

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: ICC-02/17  
Date: 3 December 2019

**APPEALS CHAMBER**

**Before:**  
Judge Piotr Hofmański, Presiding  
Judge Howard Morrison  
Judge Luz del Carmen Ibáñez Carranza  
Judge Solomy Balungi Bossa  
Judge Kimberly Prost

**SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN**

**Public**

**Further information supplementing representation of victim r/60009/17**

**Source:** Legal Representatives of Victim r/60009/17

**Document to be notified in accordance with regulation 31 of the *Regulations of the******Court to:*****The Office of the Prosecutor**

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## I. Introduction

1. On 6 December 2017 the legal representatives of Victim r/60009/17 (Abd Al Rahim Hussayn Muhammad Al-Nashiri) submitted on his behalf a victim's representation to Victims' Participation and Reparations Section pursuant to article 15(3) of the Rome Statute and to the Order to the Victims Participation and Reparation Section Concerning Victims' Representations issued by the Pre-Trial Chamber III on 9 November 2017.<sup>1</sup>
2. Since 5 December 2017, there have been two developments with regard to Mr. Al-Nashiri's case, which further clarify and supplement the dates and locations of Mr. Al-Nashiri's illegal detention and torture. First, on 31 May 2018 the European Court of Human Rights (hereinafter: "ECtHR") issued its judgment in the case of *Al Nashiri v. Romania*, application no. 333234/12 concerning the US Central Intelligence Agency secret detention site in the Romanian territory (the ECtHR judgement in this case is available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-183685%22%5D%7D>}, 26 November 2019).
3. Secondly, the report by the Rendition Project "*CIA Torture Unredacted: An Investigation into the CIA Torture Programme*" was published in July 2019 (hereinafter: "the Rendition Project Report", available at: <https://www.therenditionproject.org.uk/unredacted/the-report.html>}, 26 November 2019).
4. The two above mentioned documents provide additional information about the time and locations in which Mr. Al-Nashiri was held under the Central Intelligence Agency (hereinafter: "CIA") secret rendition, detention and interrogation programme and about the ill-treatment to which Mr. Al-Nashiri was subjected. Therefore, the LRVs of r/60009/17 submit this additional information to give a fuller and more precise picture of the crimes that Mr. Al-Nashiri's has suffered.

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<sup>1</sup> Pre-Trial Chamber III, 'Order to the Victims Participation and Reparation Section Concerning Victims' Representations', ICC-02/17-6, 11 November 2017.

## II. *Overview of Mr Al-Nashiri's capture and detention*

5. Mr. Al-Nashiri is a victim of a secret rendition, detention and interrogation programme of the CIA (hereinafter: "CIA programme"), developed and operated following the attack of 11 September 2001. This programme was intended for the so-called "High Value Detainees" (hereinafter: "HVD") – captives from among the Al-Qaeda group suspected of terrorism. In so-called "black-sites" the allegedly HVD prisoners – including Mr. Al-Nashiri – were subjected to brutal interrogation techniques, amounting to torture, developed by the CIA under the Enhanced Interrogation Techniques programme (hereinafter: "EIT").
6. These acts were committed at least on the territories of Afghanistan, Cuba, Poland, Romania, Lithuania, Morocco and Thailand. Credible evidence exists that employees, servants and/or agents of those countries aided and abetted or were complicit and conspired with the US authorities in the torture and ill-treatment of Mr. Al-Nashiri.
7. Mr. Al-Nashiri was captured in late October 2002 in Dubai, United Arab Emirates in relation to allegations of the US authorities concerning his alleged involvement in two bombings against American and French naval targets. He was then transferred to CIA custody in Dubai by November 2002. After custody in Dubai, Mr. Al-Nashiri was taken to a secret CIA prison in Afghanistan known as the "Dark Prison" (previously referred to as the "Salt Pit")<sup>2</sup>. Subsequently, US security services took Mr. Al-Nashiri to another secret prison in Bangkok, Thailand, known as "Cat's Eye"/ "Catseye", where he remained until 4 December 2002, and where he was subjected to EIT.
8. On 4 December 2002, Mr. Al-Nashiri was transferred to the fourth place of his clandestine detention by an American airplane registered by the US Federal Aviation Authority as N63MU. This airplane landed in – at the time – Szymany military airbase in Poland on 5 December 2002 at 14:56. From there Mr. Al-Nashiri

