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Date: 11/10/2024

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Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1514th meeting (December 2024) (DH)

Communication from the authorities (10/10/2024) concerning the group of cases Abu Zubaydah v. Lithuania (Application No. 46454/11) (appendices in Lithuanian are available at the Secretariat upon request).

Information made available under Rule 8.2a of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1514^e réunion (décembre 2024) (DH)

Communication des autorités (10/09/2024) relative au groupe d'affaires Abu Zubaydah c. Lituanie (requête n° 46454/11) (des annexes en Lituanien sont disponibles auprès du Secrétariat sur demande) [**anglais uniquement**].

Informations mises à disposition en vertu de la Règle 8.2a des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

DGI

10 OCT. 2024

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH



LITUVOS RESPUBLIKOS TEISINGUMO MINISTERIJA
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Data have been accumulated and stored in the Register of Legal Entities, code 188604955

Department for the Execution of Judgments of the ECHR
DGI Directorate General of Human Rights and Rule of Law
Council of Europe

10 October 2024

Cc:

Permanent Representation of Lithuania to the Council of Europe

UPDATED INFORMATION REGARDING THE EXECUTION OF THE JUDGMENT OF THE EUROPEAN COURT OF HUMAN RIGHTS IN CASE ABU ZUBAYDAH V. LITHUANIA (NO. 46454/11)

The Agent of the Government of the Republic of Lithuania before the European Court of Human Rights (hereinafter – Government Agent) submits updated information about the actions taken within the execution process in the case *Abu Zubaydah v. Lithuania* (no. 46454/11, 31 May 2018).

Description of case

The Court has established Lithuania's responsibility under the Convention for the applicant's undisclosed detention and inhuman treatment in Lithuania, on account of its involvement in the execution of the United States Central Intelligence Agency (CIA) High-Value Detainee Programme in 2005-2006, as well as for the applicant's subsequent transfer from its territory, which exposed him to a serious risk of continued secret, incommunicado and arbitrary detention and further inhuman treatment.

The Court found the following violations of the Convention:

- violation of Article 3 (procedural) on account of the Lithuanian authorities' failure to carry out an effective investigation into the applicant's allegations of violations of the Convention;
- violation of Article 3 (substantive) on account of Lithuania's complicity in the CIA's High-Value Detainee Programme;
- violation of Article 5 on account of the applicant's secret detention on Lithuanian territory and the fact that the Lithuanian authorities had enabled the US authorities to transfer him to another secret CIA detention site;
- violation of Article 8 because the interference with the applicants' private and family life was not in accordance with the law and lacking justification under paragraph 2 of Article 8;
- violation of Article 13 on account of the lack of effective remedies in respect of the applicant's complaints under Articles 3, 5 and 8.



Regarding general measures

By the decision of 3 December 2020 adopted in the 1390th DH meeting the Committee of Ministers decided to close the supervision of the execution of general measures¹.

Regarding individual measures

Payment of just satisfaction

The applicant was awarded compensation of non-pecuniary damage and legal costs in the total amount of EUR 130,000 which was initially transferred to the notary's depository account as within the prescribed terms no request indicating the beneficiary and account details was submitted by the applicant or his representative.

On 21 December 2021 the sums awarded by the European Court of Human Rights for the compensation of the sustained non-pecuniary damage and the litigation costs and expenses were transferred to the accounts indicated and specified by the applicant's representative acting in accordance with the power of attorney issued by the applicant Abu Zubaydah.

By the decision of 8 December 2022 adopted in the 1451st DH meeting the Committee of Ministers decided that the question of just satisfaction is solved².

Diplomatic assurances

In line with the Court's judgment and subsequent decisions of the Committee of Ministers, prompt actions were taken requesting diplomatic assurances of the U.S. authorities by submitting the respective diplomatic notes, it could be reiterated that already for three times the Lithuanian diplomats have made the requested representations. In reply to these representations the U.S. authorities reaffirmed their views presented in reply to the initial diplomatic note submitted by the Lithuanian authorities in 2019, whereby the request of the Lithuanian authorities was not supported still providing certain guarantees that the applicant is not subjected to inhuman treatment and has access to some legal remedies for the review of his detention.

The Lithuanian authorities took actions aiming to hold bilateral consultations with the relevant US authorities. In December 2022 the on-line meeting at the expert level was held, which was followed by the written request for information presenting the findings of the Court in Abu Zubaydah case and the necessary individual execution measures, particularly aimed at getting an updated information about the situation of the applicant, his detention conditions, Periodic Review Board decisions, the state of his *habeas corpus* proceedings. The reply of the U.S. Department of State was in detail presented in the previous submissions of June 2023³.

