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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 an NGO (Human Rights in Practice) (23/10/2024) concerning the cases of HUSAYN (ABU ZUBAYDAH) v. Poland (Application No. 7511/13) (Al Nashiri group, 28761/11) and Abu Zubaydah group v. Lithuania (Application No. 46454/11) and reply from Poland (31/10/2024).

Information made available under Rules 9.2 and 9.6 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 d'une ONG (Human Rights in Practice) (23/10/2024) relative aux affaires HUSAYN (ABU ZUBAYDAH) c. Pologne (requête n° 7511/13) (groupe Al Nashiri, 28761/11) et groupe Abu Zubaydah c. Lituanie (requête n° 46454/11) et réponse de la Pologne (31/10/2024). **[anglais uniquement]**

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

23 October 2024

By email

Rule 9 Submission (*Abu Zubaydah v Poland* and *Abu Zubaydah v Lithuania*)

We write on behalf of Mr Abu Zubaydah with respect to the status of the implementation of the *Abu Zubaydah v Poland* (Appl. No. 7511/13) and *Abu Zubaydah v Lithuania* (Appl. No. 46454/11) extraordinary rendition and torture judgments (“the Judgments”). The Committee is referred to our previous submissions, upon which this submission builds.¹ We do not repeat the details of the states’ failures, but reiterate previous requests to ensure adequate implementation, the vast majority of which remain unaddressed, and which are all the more urgent and pressing at this time.

Abu Zubaydah v Poland and *Abu Zubaydah v Lithuania* make clear the gross human rights violations perpetrated in the course of the CIA’s extraordinary rendition programme arising from the “War on Terror” and the critical role played by European states in aiding these egregious wrongs. The failure to respond and to ensure adequate implementation undermines the role and relevance of the Convention at a critical time, when the system it is under attack and scepticism regarding international law is rising. It is crucial that Poland and Lithuania (the relevant states) take the measures that they can and must take to give effect to these historic judgements.

The Committee and others have raised concerns in relation to the implementation of these Judgments on multiple occasions, most recently on September 2023.² In this submission we underscore that key aspects of the Court’s Judgments that remain unimplemented and where the Committee’s robust ongoing engagement is essential. In particular, we call for both states and this Committee to take specific, realisable and reinvigorated measures to ensure effective collective action, to increase pressure to bring to an end the flagrant denial of justice against our client.

This submission provides a brief overview of our client’s situation, developments in his case, those aspects of implementation that remain unfulfilled and specific requests.

Overview of Mr Abu Zubaydah’s situation and of outstanding issues of implementation

Mr Abu Zubaydah has now been detained without charge - at the CIA “black sites” and in Guantanamo Bay military detention facility - for a staggering 22.5 years. He has never been

¹ See eg Rule 9 Submission (Al Nashiri v Poland, Abu Zubaydah v Poland and Abu Zubaydah v Lithuania) 20 January 2022 (“2022 Submission”) <https://static1.squarespace.com/static/5b82ab175b409b90d4c99071/t/62daf23ef23dda67f731ed0e/1658516030978/RULE+9+JAN+2022+20122+final.pdf>.

² See e.g. [https://search.coe.int/cm/#\[%22CoEIdentifier%22:\[%220900001680ac9a61%22\],%22sort%22:\[%22CoEValidationDate%20Descending%22\]\]](https://search.coe.int/cm/#[%22CoEIdentifier%22:[%220900001680ac9a61%22],%22sort%22:[%22CoEValidationDate%20Descending%22]]) and [https://search.coe.int/cm/#\[%22CoEIdentifier%22:\[%220900001680ac9b20%22\],%22sort%22:\[%22CoEValidationDate%20Descending%22\]\]](https://search.coe.int/cm/#[%22CoEIdentifier%22:[%220900001680ac9b20%22],%22sort%22:[%22CoEValidationDate%20Descending%22]])

charged or tried, and has still had no habeas corpus review. He is, for all intents and purposes, a ‘forever prisoner,’ who the United States continues to assert the right to detain indefinitely without charge or trial pursuant to a putative ‘war’ on terrorism of global reach and indefinite duration.³ There is growing urgency around Abu Zubaydah’s medical and psychological needs as a result of his torture and extreme prolonged arbitrary detention, which have never been adequately addressed at Guantanamo.⁴

