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

Communication from the applicant (31/10/2024) concerning the case of Al-Hawsawi v. Lithuania (Application No. 6383/17) (Abu Zubaydah group, 46454/11).

Information made available under Rule 9.1 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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Réunion : 1514^e réunion (décembre 2024) (DH)

Communication du requérant (31/10/2024) relative à l'affaire Al-Hawsawi c. Lituanie (requête n° 6383/17) (groupe Abu Zubaydah, 46454/11). **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.1 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

REDRESS

Ending torture, seeking justice for survivors

DGI

31 OCT. 2024

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

DGI Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECtHR
F-67075 Strasbourg Cedex
FRANCE

BY EMAIL ONLY: DGI-Execution@coe.int

31 October 2024

**COMMUNICATION
IN ACCORDANCE WITH RULE 9.1 OF THE RULES OF THE COMMITTEE OF MINISTERS
REGARDING THE SUPERVISION OF THE EXECUTION OF JUDGMENTS AND OF TERMS
OF FRIENDLY SETTLEMENTS**

**SUBMITTED BY REDRESS
AS REPRESENTATIVE OF:
MUSTAFA AHMED ADAM AL-HAWSAWI (APPLICATION NO. 6383/17)**

1. As legal representatives of Mr. Mustafa Ahmed Adam al-Hawsawi, we write to supplement the Rule 9.1 submission we provided dated 15 October 2024 (our Rule 9.1 submission), to take into account **the State's Action Plan dated 14 October 2024 (your ref: DH-DD(2024)1167)** (the State Action Plan) which was published on the website of the Department for the Execution of Judgments on 16 October 2024.

Diplomatic assurances from the US

2. We can supplement our Rule 9.1 submission, paragraphs 30-34, by providing the attached letter dated 30 October 2024 from Mr al-Hawsawi's Military Commission Defense Counsel which provides additional information regarding:
 - a) Medical issues;
 - b) Access to medical records;
 - c) The legality of the proceedings before the Military Commissions;
 - d) The US Government's rejection of the recent plea deal (see our Rule 9.1 submission, para. 33);
 - e) The position regarding challenges to the legality of detention.
3. In the light of the comments of Mr al-Hawsawi's Defense Counsel, we have added an additional recommendation to those included in our Rule 9.1 submission. We have repeated the full list of recommendations below, with the additional final recommendation added in red text.

Criminal investigation

4. We have carefully considered the comments contained in the State Action Plan concerning the criminal investigation in Lithuania. We have little to add to what we said in our Rule 9.1 submission (paras. 9-29) which already addresses the substantive points raised in the State Action Plan.

RECOMMENDATIONS (AMENDED IN THE LIGHT OF THE STATE ACTION PLAN)

Recommendations regarding the domestic investigation

1. In light of the broader pattern across Europe of unwillingness to investigate CIA rendition cases, we respectfully request the Committee of Ministers to reinforce its supervisory role by adopting the most decisive measures possible in order to reflect the gravity of the violations, the urgent need for accountability, and the long-standing failures to achieve accountability despite two ECtHR judgments against the same State and this Committee's efforts over several years to secure an effective investigation.
2. Specifically, we encourage the Committee of Ministers to urge Lithuanian authorities to ensure that the pending criminal investigation:
 - a) Is undertaken within a reasonable time, considering that nearly two decades have passed since Mr al-Hawsawi was secretly detained in Lithuania and rendered;
 - b) Is undertaken in compliance with Chapter III of the Istanbul Protocol (2022),¹ and in this context Lithuania should submit an updated investigation plan, which should not be limited to legal assistance requests to the US or other States;
 - c) Allows for independent legal representation of Mr al-Hawsawi as an interested party in the investigation (at the expense of Lithuania), whether by granting him victim status or otherwise;
 - d) Provides Mr al-Hawsawi (via his Legal Representatives at REDRESS) with the information envisaged in the Istanbul Protocol Chapter III, paragraph 208, which includes, for example, regular updates on the investigation ("particularly following interviews and examinations"), key hearings, and any arrests;
 - e) Is carried out with transparency, allowing for the necessary public scrutiny.