Those bilateral consultations continued and in April 2024 updated information was requested from the U.S. Department of State drawing attention to the last decision of the Committee of Ministers whereby it was stressed that the situation of Mr Abu Zubaydah raises urgent humanitarian concerns, in particular taking into account the relevant findings of the UN expert bodies.

¹ [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2020\)1390/H46-15E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2020)1390/H46-15E)

² [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2022\)1451/H46-19E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2022)1451/H46-19E)

³ [https://hudoc.exec.coe.int/eng?i=DH-DD\(2023\)734E](https://hudoc.exec.coe.int/eng?i=DH-DD(2023)734E)

In June 2024 in their reply, the U.S. authorities submitted that their view remains that both military commissions and federal courts are appropriate for addressing the cases of Guantanamo Bay detainees in a manner that comports with all applicable international and domestic law. However, the United States continues to engage with UN bodies and other interested parties, as appropriate. For instance, the United States were please to facilitate the visit of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms and provided her unprecedented access to Guantanamo Bay detention facility. Additionally, the U.S. continue to respond to inquiries and engage with the UN Working Group on Arbitrary Detention on issues related to Guantanamo Bay detainees.

Further, it was reiterated that the United States has legal authority under the law of war to detain individuals who are part of or substantially supported al-Qaeda or associated forces until the end of hostilities with those groups, consistent with U.S. law and applicable international law. Detainees have the right to challenge the legality of their detention in U.S. court through a petition for the writ of *habeas corpus*.

The U.S. authorities assured that they take very seriously the responsibility to provide for the safe and humane treatment of detainees at Guantanamo Bay, including providing appropriate medical care and attention as required by any conditions of the detainees.

With regard to the individual situation of the applicant Abu Zubaydah (Zayn Al-Abidin Muhammad Husayn), the following updated information was provided:

- Abu Zubaydah is in law of war detention and remains eligible for review by the Periodic Review Board (PRB). His last full case review, including a hearing before the PRB, was conducted on 15 July 2021. After Review Committee action and pursuant to Executive Order 13567, it was determined that continued law of war detention remained necessary to protect against a continuing significant threat to the security of the United States. Mr. Husayn's next full review and hearing was scheduled for 27 June 2024⁴.
- Mr. Husayn's petition for the writ of *habeas corpus* also continues to be actively litigated in US federal court in the District of Columbia. The case, 08-cv-1360, remains in the pre-trial phase before the U.S. District Court, with discovery ongoing.
- Abu Zubaydah also filed claims under the Alien Tort Statute, 28 U.S.C. § 1350, in U.S. District Court in the Eastern District of Washington. That Court dismissed the case for lack of jurisdiction on 27 February 2024, and Mr. Husayn has filed an appeal.
- There have not been any further developments regarding Mr. Husayn's previous efforts to obtain discovery under 28 U.S.C. § 1782 following the U.S. Supreme Court decision in *United States v. Zubaydah*, 595 U.S. 195 (2022).

The European Court of Human Rights while requesting the Lithuanian authorities to make effort to obtain diplomatic assurances explicitly referred in it's judgment to violations of Articles 5 and 3 of the Convention (para. 681), thus all the actions were and will continue to be aimed at redressing these concrete violations found by the Court in the case against Lithuania.

⁴ <https://www.prs.mil/Review-Information/Subsequent-Full-Review/>

According to publicly available information at the request of the detainee his written submissions and the transcript of the session are not posted and the final determination is still pending.

Criminal investigation

Turning to the individual measures related to the investigation, it must be noted that despite the reluctance of the US authorities to provide legal assistance in accordance with the established procedure under mutual international cooperation agreement, the Lithuanian investigative authorities continue their efforts with a view to advance the pre-trial investigation and overcome the challenges where the main evidence is in the possession of foreign jurisdictions, and the possibilities to collect any of the relevant evidentiary material are very limited.

With the assistance of EUROJUST in March 2024 there was a coordination meeting in Hague held between the Lithuanian and Polish prosecuting authorities in charge of the domestic investigations concerning the CIA's Detention and Interrogation Program with a view to share the experience in investigating similar cases, including on the best practices collecting the relevant data. It was agreed to meet once again to discuss in more detail some questions raised during the meeting.

Finally, it could be noted that according to the information provided by the General Prosecutor's Office no requests or complaints of the applicant's representatives have been received since the last submissions in the case at issue.

The Committee of Ministers will be informed on further developments in the execution of the Court's judgments in the present case.

Respectfully,

A handwritten signature in black ink, consisting of a stylized capital letter 'R' followed by a horizontal line that tapers to the right.

Ričard Dzikovič
Agent of the Government of the Republic of Lithuania

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