A decade has now passed since the European Court of Human Rights (“the Court” or “ECtHR”) delivered its first judgment in his case, *Abu Zubaydah v Poland* (2014), and six years since *Abu Zubaydah v Lithuania* (2018). We recall that the ECtHR found the respondent states had violated multiple obligations under the European Convention of Human Rights (“the Convention”) through its role in the CIA’s extraordinary rendition programme, contributing to the unlawfully detention, torture and other violations of the Convention. The Court found, inter alia, that Mr Abu Zubaydah is the victim of an ongoing ‘flagrant denial of justice’⁵ as a result of his ongoing indefinite detention without charge or trial, and referred to the rendition programme as ‘anathema to the rule of law.’ Many years later, these violations continue, through Abu Zubaydah’s continued prolonged arbitrary detention to the present day, with no lawful grounds for detention, due process or end in sight. This is normalising the abnormal, and compounding notorious violations with notorious impunity, to which Poland and Lithuania, among other states, are contributing.

Poland and Lithuania have still failed to meaningfully engage with implementation. The only form of reparation that has been provided is compensation which, while important and appreciated, evidently falls short of the relevant states’ obligations and of meaningful implementation of the judgments. No thorough and effective domestic investigations have been conducted. No specifics have been provided as to the cooperation the authorities claim to have pursued nor, perhaps more importantly, as to the concrete investigative steps taken domestically. Not a single person has been held to account for these notorious and well-documented violations. There has never even been basic recognition by Poland and Lithuania of their responsibility for Mr Abu Zubaydah’s torture and unlawful detention. No apology has been offered to him. Nor has there been indication by Poland or Lithuania of meaningful measures of non-repetition. While, as noted below, there has been some outreach to U.S. authorities, simple steps that Lithuania and Poland could take to facilitate an end to the injustice of his case, including offering to relocate our client to facilitate release, have not been taken. Repeated calls for full implementation of the Judgments by the Committee of Ministers (“the Committee”) have not been adequately followed up on or answered.

³ See submissions of the US in the context of the UN Working Group on Arbitrary Detention case, leading to the decision *Abu Zubaydah v US, UK et al* (Decision 2023), below.

⁴ See UN reports of the UNWGAD and UN Special rapporteurs (2023) below.

⁵ PACE, 2020, “The implementation of judgments of the European Court of Human Rights Report”, Committee on Legal Affairs and Human Rights, Rapporteur: Mr. Constantinos Efstathiou, Doc. 15123, <https://www.ecoi.net/en/file/local/2033883/document.pdf>, para. 25.

We welcome the fact that one of the priorities of the current Lithuanian presidency of the Committee of Ministers is implementation of the judgments of the ECtHR by member states.⁶ As such, we are hopeful that Lithuania will fulfil this commitment with respect to *Abu Zubaydah v Lithuania*. Equally, Poland's renewed commitment to the rule of law⁷ should be reflected in its willingness and capacity to fully and swiftly implement the ECtHR's judgment in *Abu Zubaydah v Poland*. We have reiterated on several occasions that we would be delighted to meet with and work with delegations from these countries but these efforts have yet to bear fruit.

Developments underscoring the Need for Urgent Implementation and Robust Oversight

The importance of full and satisfactory implementation of the Judgments should be considered in light of several other international legal developments that highlight the ongoing violations and urgent needs arising in this case. These include the Decision of the United Nations Working Group on Arbitrary Detention (UNWGAD) in our client's case, Report of the UN Special Rapporteur on Counterterrorism and Human Rights, Concluding Observations of the UN Human Rights Committee as well as an additional judgment against Lithuania by the Court.

