

Rule 9 Submissions to the Committee of Ministers

On 6 February 2020, Human Rights in Practice (HRiP) presented written submissions on behalf of Guantanamo detainee and torture victim Abu Zubaydah to the Committee of Ministers of the Council of Europe. The “rule 9 submissions” concern the implementation of the European Court of Human Rights’ (ECtHR) cases *Abu Zubaydah v. Poland* (2014) and *Abu Zubaydah v. Lithuania* (2018).

The submissions provide an overview and assessment of developments since the ECtHR established beyond reasonable doubt both Poland and Lithuania’s state responsibility for our client’s arbitrary detention, torture/inhuman treatment on their territories and transfer to on-going “flagrant denial of justice” in Guantanamo Bay. They respond to the ‘action plans’ presented by the Lithuanian and Polish states, but note with concern the states’ inaction in respect of each key areas of implementation.

The submissions outline the applicant’s current situation and deeply regrettable lack of change in his situation or prospects for trial or release, and respond to unfounded assertions made by the United States in response to representations by Poland and Lithuania. The rule 9 brief considers developments in Poland and Lithuania, in light of each states’ ‘action plans’ for implementation. It makes submissions and recommendations directed to Poland and Lithuania in five key areas:

- 1) securing the payment to the applicant of the just satisfaction awarded by the Court, removing undue and unrealistic burdens that have been placed on him, mindful of the reality of the circumstances created by his on-going arbitrary detention;
- 2) taking all feasible steps, individually and collectively with other states, to pressure for a solution to the applicant’s egregious on-going arbitrary detention without charge or trial for 18 years;
- 3) taking robust action to meet the Court’s requirements in relation to criminal investigations, transparency and truth within Poland and Lithuania - while states hide behind regrettable US non-cooperation there are many other developments that provide opportunities to proceed to robust investigation, international cooperation and accountability;
- 4) finally, acknowledging their role and responsibility, and apologising to the applicant for the violations of his rights as part of meaningful reparation;
- 5) implementing general measures, including in relation to reform of the security services and intelligence cooperation, directed at ensuring non-repetition of violations such as those at the heart of this case.

The submissions highlight specific failings in relation to each of these areas to date. It acknowledges areas of progress, notably in relation to the Lithuanian reshaping of the investigation, but these fall far short of full and meaningful implementation. It expresses particular concern in relation to Polish failure in each of these areas nearly 6 years after the judgment. In light of the submissions, we urged the Committee of Ministers to remain actively engaged in the oversight of the implementation in these crucial cases, to urge the Council of Europe to lend weight to representations to the US required by the Court and the quest for solutions to the ongoing flagrant denial of justice and impunity in these cases.

The submissions can be read here: <https://www.rightsinpractice.org/new-blog/2020/2/6/implementation-of-the-abu-zubaydah-v-lithuania-and-poland-judgments-rule-9-brief-filed-with-committee-of-ministers>

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