Human Rights After Guantanamo?

Essay From A Civil Rights Perspective On The Situation Of Ex-Guantanamo Detainees In Europe

Jozefien Van Caeneghem

University of Vienna, Austria
Supervised by Manfred Nowak, Tiphanie Crittin and Moritz Birk

E.MA in Human Rights and Democratisation
2009-2010
ACKNOWLEDGEMENTS

This paper would not have been possible without my supervisors, Tiphanie Crittin, Moritz Birk and Manfred Nowak. It is mainly thanks to their constructive comments and suggestions that this research has become something I am genuinely proud of.

I am grateful to the many people I interviewed and especially to Polly Rossdale, Eva Berghmans and Omar Deghayes for taking the time to talk to me extensively. The information and insight provided for by them was of great help to draw a more complete picture of the current situation of ex-Guantanamo detainees in Europe.

A special thanks to my parents, Marleen Derveeuw and Luc Van Caeneghem, who have given me the great opportunity to develop and broaden my personal and academic interests for the past seven years and to my sister, Elisabet Van Caeneghem, who with great pleasure proofread the whole paper before I handed in the final version. I also want to express my gratitude to my flatmate, Anne Van Eijndhoven, for being there every step of the way for the past five months.

Last but certainly not least, I want to dedicate this master thesis to each and every one of the ex-GTMO detainees who are now in Europe and to those who will be transferred to Europe in the future. May their human rights finally be fully respected.
ABSTRACT

The purpose of this master thesis is to find out whether the civil rights of ex-GTMO detainees in Europe are respected. To answer the research question, five specific recurrent common issues of ex-GTMO detainees in Europe are discussed: (1) torture and other forms of ill-treatment, (2) initial detention, bail and trial, (3) risk of refoulement, (4) surveillance and security and (5) identity cards and passports. Per issue, a description of the situation of ex-GTMO detainees in Europe is followed by an overview of the relevant legal and non-legal provisions. An assessment of the facts is made against those provisions.

The answer to the research question of this master thesis is that the civil rights of ex-GTMO detainees in Europe have been violated in many cases. The common characteristic of the restrictions is that European States appear to impose them upon ex-GTMO detainees because of their previous detention at GTMO. The conclusion of this research is that instead of restricting the civil rights of ex-GTMO detainees, European States should provide them with special protection of their civil rights because the stigma attached to ex-GTMO detainees makes them more vulnerable to violations of their civil rights.
### ABBREVIATIONS & TERMINOLOGY

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>CAT</td>
<td>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
</tr>
<tr>
<td>CCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ECHR</td>
<td>European Convention for the Protection of Human Rights and Fundamental Freedoms</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>Executive Order 13492</td>
<td>Executive Order on the Review and Disposition of Individual Detainees at the Guantanamo Bay Naval Base and Closure of Detention Facilities</td>
</tr>
<tr>
<td>GTMO</td>
<td>Guantanamo Bay Naval Base of the United States of America in Cuba</td>
</tr>
<tr>
<td>Ill-Treatment</td>
<td>Torture and cruel, inhuman or degrading treatment</td>
</tr>
<tr>
<td>MS</td>
<td>Member States</td>
</tr>
<tr>
<td>Protocol 4 ECHR</td>
<td>Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain Rights and Freedoms other than those already included in the Convention and in the First Protocol thereto</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Description</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------</td>
</tr>
<tr>
<td>RC</td>
<td>Convention Relating to the Status of Refugees</td>
</tr>
<tr>
<td>Receiving State</td>
<td>State to which a person is transferred and where there are reasonable grounds to believe that person is at risk of torture or cruel, inhuman or degrading treatment or punishment</td>
</tr>
<tr>
<td>Sending State</td>
<td>State transferring a person against his/her will to a State where there are reasonable grounds to believe that person is at risk of torture or cruel, inhuman or degrading treatment or punishment</td>
</tr>
<tr>
<td>SMRTP</td>
<td>Standard Minimum Rules for the Treatment of Prisoners</td>
</tr>
<tr>
<td>Task Force</td>
<td>Guantanamo Detainees Review Task Force</td>
</tr>
<tr>
<td>Third State National</td>
<td>Guantanamo detainee who is cleared for transfer but who cannot be transferred back to his State of origin and who therefore is or will be transferred to another State</td>
</tr>
<tr>
<td>Transfer</td>
<td>Moving detainees out of Guantanamo to another State for release, further detention or prosecution</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>UNSRT</td>
<td>United Nations Special Rapporteur on Torture</td>
</tr>
<tr>
<td>US</td>
<td>United States of America</td>
</tr>
<tr>
<td>Vienna Convention</td>
<td>Vienna Convention on the Law of Treaties</td>
</tr>
</tbody>
</table>
TABLE OF CONTENTS

Acknowledgments 1

Abstract 2

Abbreviations & Terminology 3

Table of Contents 5

Part 1: Introduction 8

1.1 Subject 8

1.2 Structure 9

1.3 Methodology 10

1.4 Limitation 11

Part 2: Situating the Problem 12

2.1 In Need of Closure 12

2.2 In Need of Resettlement 12

2.3 In Need of Help 15

2.3.1 Slow Progress, Missed Deadline 15

2.3.2 European Reluctance 16

2.3.3 European Assistance 18

2.3.4 European Framework Supporting Closure 19

2.4 In Need of Freedom 20

Part 3: Torture and Other Forms of Ill-Treatment 21

3.1 Situation of Ex-Detainees 21

3.2 Prohibition of Ill-Treatment 24
6.2.1 Right to Respect for Private Life 63
6.2.2 Right to Security of Person 65
6.3 Assessment 66

Part 7: Identity Cards and Passports 69
7.1 Situation of Ex-Detainees 69
  7.1.1 Nationals 69
  7.1.2 Third State Nationals 71
7.2 Freedom of Movement 73
7.3 Assessment 75

Part 8: Conclusion 79

Bibliography 82

Annex: Figures 107
1. Total Number of Detainees per Nationality 107
2. Transfer Countries 108
3. Status Quo on 1 April 2010 109
4. Nationalities of Detainees still in Guantanamo on 1 April 2010 110
5. Division of the Current Detainee Population in Three Groups 111
6. Number of Detainees Transferred per Year 112
7. Transfers to Third Countries during Bush and Obama Administration 113
8. Transfers to European and Non-European Third Countries 114
9. Transfers of Third Country Nationals to Europe 115
10. Total Number of Ex-Detainees Transferred to Europe 116
2010

Human rights after Guantanamo? : essay from a civil rights perspective on the situation of ex-Guantanamo detainees in Europe

Caeneghem, Jozefien : Van

https://doi.org/20.500.11825/1036

Downloaded from Open Knowledge Repository, Global Campus' institutional repository