Of particular note in our client's case is the 2023 decision of the UNWGAD which was referred to briefly in the most recent report of the Committee. The UNWGAD found both Poland and Lithuania responsible – alongside the U.S. and 5 other states - for multiple ongoing violations of Abu Zubaydah's rights including arbitrary detention, without legal basis or essential due process safeguards, torture and discrimination. It found that there is no prospect of a fair criminal process for Mr Abu Zubaydah at this time.⁸ It found ongoing violations to arise from the failure to secure investigation or accountability. It went so far as to find that, in light of all the circumstances of his anomalous situation, 'widespread or systematic imprisonment or other severe deprivation of liberty in violation of fundamental rules of international law may constitute crimes against humanity.'⁹

Of particular relevance are the UNWGAD's clear recommendations in respect of Mr Abu Zubaydah, which should be underscored by this Committee. They include, among others, that he should be '*immediately released*'¹⁰ and that the Governments that share responsibility for the

⁶ See: <https://www.urm.lt/en/news/lithuanian-presidency-of-the-committee-of-ministers-of-the-council-of-europe-may-november-2024/2183> and <https://www.urm.lt/en/priorities-of-the-lithuanian-presidency-of-the-committee-of-ministers-of-the-council-of-europe/2185>

⁷ See for example <https://www.economist.com/europe/2024/02/07/poland-is-trying-to-restore-the-rule-of-law-without-violating-it>

⁸ UN Working Group on Arbitrary Detention, Opinion No. 66/2022 concerning Zayn al-Abidin Muhammad Husayn (Abu Zubaydah) (United States of America, Pakistan, Thailand, Poland, Morocco, Lithuania, Afghanistan and the United Kingdom of Great Britain and Northern Ireland), para. 52.

⁹ Ibid para. 115.

¹⁰ Ibid para. 120.

violations of his rights must now ‘take the steps necessary to remedy the situation...without delay.’¹¹

Moreover, we note the findings of the former UN Special Rapporteur on Counterterrorism and Human Rights, following the first visit of her mandate to Guantanamo.¹² She referred to the cumulative conditions of continuing detention and the ‘totality of factors’ pertaining to the arbitrariness of detention as amounting to cruel, inhuman, and degrading treatment, and that they may meet the legal threshold for torture. She emphasised the lack of medical attention for torture victims such as our client.

In October 2023, following our submission and others to the UN Human Rights Committee in relation to United States,¹³ the UNHRC also expressed deep concern regarding Guantanamo detention and the need for urgent measures to “put an end to the system of administrative detention without charge or trial.” It emphasised the lack of medical care and called for the urgent efforts to release remaining detainees.¹⁴

These developments built on a series of earlier reports and decisions of UN bodies, including the UNCAT (2021)¹⁵ the UNHRC (2018)¹⁶ and UN Committee on Enforced Disappearances (2017),¹⁷ regarding Lithuanian and/or Polish failure to conduct an effective investigation and corresponding ongoing violations. These findings have most recently been reiterated in respect of Lithuania by the ECtHR in the *al Hawsawi v Lithuania* judgment (2024) in which the Court found multiple violations, including the ongoing “fail[ure] to comply with the requirements of an ‘effective and thorough’ investigation” and the need for the State to take “all necessary steps to reactivate and advance the still pending criminal investigation.”

It is critical that the relevant states engage actively, urgently and with renewed vigour and effectiveness to bring ongoing violations of *jus cogens* norms to an end, including taking all possible measures to secure the release of our client after 22.5 years of arbitrary detention. The urgency of engagement is underscored by the well-known fact that the United States will hold general elections in November 2024. Whatever the outcome, it will be a time of transition within the US administration and a crucial time to press to give effect to human rights that have for too long been ignored. The Committee therefore meets at a critical juncture when measures to bring this notorious situation to end are imperative and urgent.

¹¹ Ibid para. 119.

¹² Report on the Technical Visit to the United States and Guantánamo Detention Facility by the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism (14 June 2023), para. 49.