Recommendations regarding representations to the US

3. We respectfully request the Committee of Ministers to urge the Lithuanian government to:
 - a) Immediately and effectively seek assurances from the US authorities to prevent the imposition of the death penalty on Mr al-Hawsawi;
 - b) Invite the US Permanent Representative to the Council of Europe to participate when the case is orally debated;
 - c) Actively make representations to the US authorities to
 - i) Seek the exclusion of any torture-tainted evidence in the ongoing proceedings against Mr al-Hawsawi;
 - ii) End his arbitrary detention, and meanwhile:

¹ UN OHCHR, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Professional Training Series No. 8, Rev. 2 ('the Istanbul Protocol')*, 2022, HR/P/PT/8/Rev. 2, Chapter III, paras 191-237.

- (1) Ensure his detention conditions comply with basic minimum international standards (for example, the UN Standard Minimum Rules for the Treatment of Prisoners, the 'Nelson Mandela Rules'²); and
- (2) Ensure that he has consistent access to appropriate medical care (in accordance with the same standards).

d) Request clarification from the US authorities regarding:

- i) the state of the plea deal;
- ii) the reasons for the Secretary of Defense's withdrawal from an agreement that was properly and lawfully negotiated between the parties;
- iii) the Secretary's assertion that Mr al- Hawsawi and his co-defendants must face a full death penalty trial; and
- iv) the basis for seeking to discard a path which could have resolved Mr al Hawsawi's 16-year prosecution.

² Available here: https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

DGI Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECtHR
F-67075 Strasbourg Cedex
FRANCE

(sent via REDRESS)

DGI

31 OCT. 2024

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Oct. 30, 2024

Dear Sir/Madam

**Re: EXECUTION OF THE JUDGMENT OF THE EUROPEAN COURT OF HUMAN RIGHTS (ECtHR) IN AL
HAWSAWI V. LITHUANIA (NO. 6383/17)**

We are the defense counsel representing Mr. al Hawsawi who is imprisoned at the U.S. Naval Station in Guantanamo, Cuba, and who is facing a criminal death penalty trial before a military commission there.

Members of our team have previously made various Affidavits and Declarations to the ECtHR in this case, which were cited and relied on in the ECtHR judgment (for example, at paragraphs 56-57, 77-78, 80-83, and 282).

Mr. al Hawsawi's legal representatives in the ECtHR case, REDRESS, have sent us a copy of their Rule 9 submission dated 15 October 2024. They have also sent us a copy of the **State's Action Plan dated 14 October 2024 (your ref: DH-DD(2024)1167)** ("the State Action Plan") and have asked us to comment on the issues raised in the State Action Plan under the heading "diplomatic assurances". We provide our comments as follows.

MEDICAL STATUS

The State Action Plan states that:

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. Detainees at Guantanamo Bay receive a quality of medical care comparable to that which U.S. military personnel receive at Guantanamo. The Joint Medical Group (JMG), Joint Task Force Guantanamo Bay (JTF-GTMO), consists of licensed, board-certified physicians of different specialties. The U.S. Naval Hospital, Guantanamo Bay, provides additional consultative services from numerous medical professionals, and the JMG routinely brings in subspecialists as needed.

From the previous updates provided to the ECtHR regarding Mr. al Hawsawi's medical status, the undersigned note that Mr. al Hawsawi's health remains in decline due to the medical conditions he suffers consequent to the maltreatment and torture he experienced in US custody.

