



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



Strasbourg, 5 June 2009

Dear Ambassador,

This is a letter that I address to all Permanent Representatives of the 47 Council of Europe member states following my visit to Washington DC on 1 and 2 June and concerns the possibility of resettlement to member states of certain detainees from the Guantánamo detainee facility.

As you know, the US President has ordered the closure of the prison camp. The US administration is now working for this closure by January 2010 at the latest. Ambassador Daniel Fried at the State Department has been appointed as Special Envoy for Closure of the Guantánamo Detainee Facility. During my visit to Washington DC I met with him, as well as with representatives of the National Security Council at the White House and of the Department of Defence.

Based on these discussions, I am convinced about the US authorities' determination to go ahead with the closure and the urgent need of effective support by European states to contribute to the attainment of this goal.

The Guantánamo prison camp has become a world-wide symbol of injustice and oppression, which has stained the US but to some extent also some other countries given the inter-state transfers to Guantánamo that have occurred, as reported by the Council of Europe Parliamentary Assembly and others. Resolutions 1340 (2003) and 1433 (2005) of the Assembly attest to the fact that the serious affronts to the rule of law that have occurred in Guantánamo are very much also a matter of serious concern to Europe. I recall furthermore that USA has an observer status with the Council of Europe.

There have been 778 persons from various countries who have been detained in Guantánamo. The first arrived hooded and shackled on 11 January 2002. The number of the remaining detainees is today 240. Expert reports have made clear that the majority of the Guantánamo detainees have not committed hostile acts against the US or its allies, only less than ten per cent have been characterized as al-Qaeda fighters and several of them are no more than "volunteer foot soldiers".

Among the current detainees there are approximately fifty persons who are 'cleared for release' by the US authorities but cannot be repatriated because they are stateless or likely to face torture or other serious human rights violations if forcibly returned to their home countries. They come from various countries such as Algeria, China, Libya, the Occupied Palestinian Territories, Russia, Syria, Tajikistan, Tunisia and Uzbekistan.

While Council of Europe member states have accepted their own nationals who had been in Guantánamo, certain others, such as Albania, France, Sweden and the United Kingdom, have also accepted non-citizens from Guantánamo. Authorities from a number of other member states have made public their willingness to accept non-citizen Guantánamo detainees. Last April the EU ministers for justice and the interior started to work towards a EU response to the closure of Guantanamo that would include possible provision of residence for persons 'cleared for release' but cannot return to their countries of origin for 'compelling reasons'.

It is beyond doubt that a number of the Guantánamo detainees are in need of international protection. Reliable reports have indicated that some of those released and returned to their home countries have suffered serious human rights violations, such as torture and unlawful detention.

I made the point during my visit that the US authorities must offer at least to some of the 'cleared' detainees with protection needs a possibility to settle down in the United States. This was well received by my interlocutors though the recent Congress discussion had not been helpful in this respect. I have, however, reason to believe that such offers will indeed be given. However, it is likely that some detainees would not, for obvious reasons, accept to stay in the country. It is for this major reason that European states should lend a hand.

In view of the above, I would like to call upon your government, along with other member state governments, to consider receiving some few released detainees for whom return home is not really an option. Such transfers should of course be voluntary in nature.

I believe that such a decision by Council of Europe member states will constitute not merely a gesture of a humanitarian nature. They will in effect strengthen their fight against terrorism by reaffirming that all measures taken to prevent or suppress terrorist offences have to respect the rule of law and democratic values, human rights and fundamental freedoms, for which the Council of Europe was created and has worked for sixty years now.

Looking forward to hearing from you, I remain

Yours sincerely

A handwritten signature in blue ink, which appears to read "Thomas Hammarberg". The signature is written in a cursive, flowing style.

Thomas Hammarberg