¹³ <https://promiseinstitute.law.ucla.edu/wp-content/uploads/2023/09/Abu-Zubaydah-UNHRC-Submission-2023.09.pdf>

¹⁴ <https://documents.un.org/doc/undoc/gen/g23/232/66/pdf/g2323266.pdf>

¹⁵ Eg. Concluding Observations of the UN Committee against Torture regarding Lithuania, 21 December 2021;

¹⁶ Eg. Concluding observations on the fourth periodic report of Lithuania, 29

August 2018, CCPR/C/LTU/CO/4

¹⁷ Concluding observations on the report submitted by Lithuania under article 29 (1) of the Convention, 16 October 2017, CED/C/LTU/CO/1, para. 21

Implementation proposals for the Committee's consideration

As noted above, since our earlier submissions, progress with respect to the implementation of the Judgments has been minimal, notwithstanding the Committee's calls to Lithuania, Poland and other member states to undertake a range of measures. The Committee is urged to repeat its earlier calls at this time, and to press for more meaningful, effective and coordinated action.

The Polish and Lithuanian governments should finally acknowledge responsibility. They should indicate in clear terms that they accept the facts pertaining to the violations committed against Mr Abu Zubaydah, and their role in the rendition programme and violation of Mr Abu Zubaydah's rights, as found established beyond reasonable doubt in the Judgments.

Both states indicate they have made submissions to the United States, without effect. Undoubtedly, the US' unwillingness to cooperate has at least in part contributed to the lack of progress by impeding investigation. But this cannot account for the inaction and lack of transparency in respect of investigation, accountability and lessons learned.

We call on the Committee to insist on more effective and robust approach regarding diplomatic dialogues and assurances, both on the part of Poland and Lithuania, as well as collectively by the institutions of the Council of Europe and its member states. As set out years ago by the Committee, "the consequences of the violation of the Convention for the applicant have not been remedied as Mr. Abu Zubaydah remains subjected to a flagrant denial of justice, notably due to his indefinite detention."¹⁸ We urge Poland and Lithuania to intensify their efforts to secure his release, and the possibility to resume a life with dignity. We call on Poland and Lithuania to escalate the level, frequency and means of their diplomatic engagement with the US. Poland and Lithuania could seek to bolster representations by engaging together with other states, COE and the EU, of which both states are members.

Specifically, we urge Poland and Lithuania to urgently commit to working with the United States to find suitable relocation for Mr. Abu Zubaydah, a Palestinian man who does not have a home state to which he can safely return. The states should offer to provide a home to our client, a simple and straightforward step to facilitate an end to the violations. Yet, despite being requested to do so on previous occasions, to date Poland and Lithuania have simply ignored this request.

In addition to measures by Poland and Lithuania individually, coordinated and collective action is, as the Committee has noted previously, essential. We commend the Committee's previous efforts to make clear that other member states should play a role in bringing the violations to an end.¹⁹ We request the Committee to follow up by engaging member states of the Council of Europe in a coordinated dialogue on potential avenues for future collective diplomatic efforts to remedy this

¹⁸ 1390th meeting (1-3 December 2020) (DH) - H46-15 Abu Zubaydah v. Lithuania (Application No. 46454/11), CM/Del/Dec(2020)1390/H46-15, [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). See also: 1411th meeting (DH), 14-16 September 2021 - H46-21 Abu Zubaydah c. Lithuania (Application No. 46454/11), CM/Del/Dec(2021)1411/H46-21, [https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:\[%22CM/Del/Dec\(2021\)1411/H46-21E%22\]}](https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22CM/Del/Dec(2021)1411/H46-21E%22]}).

¹⁹ CM/Del/Dec(2023)1475/H46-23 1475th meeting (DH), September 2023 - H46-23 Al Nashiri group v. Poland (Application No. 28761/11)

situation. This is consistent with the Committee's earlier call to the authorities of the other member States of the Council of Europe and to the Secretary General to raise Mr Abu Zubaydah's situation with their contacts with the US authorities.²⁰ Member states should be urged to prioritise the issue in their bilateral high-level diplomatic consultations within the US administration. They should also seek to engage with other states in an effort to find a suitable relocation solution that meets his needs through other states.

