



European Court rules in seventh case concerning CIA secret detainee programme, multiple violations against Lithuania

The case [al-Hawsawi v. Lithuania](#) (application no. 6383/17) concerned a national of Saudi Arabia who is currently on trial before a US military commission in Guantánamo Bay on suspicion of being a facilitator and financial manager of al-Qaeda.

In his case before the European Court of Human Rights Mr al-Hawsawi raised multiple complaints of torture, ill-treatment and unacknowledged detention in 2005-06 when he was held at a secret facility in Lithuania run by the US Central Intelligence Agency (CIA). Those alleged events took place against the background of the so-called “War on Terror”.

In today’s **Chamber judgment**¹ in the case the European Court held, unanimously, that there had been:

violations of Article 3 (prohibition of inhuman or degrading treatment/investigation) of the European Convention on Human Rights because of Lithuania’s failure to effectively investigate Mr al-Hawsawi’s allegations and because of its complicity in the CIA secret detainee programme;

violations of Article 6 § 1 (right to a fair trial within a reasonable time), and Articles 2 (right to life) and 3 taken together with Article 1 of Protocol No. 6 (abolition of the death penalty), because Lithuania had assisted in Mr al-Hawsawi’s transfer from its territory in spite of a real risk that he could face a flagrant denial of justice and the death penalty; and,

violations of Article 5 (right to liberty and security), Article 8 (right to respect for private life), and Article 13 (right to an effective remedy) in conjunction with Articles 3, 5 and 8.

The Court noted that Mr al-Hawsawi had been subject to a virtual ban on his communication with the outside world since his capture in 2003 so it had had to establish the facts from various other sources.

In particular, it had gained key information from one of the most credible sources available, a US Senate Committee report on CIA torture released in December 2014. That report had specifically named Mr al-Hawsawi as having been detained at the CIA secret detainee site codenamed “Detention Site Violet”. That site, in light of evidence gathered by the Court, was located in Lithuania.

The Court went on to find that although he had probably not been subjected to the harshest interrogation techniques there, he had to have experienced blindfolding or hooding, solitary confinement, the continuous use of leg shackles, and exposure to noise and light, which had been standard CIA practice under the secret detainee programme at the time.

The Lithuanian authorities had to have been aware that the CIA would subject him to such treatment at the secret prison located on their territory, given the information widely available at the time on torture, ill-treatment and abuse inflicted on terrorist-suspects in US custody. They had also permitted him to be moved to another secret CIA detention site (in Afghanistan), exposing him to

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

further ill-treatment, and to the USA where he faced the risk of a flagrant denial of justice and the death penalty.

The Court concluded that Mr al-Hawsawi had been within Lithuania's jurisdiction and that the country had been responsible for the violations of his rights under the Convention.

In coming to those conclusions, it specifically referred to the evidence in a similar case previously brought before it, [Abu Zubaydah v. Lithuania](#) of 2018, as well as five other rulings: [El-Masri v. "the former Yugoslav Republic of Macedonia"](#) of 2012, [Al Nashiri v. Poland and Husayn \(Abu Zubaydah\) v. Poland](#) of 2014, [Nasr and Ghali v. Italy](#) of 2016 and [Al Nashiri v. Romania](#) of 2018.

[Under Article 46 \(binding force and implementation of judgments\)](#) it repeated the recommendations made in some of those previous rulings that the respondent State undertake a full criminal investigation as quickly as possible and, if necessary, punish any officials responsible. Lithuania also had to make further representations to the United States to remove or limit the effects of the violations of Mr al-Hawsawi's rights.

A legal summary of this case will be available in the Court's database HUDOC ([link](#))

Principal facts

The applicant, Mustafa Ahmed Adam al-Hawsawi, is a national of Saudi Arabia who was born in 1968 and is currently detained in the internment facility at the United States Guantánamo Bay Naval Base in Cuba.

The case concerned the "extraordinary rendition" of Mr al-Hawsawi by the US Government during which he was allegedly held at a CIA secret detention facility in Lithuania in 2005-06. "Extraordinary rendition" means the transfer of persons from one jurisdiction or State to another, for the purposes of detention and interrogation outside the normal legal system, with a real risk of torture or cruel, inhuman or degrading treatment.

The applicant stated that he was captured in March 2003 in Pakistan during the so-called "War on Terror" in the aftermath of the 9/11 attacks. He was transferred to the US authorities' custody and, from then on, detained secretly in CIA clandestine detention facilities in various countries, allegedly also including Lithuania.

He submitted in particular that, according to recent research, he had been transferred either on 18 February or 6 October 2005 to a CIA secret detention facility in Lithuania, codenamed "Detention Site Violet".

He was transferred out of Lithuania to another secret site (in Afghanistan) on 25 March 2006 when he needed urgent medical care and the local authorities had not been able to provide it. The lack of emergency medical care for detainees resulted in the closing of the site in Lithuania.

Ultimately, on 5 September 2006, he was transferred to US military custody in Guantánamo Bay where he remains to this day and is currently on trial on capital charges before a US military commission. The charges against him include terrorism, conspiracy, law of war charges for murder, attacking civilians, intentionally causing serious bodily injury, hijacking, attacking civilian objects, and destruction of property.

According to the applicant, he was subjected to "Enhanced Interrogation Techniques" throughout his detention by the CIA in order to obtain intelligence on terrorist operations by al-Qaeda.

He suffers from a number of serious ailments, including colorectal pain and rectal haemorrhoids caused by his brutal treatment in CIA custody, namely sodomy with a foreign object; chronic migraines; hypertension; hearing loss and tinnitus and insomnia.

A pre-trial investigation was instituted into Mr al-Hawsawi's allegations in Lithuania in February 2014. It is currently still ongoing and he has not yet been granted the status of victim in the proceedings.

