trials against transnational corporations, meeting with lawyers from countries in which specific human rights abuses by transnational corporations take place. Together they will discuss the possibility of future cooperation in specific cases.

The workshop will focus on concrete cases from Nigeria, Liberia, South Africa, Chad and India, including subjects the participants of the workshop are already familiar with.

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### **DONATIONS**

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