The offices of the President of the Committee are also sought to engage high level counterparts in the United States, and to explore all options for collective engagement through other institutions of the Council of Europe or beyond. We respectfully request the President of the Committee to also engage with the US administration with a view to encouraging US cooperation, as a partner state, in this matter. We respectfully suggest the Committee request that member states notify it of their diplomatic and other actions in this respect, to allow the Committee to monitor and make public member states' collective engagement. The Committee may also facilitate collaboration between Poland, Lithuania and other member states, through ad hoc working arrangements, in order to work towards the removal of obstacles to implementation, more effective high level diplomatic engagement with relevant US authorities, and the exchange of 'lessons learned' in order to ensure non-repetition.

We urge collaboration with other COE mandates, including European Commissioner for Human Rights, to explore all options for collective engagement through the institutions of the Council of Europe and the European Union, of which both Poland and Lithuania are member states. This could operate in parallel with individual and collective action of the states referred to above.

We recognise competing priorities, but would submit that the implementation of these judgments, and ending this flagrant denial of justice implicating multiple European states, should be a priority given the significance of the Judgments and their non-implementation to date. Thank you for escalating supervisory measures until full implementation is achieved. We remain at the disposal of the Committee and relevant states to achieve this end.

A more detailed overview of the current status of the implementation of the Judgments by Poland and Lithuania is set out in Annex A to this letter.

Yours sincerely,



Helen Duffy,
Lilianne Ploumen
Human Rights *in* Practice
on behalf of Mr. Abu Zubaydah

²⁰ Ibid.

Annex A: Country-specific overview of status of implementation

Poland

We are pleased to recognise that the payment of damages and costs to Mr Abu Zubaydah was actioned by the Polish government in June 2022.

We note however that Poland has not presented an Action Plan to the Committee since January 2022. We request Poland provide its updated Action Plan as soon as possible.

We address in turn below the key outstanding issues regarding the implementation of the judgment against Poland.

Diplomatic assurances: In its last submission to the Committee dated 27 July 2023, Poland indicated that the Polish Minister of Foreign Affairs had met with the US Secretary of State in Washington in December 2022.²¹ Poland reports that during this meeting the Polish Minister ‘renewed the Polish authorities’ request to provide diplomatic guarantees’ in respect of Mr Abu Zubaydah. Further, in May 2023 representatives of the Polish Embassy met with the US Department of State in Washington, as a result of which the US indicated they could not support Poland's demands in relation to Mr Abu Zubaydah.²² In its 1475th meeting of September 2023, the Committee noted the findings of the abovementioned 2023 report of the UN Working Group and the UN Special Rapporteur and urged Poland in light of these findings to indicate whether they would change their approach to liaising with the US in order to achieve diplomatic assurance for our client.²³ *Poland has not responded to this request to date.*

As noted above, we urge Poland to escalate both the level, frequency and effectiveness of representations and to provide specific information to the Committee as to the nature of those representations.

Domestic investigation: In its last submission to the Committee dated July 27 2023, Poland indicated part of the investigation conducted by the Krakow Regional Prosecutor had been

²¹DH-DD(2023)895 1475th meeting (September 2023) (DH) - Rule 8.2a - Communication from the authorities (27/07/2023) concerning the case of AL NASHIRI v. Poland (Application No. 28761/11)
[https://search.coe.int/cm/#{%22CoEGeographyId%22:\[%22pol%22\],%22sort%22:\[%22CoEValidationDate%20Descending%22\],%22CoECollection%22:\[%22CM_DOC%22,%22CM_SG%22\],%22fulltext%22:\[%22%22Abu%20zubaydah%22%22\],%22CoEIdentifier%22:\[%220900001680ac1418%22\]}>](https://search.coe.int/cm/#{%22CoEGeographyId%22:[%22pol%22],%22sort%22:[%22CoEValidationDate%20Descending%22],%22CoECollection%22:[%22CM_DOC%22,%22CM_SG%22],%22fulltext%22:[%22%22Abu%20zubaydah%22%22],%22CoEIdentifier%22:[%220900001680ac1418%22]}).

