



Secretariat, Working Group on Arbitrary Detention  
29.7.2022

**Re: Response to the information provided by the Republic of Lithuania regarding the case of Mr. Zayn Al Abidin Muhammad Husayn (Abu Zubaydah)**

Thank you for your letter dated 21 July 2022, transmitting the response of the Republic of Lithuania to the Petition concerning our client, Mr. Zayn Al-Abidin Muhammad Husayn (Abu Zubaydah), filed on 28 April 2022 (The Petition).

The payment of the just satisfaction, referred to by the government, is undoubtedly welcome for Lithuania as for Poland, and other states should follow suit. Beyond this, the Lithuanian government's cursory communication merely repeats information that has been the status quo for years and fails to address the violations alleged or the remedies sought by Abu Zubaydah in the petition.

In particular, the government has not provided any information in relation to the steps taken to end the indefinite arbitrary detention of the applicant.

- Lithuania refers to the Committee of Ministers of the Council of Europe (COM) process, which has repeatedly stressed that the state must take more creative, concerted and collective steps to intervene to bring to an end the ongoing flagrant denial of justice to which the applicant is subject at Guantanamo.<sup>1</sup> The UNWG petition seeks to engage all responsible states, including Lithuania and Poland and those not been subject to European Court judgments, to do so collectively and effectively. It is acknowledged that the US has thus far refused to provide assurances to Lithuania (or Poland and Romania), but the COM has repeatedly asked the Lithuanian authorities to 'engage in a more efficient dialogue with Washington'<sup>2</sup> and 'exhaust every possible avenue to make it effective',<sup>3</sup> consider intervening as *amicus curiae* in the relevant proceedings in the United States, particularly the *habeas corpus* proceedings brought before the US federal courts on behalf of the applicant, which according to the Committee, 'would provide alternative paths for relief by the US administration for the flagrant denial of justice the applicant continues to suffer'.<sup>4</sup> There is no response from Lithuania on any of these points.
- Lithuania should be actively offering to relocate or to assist in facilitating transfer to a suitable, rights-compliant country. Its silence on this point, like that of other states, speaks volumes as to its unwillingness to assume responsibility and make reparation. Nor is there any indication of increasing pressure from the other respondent states to insist on immediate psychiatric care and assessment and full access to medical records.

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<sup>1</sup> CoE, '[Decision of the Ministers' Deputies adopted at the 1411<sup>th</sup> meeting](#)', (DH) (14-16 September 2021) – H46-15 Abu Zubaydah v. Lithuania (Application No. 46454/11), (16 September 2021) Doc. CM/Del/Dec(2021)1411/H46-14, para 3; CoE, '[Notes on the Agenda, 1428<sup>th</sup> meeting](#)', (DH) (8-9 March 2022) – H46-15 Abu Zubaydah v. Lithuania (Application No. 46454/11), (9 March 2022) Doc. CM/Notes/1428/H46-19.

<sup>2</sup> 1411<sup>th</sup> meeting Decision para 4.

<sup>3</sup> 1428<sup>th</sup> meeting Decision para 4.

<sup>4</sup> CoE, 1428<sup>th</sup> meeting Decision, '[Decisions of the Ministers' Deputies adopted at the 1428<sup>th</sup> meeting](#)', (DH) (8-9 March 2022) – H46-19 Abu Zubaydah v Lithuania (Application No. 46454/11), (9 March 2022) Doc. CM/Del/Dec(2022)1428/H46-19, para 5.

Second, Lithuania still has not even recognised its responsibility or offered any form of apology to our client for its essential role in his arbitrary detention and torture, which it should be urged to do in clear terms. This should be the essential basis for taking real steps to guarantee non-repetition in the future. There is no indication of such steps in the government's brief response. The lack of transparency around the facts remains acute in Lithuania.

Third, it still fails to conduct the thorough domestic investigation and to ensure the accountability of those responsible for crimes committed through and in the context of the applicant's ongoing arbitrary detention.

- The government's explanation that the pre-trial investigation is incomplete 'due to the fact that the main evidences are under foreign jurisdiction and all attempts to obtain them by means of international legal assistance in criminal matters have so far been unsuccessful' is insufficient and at this stage disingenuous. Since as early as June 2019, the COM has urged the Lithuanian authorities to pursue 'alternative measures in order to overcome the effects of the United States authorities' refusal'.<sup>5</sup> For example, the COM in March 2022 called the government of Lithuania to 'thoroughly explore every relevant avenue for co-operation with member and non-member States alike and with international institutions or bodies'<sup>6</sup> and to take a proactive approach to seek 'access to information in proceedings under United States jurisdiction in order to advance the investigation' and 'intervene in relevant proceedings'.<sup>7</sup>
- US non-cooperation cannot excuse Lithuania's failure to take all necessary measures that are within its control to conduct the thorough, effective, and independent investigation required of it under international law. Just as Italian investigations and prosecutions were possible in the Abu Omar case, shows that US cooperation, while important, is not imperative. The government vaguely asserts that all attempts have been unsuccessful, without providing concrete information illustrating the kind of evidence sought, assistance requested, from which member or non-member States or institutions, and the reasons provided for any negative response. The victim and the public's right to truth remain unfulfilled.
- As noted in relation to Poland, even as regards information and witnesses within the US, the Lithuanian authorities could undoubtedly do more. As noted in relation to the UK, it should be seeking to access the full US Senate report but there are no indications of this to date. Considerable emphasis has been placed in recent US proceedings on secrecy commitments given by the US to other states, as justification to block victim access to information about the rendition programme on 'state secrecy' grounds.<sup>8</sup> To facilitate information sharing, Lithuania (like other respondent states) could make clear to the US authorities that they waives any such commitments, and has no objection to information concerning the role of Lithuania in the rendition and torture programme being disclosed. Indeed, if Lithuania acknowledged publicly the black site on its soil, it would be more difficult for the US to sustain that any information that might lead to such a revelation must remain secret.

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<sup>5</sup> CoE, 1348<sup>th</sup> meeting Decision, para 9.

<sup>6</sup> CoE, 1428<sup>th</sup> meeting Decision, '[Decisions of the Ministers' Deputies adopted at the 1428<sup>th</sup> meeting](#)', (DH) (8-9 March 2022) – H46-19 Abu Zubaydah v Lithuania (Application No. 46454/11), (9 March 2022) Doc. CM/Del/Dec(2022)1428/H46-19, para 6.

<sup>7</sup> Ibid para 7.

<sup>8</sup> [Abu Zubaydah v United States 2022](#). The case arose as access to the psychologists who designed and implemented the programme was sought by Abu Zubaydah for the purposes of the Polish investigation.

We therefore reiterate the arguments regarding Lithuania's responsibility and the requests for relief set out in the petition, which are undiminished by the government's communication.

Yours sincerely,

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For Abu Zubaydah