

## **Mandate for the Committee of Inquiry**

**(Bundestag Printed Paper 16/990 as amended by the recommendation for a decision of the Committee for the Scrutiny of Elections, Immunity and the Rules of Procedure of 7 April 2006: Bundestag Printed Paper 16/1179 - extract -,**

**and**

**Bundestag Printed Paper 16/3028 as amended by the recommendation for a decision of the Committee for the Scrutiny of Elections, Immunity and the Rules of Procedure of 27 October 2006: Bundestag Printed Paper 16/3191 - extract -**

**and**

**Bundestag Printed Paper 16/5751 as amended by the recommendation for a decision of the Committee for the Scrutiny of Elections, Immunity and the Rules of Procedure of 6 July 2007 Bundestag Printed Paper 16/6007 - extract -)**

On 20 February 2006, the German Federal Government presented the Parliamentary Control Panel of the German Bundestag with a report "on events relating to the Iraq War and combating international terrorism".

A Committee of Inquiry will be established in accordance with Article 44 of the German Basic Law in order to clarify still unresolved questions, make assessments and draw the necessary conclusions.

The Committee of Inquiry is to clarify what political directions were given for the actions of the Federal Intelligence Service (BND), Federal Office for the Protection of the Constitution (BfV), Federal Armed Forces Counterintelligence Office (MAD), Federal Prosecutor General (GBA) and Federal Criminal Police Office (BKA) in connection with the events described in the report and how political leadership and oversight were provided and ensured. These matters and the political responsibility for them are to be clarified in relation to the events and issues specified in concrete terms below:

- I. In relation to CIA flights and the (secret) prisons for terror suspects operated by American agencies, it is to be clarified
  1. whether terror suspects who may have been abducted have been transported via German territory on flights arranged by American agencies (in particular, the Central Intelligence Agency, CIA) or whether the possibility of events of this kind can at least not be ruled out;
  2. whether and, if so, from what point in time the German Federal Government had what information about prisoner transports of this kind;
  3. whether the statements made by the German Federal Government in its report of 23 February 2006 are accurate;
  4. what measures the German Federal Government has taken to monitor, investigate and, where necessary, terminate any such operations – for

example by deploying the Federal Office for the Protection of the Constitution within the framework of its statutorily enshrined functions – , why such action has not been taken, if this is the case, and who bears the responsibility for this omission;

5. what suitable measures the German Federal Government may have taken in order to prevent flights of this kind in future;
6. whether the German Federal Government has information about (secret) prisons for terror suspects operated by US agencies in Europe and elsewhere to which terror suspects have been transported via German territory and, if so, what information it has and how any such information has been verified;
7. what action may have been taken by the German Federal Government to put an end to the operation of such prisons.

I. a Furthermore, the Committee is to clarify

1. whether the German Federal Government had information - and the nature of any such information - about the fate following arrest of Abdul-H. Khafagy and other persons who were German citizens or, at the time of their arrest, had legal residency status in Germany and who were detained after the 11th of September 2001 at Camp Eagle Base or other prisons in Bosnia and Herzegovina used by US agencies on suspicion of involvement in terrorist activities;
2. whether the German Federal Government had information - and the nature of any such information - about the possible involvement of staff from agencies of the German Federation in the detention, interrogation and treatment of prisoners who were detained after the 11th of September 2001 at Camp Eagle Base or other prisons used by US agencies in Bosnia and Herzegovina on suspicion of involvement in terrorist activities;
3. whether and in what fashion relatives and legal counsel of the persons specified in part I of this mandate were kept informed by agencies of the German Federation and whether assistance was provided and, if this was not the case, why no assistance was provided.

II. Furthermore, the Committee is to clarify

1. whether agencies of the German Federation or, as far as the German Federal Government is aware, agencies of the German Länder (constituent states) supplied information about Khaled El-Masri to foreign agencies;
2. if so, whether this information contributed to the abduction of Khaled El-Masri;
3. what information the German diplomatic service in Macedonia had about the abduction of Khaled El-Masri;
4. whether – following the meeting at Whitsun 2004 – the then Federal Minister of the Interior, Otto Schily, received information on the case of the abduction of the German citizen Khaled El-Masri by US agencies in further discussions with US Ambassador Daniel Coats and other US agencies, for instance with US Attorney General John Ashcroft and the then Director of the CIA, what information he received and why this information has not been utilised for investigations in Germany or passed on;

5. whether German citizens and German agencies were involved in the interrogation of Khaled El-Masri and the identity of the person described by Khaled El-Masri as a German called "Sam", who was present at interrogations in Kabul shortly before Khaled El-Masri's release and accompanied Khaled El-Masri on a flight back to Macedonia;
6. how the German Federal Government has endeavoured in "an appropriate fashion" to investigate these events at the diplomatic level and the levels of the intelligence agencies and Federal Police.

III. Furthermore, the Committee is to clarify the following questions:

1. whether and, if so, for what purpose and on what legal basis German federal authorities passed on travel data to US, Dutch and Moroccan agencies in the case of M.H.Z., to Lebanese agencies in the case of D. and S. and to US or Pakistani agencies in the case of M.K.;
2. what conclusions have been, and still remain to be, drawn from the interrogations/interviews that are claimed to have taken place following torture or in circumstances comparable to torture;
3. how it is to be ensured that the Federal Prosecutor General's powers to direct investigative proceedings are not undermined;
4. what precautions are to be put in place in order to ensure that agents of the Federal Intelligence Service, Federal Criminal Police Office or other agencies of the German Federation can be prevented from conducting interviews of this kind in future;
5. in the case of M.K., what efforts have been made by the German Federal Government to give M.K. assistance and obtain his release. In particular, it is to be clarified whether offers with regard to his release have been made by US agencies, what offers may have been made, whether such offers have been rejected or not taken up by the German side and, if so, for what reasons. In this connection, it is to be clarified which agencies of the German Federation were involved in such a decision and who bears the responsibility for it;
6. the extent to which the German Federal Government is aware of the circumstances that led to the detainment of M.H.Z., D. and S., what the German Federal Government has done in each case to give assistance to the individuals detained and bring about their release, whether and when there have been opportunities for their release and, if so, why such opportunities for their release have not been exploited.