²² Ibid.

²³ CM/Del/Dec(2023)1475/H46-23 1475th meeting (DH), September 2023 - H46-23 Al Nashiri group v. Poland (Application No. 28761/11 <

'resumed',²⁴ however, as previously noted in our 2022 Submission, Poland has still not provided the Committee with the decision regarding the partial discontinuation. We further note that during its 1475th meeting the Committee indicated that 'the recently provided information did not include elements capable of dispelling the Committee's concerns about the lack of adequate and sufficient investigative efforts to ensure the maximum possible reparation.'²⁵ In this regard the Committee again called for Poland to provide this information. No such information has been provided to the victim, to the Committee or the public, despite the ECHR's compelling findings regarding the right to truth of society as a whole, and the importance of effective investigation.

We urge Poland to release this information as soon as possible.

General measures: In its 1475th meeting in September 2023, the Committee noted that the information provided by Poland in its 27 July 2023 submission was 'insufficient' to support Polish authorities' conclusion that the current system of supervision is thorough and effective, and did not dispel concerns that these cases revealed 'a more general problem of democratic oversight of intelligence services,' as identified by the ECtHR.²⁶ The Committee therefore suggested Polish authorities 'clarify what safeguards have been put in place since the facts in these cases to ensure genuine and effective democratic oversight over secret services, including regarding parliamentary oversight, to prevent similar breaches of human rights, in particular as a result of secret cooperation with foreign authorities.'²⁷ The Committee noted with the 'deepest concern' that Poland is yet to respond to most of the issues raised in the Committee's Interim Resolution dated 8 December 2022, which underlines Poland's unconditional obligation to abide by the Court's judgments fully, effectively, and promptly and 'exhorted the authorities once again to heed these calls without further delay.'²⁸

The Committee requested Poland to provide updated information by 15 March 2024, however to our knowledge, no information has been submitted by Poland since July 2023.

The stark failure to engage with the important findings of the Committee, and of the Court, are a matter of serious concern.

²⁴ DH-DD(2023)895 1475th meeting (September 2023) (DH) - Rule 8.2a - Communication from the authorities (27/07/2023) concerning the case of AL NASHIRI v. Poland (Application No. 28761/11)
[https://search.coe.int/cm/#{%22CoEGeographyId%22:\[%22pol%22\],%22sort%22:\[%22CoEValidationDate%20Descending%22\],%22CoECollection%22:\[%22CM_DOC%22,%22CM_SG%22\],%22fulltext%22:\[%22\%22Abu%20zubaydah\%22%22\],%22CoEIdentifier%22:\[%220900001680ac1418%22\]}>](https://search.coe.int/cm/#{%22CoEGeographyId%22:[%22pol%22],%22sort%22:[%22CoEValidationDate%20Descending%22],%22CoECollection%22:[%22CM_DOC%22,%22CM_SG%22],%22fulltext%22:[%22\%22Abu%20zubaydah\%22%22],%22CoEIdentifier%22:[%220900001680ac1418%22]}).

²⁵ CM/Notes/1475/H46-23 1475th meeting (19-21 September 2023) (DH) - H46-23 Al Nashiri group v. Poland (Application No. 28761/11)
<[https://search.coe.int/cm/#{%22CoEGeographyId%22:\[%22pol%22\],%22sort%22:\[%22CoEValidationDate%20Descending%22\],%22CoECollection%22:\[%22CM_DOC%22,%22CM_SG%22\],%22fulltext%22:\[%22\%22Abu%20zubaydah\%22%22\],%22CoEIdentifier%22:\[%220900001680ac7661%22\]}>](https://search.coe.int/cm/#{%22CoEGeographyId%22:[%22pol%22],%22sort%22:[%22CoEValidationDate%20Descending%22],%22CoECollection%22:[%22CM_DOC%22,%22CM_SG%22],%22fulltext%22:[%22\%22Abu%20zubaydah\%22%22],%22CoEIdentifier%22:[%220900001680ac7661%22]}>)>.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