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<sup>2</sup> According to the Rendition Project Report the Dark Prison has also been referred to as the 'Salt Pit' in some reports, although prior confusion has meant that that name has also been applied to 'Rissat 2', an Afghan-run facility in Kabul which held detainees on behalf of the CIA throughout 2002-2004 (see p. 105 of the Rendition Project Report).

was taken directly to the CIA secret detention facility in Stare Kiejkuty, a Polish intelligence agency training facility. He was detained in Stare Kiejkuty until 6 June 2003 when he was sent to the CIA prison in Rabat, Morocco. On 23 September 2003, the CIA agents transported Mr. Al-Nashiri to the prison at Guantanamo Bay Naval Base. However, on 12 April 2004 Mr. Al-Nashiri was moved from Guantanamo to a CIA secret detention facility in Bucharest, Romania. He remained in Romania until 5 October 2005 when he was transferred to a secret location in Antaviliai, Lithuania, where he was held until 25-26 March 2006. He was then transferred to a final secret detention site in Afghanistan. Between 4 and 5 September 2006, Mr. Al-Nashiri was transferred into US military custody at Guantanamo Bay detention facility, where he has been imprisoned ever since.

9. Given the above, from the day of his abduction in November 2002, Mr. Al-Nashiri was detained in the following locations:

- 1) Dark Prison, Afghanistan, between 10 and 15 November 2002 (code name Cobalt);
- 2) Cat's eye / Catseye in Bangkok, Thailand between 15 November – 4-5 December 2002 (code name Green);
- 3) Stare Kiejkuty, Poland between 4/5 December 2002 and 6 June 2003 (code name Blue);
- 4) Rabat, Morocco between 6 June 2003 and 23 September 2003;
- 5) Guantanamo Bay Military Prison, Cuba, between 23 September 2003 and 12 April 2004;
- 6) Bucharest, Romania, known as Bright Light until 5 October 2005 (code name Black);
- 7) Antaviliai, Lithuania, between 5 October and 25-26 March 2006 (code name Violet);
- 8) Afghanistan, between 25-26 March and September 2006 (code name Orange);
- 9) Since 6 September 2006 Mr Al-Nashiri has been detained in Guantanamo Bay Military Prison in Cuba.

### III. *Ill-treatment in CIA secret detention facility, Antaviliai, Lithuania*

10. Little is known about specific conditions of Mr. Al-Nashiri's incommunicado detention in Lithuania. However, at a minimum we know that Mr. Al-Nashiri was held in isolation and by that time had suffered severe psychological and physical ill-treatment after having been forcibly and clandestinely transferred between black sites in several states and secretly detained for over three years.

### IV. *Regarding acts committed in Romania*

11. At the time when the Victim's Representation on behalf of r/60009 was filed, the case of Mr. Al-Nashiri v. Romania was still pending before ECtHR (Application no. 333234/12). In the judgement rendered in this case on 31 May 2018, the ECtHR found that Romania participated in rendition, secret detention and ill treatment of Mr. Al-Nashiri. According to the ECtHR, these acts amounted to violation of Article 2 (right to life), Article 3 (prohibition of torture), Article 8 (right to respect private and family life), Article 5 (right to liberty) of the European Convention on Human Rights and Article 1 abolition of the death penalty) of Protocol No. 6 to the European Convention on Human Rights. The ECtHR found also that Romania's refusal to acknowledge, investigate and disclose details of Mr. Al-Nashiri's ill-treatment, enforced disappearance and rendition violated his and the public's right to truth. Importantly, the ECtHR judgement confirms the Romanian state's complicity in the CIA programme.