IV. The Committee of Inquiry is also to clarify

1. who gave the order for the deployment of two Federal Intelligence Service staff in Baghdad and what government agencies were involved in decision-making about their operations;
2. whether, and to what extent, further information additional to that listed in the report of the German Federal Government – in particular, a new military plan for the defence of Baghdad – was supplied to headquarters from Iraq by the Federal Intelligence Service staff prior to the beginning of, and during, the Iraq War, reached US agencies and may have been of significance to US military operations or was actually used in such operations;

3. whether, and to what extent, the buildings and facilities specified on p. 20 of Bundestag Printed Paper 16/800, which were reported by Federal Intelligence Service staff in Baghdad and forwarded to US agencies, are accurately reproduced and assessed;
  4. the content of inquiries submitted by US agencies to the Federal Intelligence Service from the beginning of 2003, how the Federal Intelligence Service responded to these inquiries, whether the inquiries were passed on to the Federal Intelligence Service staff in Baghdad and whether, and how, they were answered;
  5. what was discussed and agreed with US agencies about the functions of the Federal Intelligence Service staff in Baghdad and why what was agreed was not recorded in writing;
  6. why the orders and instructions of the German Federal Government, in particular the limitations placed on what the Federal Intelligence Service staff should report on from Baghdad and what could, and could not, be forwarded to US agencies, were not recorded in writing and what precautions were taken to ensure effective control of compliance with the limitations placed on the forwarding of information;
  7. whether, and if so what, information from Federal Intelligence Service staff in Iraq who were not informed about the limitations placed on the forwarding of information to US agencies reached US agencies by telephone or in writing;
  8. whether members or officials of the German Federal Government or their predecessors and subordinate officials were aware of, approved, ordered or supported the forwarding of information to US agencies and the detailed arrangements for the forwarding of that information, and whether members of the German Federal Government informed the German Bundestag and the public accurately about these matters following the appearance of press reports from the beginning of January 2006 onwards;
  9. whether further investigation indicates that the assessment of the activities of the Federal Intelligence Service during the Iraq War given in the report of the German Federal Government is accurate;
  10. how the Parliamentary Control Panel was informed promptly by the German Federal Government, whether this may have been dispensed with and, if so, on what grounds.
- V. With regard to the circumstances examined by the expert investigator appointed by the Parliamentary Control Panel, former Presiding Judge at the Federal Court of Justice Dr. Gerhard Schäfer, in his report of 26 May 2006, the Committee is to clarify
1. who within the Federal Chancellery and at the executive level of the Federal Intelligence Service (Presidents, Vice-Presidents and directors-general) knew, and when they knew, that the Federal Intelligence Service
    - a) was monitoring and investigating journalists or having them monitored and investigated,
    - b) was collaborating with journalists to this end and rewarding them financially or by other means for the provision of information, and was initiating and receiving reports of this kind from journalists,
    - c) was exerting influence on media reporting by, for example, initiating reports or influencing their content

or, if they did not become aware of these operations promptly, why this was the case;

2. in connection with the activities specified in part V(1) of this mandate, whether the Federal Intelligence Service may also have acted towards Members of the German Bundestag as described in part V(1) and, if so, who within the German Federal Chancellery and at the executive level of the Federal Intelligence Service was aware of this, when they were aware of it and, if they did not become aware of it promptly, why this was the case;
3. who within the German Federal Chancellery and the Federal Intelligence Service gave orders with regard to the operations specified in part V(1) and (2), what orders they gave, when they gave these orders and who bears the political responsibility for this;
4. how internal checks in this respect are organised by the executive level of the Federal Intelligence Service;
5. what guidelines, instructions and orders relating generally to operations of this kind had been issued by the executive level of the Federal Intelligence Service or, if there were no such guidelines, instructions and orders, why this was the case;
6. what measures, in particular investigative and monitoring measures, the Federal Intelligence Service has taken in connection with the operations specified in part V(1) and (2);
7. how the German Federal Government has exercised its powers of oversight over the Federal Intelligence Service with regard to the operations specified in part V(1) and (2), and who bears the political responsibility for possible misconduct in this field;
8. how the German Federal Government informed the German Bundestag about these operations, the extent to which it refrained from doing so and, if it refrained from doing so, why this was the case.

VI. Finally, the Committee is to

1. clarify whether, and to what extent, guidelines or instructions of the German Federal Government, official duties, employees' obligations or German or international law have been infringed by activities specified in parts I to V of this mandate;
2. deliver recommendations as to what legal and practical conclusions are to be drawn in order to ensure that the fight against terrorism takes place on the basis of the rule of law, preserve the rights of Members of the German Bundestag (cf. part V[2]) with regard to the activities of the Federal Intelligence Service, safeguard press freedom as a protected fundamental right and improve scrutiny of the intelligence services in order to make it possible for undesirable developments to be prevented;
3. clarify what has been, or will be, done to ensure that any repetition of the illegal monitoring of journalists and Members of the German Bundestag (cf. part V[2]) by the Federal Intelligence Service is precluded in future.