Lithuania

As noted in our 2022 Submission, we are pleased to recognise that the payment of damages and costs by the Lithuanian government was completed in December 2021 and that, as noted in the Committee's decision on 8 December 2022, the issue of just satisfaction has now been resolved.²⁹

Diplomatic assurances: In its submission to the Committee on 15 June 2023, Lithuania noted that representatives of the Lithuanian Ministries of Justice and Foreign Affairs held an online meeting with the US Department of State in December 2022, and an in-person meeting on 27 March 2023 to discuss Mr Abu Zubaydah's situation.³⁰ Lithuania also reported that in May 2023, the US Department of State provided information regarding the conditions in which Mr Abu Zubaydah is being detained and noted that the safeguards against torture and ill-treatment by the US have been strengthened and investigations into Mr Abu Zubaydah's treatment have been conducted. In its meeting in September 2023, the Committee welcomed the consultations between Lithuania and the US, but '*urged the Lithuanian authorities to follow-up on these initiatives and intensify their diplomatic efforts*' and to advise whether they intend to explore further the option of intervening as *amicus curiae*.³¹

In its latest submission to the Committee dated 10 October 2024, Lithuania reiterated the above information and reported that bilateral consultations between Lithuania and the US have continued and that, in April 2024, updated information was requested from the US Department of State. The US provided a response in June 2024 indicating, among other things, that:³²

...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.

²⁹ CM/Del/Dec(2022)1451/H46-19 1451st meeting (DH), December 2022 - H46-19 Abu Zubaydah v. Lithuania (Application No. 46454/11) <

³⁰ DH-DD(2023)734 1475th meeting (September 2023) (DH) - Rule 8.2a - Communication from the authorities (15/06/2023) concerning the case of Abu Zubaydah v. Lithuania (Application No. 46454/11) <

³¹ CM/Notes/1475/H46-20 1475th meeting (19-21 September 2023) (DH) - H46-20 Abu Zubaydah v. Lithuania (Application No. 46454/11) <

³² DH-DD(2024)1142 1514th meeting (December 2024) (DH) - Rule 8.2a - Communication from the authorities (10/10/2024) concerning the group of cases Abu Zubaydah v. Lithuania (Application No. 46454/11) <

The US authorities indicated with respect to Mr Abu Zubaydah's particular situation that his detention remains lawful pursuant to the 'Law of War' and that he continues to be eligible for review by the Periodic Review Board ("PRB") which determined during its 2021 review that his detention remained 'necessary.' In respect of the PRB process, we emphasise the UN Special Rapporteur's comments that this 'lacks the most basic procedural safeguards including because the process is a purely discretionary proceeding that is not independent and that is subject to veto by the political officials on the review committee.'³³

While we welcome Lithuania's efforts in continuing to engage with US authorities, such engagement must be meaningful and every effort made to ensure its effectiveness. No efforts have been made to offer relocation or engage with other states in this respect. Nor does Lithuania appear to have engaged with the UNWGAD recommendations regarding release and relocation.

Lithuania should engage with UN bodies, other states and other relevant stakeholders with a view to facilitating Mr Abu Zubaydah's release.