12. As to the specific ill-treatment of Mr. Al Nashiri, the ECtHR found that the detention regime to which he was subjected in Romania included "blindfolding or hooding of detainees, designed to disorient them and keep them from learning of their location or the layout of the detention facility".<sup>3</sup> The ECtHR also found that detention of Mr. Al-Nashiri included "incommunicado, solitary confinement, continuous noise of high and varying intensity played at all times; continuous noise of high and varying intensity played at all times; continuous light – each cell was

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<sup>3</sup> ECtHR, *Al Nashiri v. Romania*, application no. 333234/12, Judgement of 31 May 2018, para. 547.

illuminated to about the same brightness as an office; and use of leg shackles in all aspects of detainee management and movement".<sup>4</sup>

**V. *Ill-treatment in other CIA secret detention sites***

13. As it was described in the victims' representation filed to the VPRS in December 2017, Mr. Al-Nashiri was subjected to various brutal interrogation techniques throughout his involvement in the CIA's secret rendition programme.
14. In particular he was subjected to both authorized and unauthorized EIT, amounting to torture, in the "Dark Prison" facility in Afghanistan, where Mr. Al-Nashiri was subjected to prolonged stress, and standing positions, including having his hands shackled to the ceiling for two and a half days.
15. In Bangkok, Thailand, Mr. Al-Nashiri was "waterboarded." This involved being tied to a slanted table, with his feet elevated. A rag was then placed over his forehead and eyes, and water poured into his mouth and nose, inducing choking and water aspiration. The rag was then lowered, suffocating him with water still in his throat and sinuses. Eventually, the rag was lifted, allowing him to "take 3-4 breaths" before the process was repeated. To prevent his untimely death, a doctor was ordered to be in attendance to resuscitate him, if necessary.
16. In the Stare Kiejkuty detention site in Poland, for two weeks in December 2002 Mr. Al-Nashiri was subjected to several authorized EIT including sleep deprivation. Also, two CIA officers used undocumented and unauthorized interrogation techniques upon him. In particular, the officers simulated Mr. Al-Nashiri's mock execution, revving a power drill to cause him to feel fear, they chambered a bullet near his head, threatened him with sodomy and sexual abuse of his mother in front of him and smoked cigars, blowing the smoke into his face. Mr. Al-Nashiri was also subjected to various stress positions lasting even for several days. These included in particular kneeling on the floor while leaning back and standing with his hands shackled to the ceiling. During one interrogation session Mr. Al-Nashiri was aggressively lifted off the floor by his arms, with his

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<sup>4</sup> Ibid.

arms bound behind his back with a belt, which caused their dislocation from his shoulders. Mr. Al Nashiri was also tortured by using a stiff brush on his naked skin, which resulted in cuts and bruises. On another occasion, the interrogators stood on Mr. Al Nashiri's shackles in order to induce pain.

17. The harsh conditions of Mr. Al-Nashiri's detention in all secret detention sites, including long lasting isolation from the outer world, his family or lawyers, brutal interrogations with use of EIT, as well as other unauthorized techniques and other forms of ill-treatment caused him long lasting emotional and physical harm. Moreover, he was deprived of his basic fair trial rights and personal liberty as a person subjected to long-lasting unauthorized and incommunicado detention. Until this day, not a single state has conducted an effective investigation into these crimes.
18. For these reasons, Mr. Al-Nashiri continues to support opening the investigation into the crimes committed in the context of the conflict in Afghanistan, and emphasizes that such an investigation should include the crimes suffered by the victims of the CIA programme.

## VI. Conclusion

19. Given the information in the ECtHR judgment in the case of Al-Nashiri v. Romania from 31 May 2018 and in the Rendition Project Report referred to above, the representation submitted on behalf of Mr. Al-Nashiri in December 2017 required supplementation by the above provided information.




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Nancy Hollander\*

Legal Representatives for r/60009/17




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Mikołaj Pietrzak




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Ahmad Assed

Dated this 3<sup>rd</sup> of December 2019

At the Hague, The Netherlands; Albuquerque, USA



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\* Ms Hollander did not contribute to any of the facts in this document and did not confirm or deny the truth thereof.