In the past two years, Mr. al Hawsawi's diagnosis of anal stenosis (a painful hardening of the tissue around the rectum) has persisted. According to his medical records, he suffers from this condition following two failed anal surgeries and three rectal "banding" procedures, the need for which was brought on by his having endured a forcible rectal exam while in CIA custody; he is informed that any

option for his condition brings with it significant risks of more permanent and debilitating damage to his daily functions. Although the medical personnel at Guantanamo recommended a dynamic MRI for Mr. al Hawsawi three years ago, the MRI equipment at Guantanamo Naval Station has not functioned for many years. Mr. al Hawsawi has chronic anal fissures but again, the testing recommended – manometry and defecography – is not available at the Guantanamo military base.

As he did two years ago, and despite regularly taking the medications, Mr. al Hawsawi continues to experience uncontrolled hypertension; he also has chronic cervicogenic, lumbar, and sacroiliac pain that require injections to reduce the pain.

The U.S. Government generally asserts that Guantanamo detainees such as Mr. al Hawsawi receive "care equal to military personnel", and this is reflected in the State Action Plan's reference to detainees receiving "a quality of medical care comparable to that which U.S. military personnel receive at Guantanamo". However, neither formulation is correct. U.S. military personnel, whether in Guantanamo or elsewhere around the world, can return to the United States to obtain any needed expert medical care. As Mr. al Hawsawi cannot go to the United States (due to a congressional ban on the movement of Guantanamo detainees to U.S. soil), Mr. al Hawsawi cannot obtain specialized medical attention and testing, such as with a gastroenterologist or colorectal surgeon. Nor can his counsel obtain such for him. Instead, he must wait for a military medical specialist to be available to travel to Guantanamo, and these specialists come infrequently, and for a very limited period (typically, a week or less), during which period they have to attend to the needs of all 30 detainees and the approximately 4500 military personnel on the base. These military medical specialists come only when the U.S. Government decides to request them, and on an entirely unknown and unpredictable schedule that does not usually depend on the needs of detainee patients. When these military medical specialists do arrive, there is no time or interest in building trust with the patient, despite a vital need to do so because Mr. al Hawsawi and other detainees experienced maltreatment and torture in U.S. Government hands – under the supervision and with the blessing of military medical personnel. In Mr. al Hawsawi's situation, the anal stenosis he suffers from has resulted in permanent injury that appears to leave him limited chance of any improvement as the options available come with significant risks; the sensitivity of his particular situation makes the revolving door of medical personnel and paucity of relevant experts especially detrimental to any potential for progress with this condition.

Access to medical records

The State Action Plan also states:

As a matter of policy, for privacy and other reasons, the U.S. could not provide the details or results of any medical examinations or other health-related information concerning the applicant Al-Hawsawi.

The U.S. Government's apparent contention that details of Mr. al Hawsawi's medical conditions are unavailable "for privacy and other reasons," defies reason. The U.S. Government controls those records and Mr. al Hawsawi himself does not have free access to them but, rather, has to rely on his counsel to request such records from the prosecution. In contrast, the U.S. Government makes the records freely available to the prosecutors who are pursuing the death penalty against Mr. al Hawsawi in judicial proceedings. The prosecutors cull through his medical records, redact them, and then turn over documents of their choice to Mr. al Hawsawi's counsel. Given this state of affairs, the U.S. Government

is patently shying away from scrutiny over its actions, when it claims that it cannot share medical information about Mr. al Hawsawi with a State that seeks to examine the medical care he is receiving.

LEGAL PROCEEDINGS VIOLATING DOMESTIC and INTERNATIONAL LAW

The State Action Plan states that:

In June 2024 in their reply, the U.S. authorities at the outset reiterated their views already presented within the course of the execution of the Court's judgment in Abu Zubaydah v. Lithuania case, namely 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. It was specified 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. Government's assertion that Mr. al Hawsawi is in legal proceedings in Guantanamo that comport with international and domestic law is incorrect. In this regard, we note the conclusions of the ECtHR in paragraphs 249-250 of its judgment in this case. Mr. al Hawsawi has been imprisoned for nearly 22 years without trial, in violation of domestic and international law. Three of those years he spent in incommunicado detention, in extra judicial prisons controlled by the U.S. Central Intelligence Agency. The U.S. Government death penalty case against Mr. al Hawsawi has now lasted more than 16 years, and remains mired in pre-trial issues, without the commencement of the trial itself, still less a definite outcome, but with endless political interference in the process. The lack of a prompt trial, the repeated and still on-going violations of the attorney-client privilege, the abridged legal rights and access to information imposed on him in the alternative legal system at Guantanamo, and the unrelenting political obstruction of the process, each violate domestic constitutional and military law, and international humanitarian law. The proceedings violate U.S. domestic due process and prompt trial rights, as well as the Geneva Convention Common Article 3, and the International Covenant on Civil and Political Rights (ICCPR), Articles 9, 10, 14, 15. Thus, the death penalty proceedings Mr. al Hawsawi faces in Guantanamo decidedly do not comport with the law.

Even with the U.S. Government's manipulation of the judicial process, no outcome of this death penalty trial is yet in sight.

The plea deal

The State Action Plan states:

Lithuanian authorities were following the developments within so called "September 11" case, in particular with regard to a plea agreement between the Guantánamo Military Commission prosecutors and Al-Hawsawi, on the basis that any possibility of the imposition of the death penalty would be withdrawn in exchange for a guilty plea. As this deal was revoked by the U.S. Secretary of Defence, the Lithuanian authorities addressed the U.S. Department of State requesting for clarification whether the possibility of a deal whereby the accused plead guilty in exchange for a life sentence rather than a death penalty is no longer an option, or this is still under consideration and subject to further certain procedures.

Most recently, the highest levels of the U.S. Government unlawfully intervened to attempt to stop a brokered agreement, two years in the making, that the senior prosecutors on the case had reached with Mr. al Hawsawi's defense counsel. This latest government interference is delaying, and perhaps defeating, an equitable resolution of the case against Mr. al Hawsawi that all parties had agreed to and had signed. Dates had even been scheduled for entry of pleas. Now, the case promises to be mired further, this time with litigation over the illegality of the U.S. Secretary of Defense's action in purporting to withdraw from the brokered agreement.

Challenges to the legality of detention

The State Action Plan states:

[The reply of June 2024] specified 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.

...

Al-Hawsawi has previously brought three habeas cases in the U.S. Federal courts, but they have all been closed. His most recent case, 21-cv-02907, was brought in the U.S. District Court for the District of Columbia asserting three claims under the Eighth Amendment to the U.S. Constitution and one claim for medical repatriation by a mixed medical commission pursuant to Army Regulation 190-8. The court dismissed the case on March 12, 2024. On April 10, 2024, Al-Hawsawi filed a motion for reconsideration of one of his Eighth Amendment claims...

The U.S. Government incorrectly represents that a detainee, such as Mr. al Hawsawi who is in military commission judicial proceedings, broadly have the right to challenge the legality of their detention in U.S. courts. In fact, detainees facing a military commission may only petition a federal court in extremely limited circumstances that the U.S. Congress devised for Guantanamo detainees, which in effect prohibit access to federal courts; moreover, the U.S. Government actively opposes any petition filed, regardless of its subject matter, invoking any potential statutory bar. See 28 U.S.C. 2241(e)(2) (precluding federal court jurisdiction over detainee claim "relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien" held as an enemy combatant.). Attempts to address in federal courts Mr. al Hawsawi's access to medical records and medical treatment have been met with jurisdictional challenges and federal court refusal to consider matters it sees as within the purview of the commission; the commission, on the other hand, does not take cognizance of medical matters and defers such issues to the prison authorities.

We are happy to provide this information in a more formal Declaration if required. If you have any further queries, we would be happy to assist.

Sincerely,

Walter B. Ruiz

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Learned Defense Counsel
Mr. al Hawsawi



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