Domestic investigation: As the Committee has observed, Lithuania's investigative efforts appear to have been focused on seeking to obtain information from the US through international legal assistance procedures which, to date, have been largely successful given the US has determined the information is subject to state secret privilege. In its submission to the Committee dated June 2023, Lithuania observed that 'no tangible results have been achieved', however it would continue consultations with the US to ascertain other avenues for cooperation that could provide a possibility to obtain information relevant for its domestic investigation.³⁴ As noted above, and in our 2022 Submission, and while US non-cooperation is undoubtedly regrettable, and an obstacle, it is not, and cannot be allowed to be, definitive. The Committee has been clear that states should take 'alternative' steps to ensure effective investigation. The Committee noted in its meeting in September 2023 that, with respect to advancing the investigation through other international cooperation, Lithuania has not to date responded to the Committee's calls to thoroughly explore every relevant avenue for co-operation with member and non-member States alike and with international institutions or bodies.³⁵

In its latest submission to the Committee dated 10 October 2024, Lithuania reports that the Lithuanian investigative authorities 'continue their efforts' to advance the pre-trial investigation

³³ Report on the Technical Visit to the United States and Guantánamo Detention Facility by the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism (14 June 2023), para. 45.

³⁴ DH-DD(2023)734 1475th meeting (September 2023) (DH) - Rule 8.2a - Communication from the authorities (15/06/2023) concerning the case of Abu Zubaydah v. Lithuania (Application No. 46454/11) <

³⁵ CM/Notes/1475/H46-20 1475th meeting (19-21 September 2023) (DH) - H46-20 Abu Zubaydah v. Lithuania (Application No. 46454/11) <

and overcome evidential challenges,³⁶ however it appears no substantive progress has been made with respect to Lithuania's efforts to obtain evidence from the US via mutual international assistance processes. We welcome the fact that in March 2024 a meeting occurred (facilitated by EUROJUST) between the Lithuanian and Polish prosecuting authorities responsible for the domestic investigations concerning the CIA's rendition programme with a view to sharing experience concerning data collection. Collaboration between prosecutors in these and other states with relevant experience, such as Italy, should continue so that domestic investigations can finally meaningfully progress.

³⁶ DH-DD(2024)1142 1514th meeting (December 2024) (DH) - Rule 8.2a - Communication from the authorities (10/10/2024) concerning the group of cases Abu Zubaydah v. Lithuania (Application No. 46454/11)
<[https://search.coe.int/cm#{%22CoEGeographyId%22:\[%22ltu%22\],%22sort%22:\[%22CoEValidationDate%20Descending%22\],%22CoECollection%22:\[%22CM_DOC%22,%22CM_SG%22\],%22fulltext%22:\[%22\%22Abu%20zubaydah\%22%22\],%22CoEIdentifier%22:\[%220900001680b1ef5e%22\]}>](https://search.coe.int/cm#{%22CoEGeographyId%22:[%22ltu%22],%22sort%22:[%22CoEValidationDate%20Descending%22],%22CoECollection%22:[%22CM_DOC%22,%22CM_SG%22],%22fulltext%22:[%22\%22Abu%20zubaydah\%22%22],%22CoEIdentifier%22:[%220900001680b1ef5e%22]}>)>.



Ministry of Foreign Affairs Republic of Poland

Plenipotentiary of the Minister of Foreign Affairs
for cases and procedures before
the European Court of Human Rights
Agent for the Polish Government
Agnieszka Kozińska-Makowska

DGI

31 OCT. 2024

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

DPT.731.353.2024/223
Warsaw, 31 October 2024

Mr Frederic Dolt
Head of Department for the Execution
of Judgments of the European Court of Human Rights
Council of Europe
Strasbourg

Dear Sir,

With reference to the communication submitted to the Committee of Ministers of the Council of Europe on 23 October 2024 (received by the Government of Poland on 24 October 2024) by the Human Rights in Practice on behalf of the applicant in the case of *Abu Zubaydah v. Poland* (application no. 7511/13, judgment of 24 July 2014), in response to the comments and recommendations contained therein, I would like to refer to the updated information on the implementation of the European Court of Human Rights judgments in the cases of *Al Nashiri v. Poland* (application no. 28761/11) and *Abu Zubaydah v. Poland*, submitted by the Government of Poland on 17 October 2024. This information, contained in the document DH-DD(2024)1195, provides all the necessary updates, relevant also for the issues raised in the communication at hand.

Yours faithfully,

Agnieszka Kozińska-Makowska
Government Agent