Complaints, procedure and composition of the Court

Mr al-Hawsawi complained that Lithuania had enabled the CIA to detain him secretly on its territory, subject him to torture, various other forms of mental and physical abuse and incommunicado detention, thus denying him the possibility to contact his family or the outside world.

He also complained that Lithuania had allowed him to be transported to other CIA-run secret detention sites, exposing him to further arbitrary detention and ill-treatment, a flagrantly unfair trial and a risk of the death penalty.

Lastly, he complained of the lack of a prompt and thorough investigation into his allegations and of there being no effective remedies to complain about the violation of his rights.

Mr al-Hawsawi relied on Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security), 6 § 1 (right to a fair trial), 8 (right to respect for private and family life) and 13 (right to an effective remedy) and Article 1 of Protocol No. 6 (abolition of the death penalty).

The application was lodged with the European Court of Human Rights on 19 December 2016.

The International Commission of Jurists and Amnesty International submitted comments as third parties.

Judgment was given by a Chamber of seven judges, composed as follows:

Arnfinn Bårdsen (Norway), *President*,
Jovan Ilievski (North Macedonia),
Egidijus Kūris (Lithuania),
Pauliine Koskelo (Finland),
Lorraine Schembri Orland (Malta),
Diana Sârcu (the Republic of Moldova),
Davor Derenčinović (Croatia),

and also Hasan Bakırcı, *Section Registrar*.

Decision of the Court

Firstly, the Court observed that the case was largely based on circumstantial evidence, as for the last 20 years or more Mr al-Hawsawi had been subjected to a virtual ban on communication with the outside world. Furthermore, his communication with his US counsel and his account of experiences in CIA custody were classified.

The Court therefore established the facts from other public sources including, in particular, the 2014 declassified executive summary of the US Senate report on CIA torture, which detailed the activities of the CIA in the secret detainee programme in the years 2001-2009. It also relied on the testimony of experts heard by the Court in other relevant cases: *Husayn (Abu Zubaydah) v. Poland*, *Al Nashiri v. Poland* and *Abu Zubaydah v. Lithuania*.

That evidence included details of how detainees had been ill-treated, the movement of aeroplanes known to have been used by the CIA for rendition operations, how the CIA had paid foreign governments to host sites and how the programme had developed over the years.

A careful analysis of the evidence in the case *Abu Zubaydah* had already allowed the Court to conclude beyond reasonable doubt that the detention centre known as Site Violet had been located in Lithuania. The Court could not find any element in Mr al-Hawsawi's case to alter that conclusion. Nor had the Government contested those facts.

Moreover, based on all the material, the Court concluded that it was clear that Lithuania had hosted a CIA detention centre from 17 or 18 February 2005 to 25 March 2006 and that Mr al-Hawsawi had been held there. Indeed, his name and presence at Detention Site Violet were explicitly mentioned in one of the most credible sources of knowledge of the CIA rendition operations, the above-mentioned 2014 US Senate Committee report on CIA torture. That report explained the refusal of the local authorities "to admit CIA detainee Mustafa Ahmad al-Hawsawi to a local hospital despite earlier discussions..." and that as a result "the CIA was forced to seek assistance from third-party countries in providing medical care to al-Hawsawi."

The Court went on to note that the Government had not provided a single piece of evidence to cast doubt on the Court's findings in the *Abu Zubaydah* case that the Lithuanian authorities had to have known of the purpose of the CIA's activities on its territory and had cooperated. As in that case, it had also to have been clear that such actions had threatened Mr al-Hawsawi's rights, given the widely available information on torture, ill-treatment and abuse inflicted on terrorist-suspects in US custody circulating in the public domain in 2002-05, including in the Lithuanian press.

Overall, Mr al-Hawsawi's allegations fell within Lithuania's jurisdiction and could make it answerable under the Convention.

Article 3 (prohibition of inhuman or degrading treatment)

The Court had previously concluded, when adopting its judgment in the *Abu Zubaydah* case in April 2018, that the investigation into Lithuania's complicity in the CIA secret detainee programme and failure to identify those responsible had made no meaningful progress. That finding also applied to the part of the investigation in Mr al-Hawsawi's case which had been pending since 2014.

As regards the period after 2018, the Court noted that the Government heavily relied on their repeated attempts to obtain information from other States, and in particular the US, without giving any satisfactory reasons why no tangible progress had been made in investigating the complicity in CIA activities of Lithuanian officials. Nor had Mr al-Hawsawi been granted victim status, despite his numerous requests. The Court reiterated that a victim had the right to obtain an accurate account of his suffering and the role of those responsible for his ordeal and the Lithuanian public had a legitimate interest in being informed of the criminal proceedings and their results.

Because of those deficiencies the Court found that Lithuania had failed to carry out its duty to carry out an effective and thorough investigation, in violation of the **procedural aspect** of Article 3.

On the **substantive aspect** of Article 3, the Court noted that Mr al-Hawsawi had not been subjected to the harshest interrogation techniques in Lithuania. However, his prior suffering (including "water dousing" and the most brutal torture) had to be taken into account when considering his detention there because he would have been in constant fear of the previous cruel treatment being inflicted on him again.

In any event, in Lithuania he had also experienced an extremely harsh detention regime, which, according to CIA documents (and in particular the relevant guidelines in force at the time for CIA prisoners) had as standard practice included blindfolding or hooding, solitary confinement, the continuous use of leg shackles, and exposure to noise and light.

The cumulative effects of such a detention regime had amounted to inhuman treatment within the meaning of the Convention, which the Lithuanian authorities had enabled by cooperating with the CIA. The authorities could therefore be held responsible for the violation of Mr al-Hawsawi's rights

under Article 3. Moreover, they had allowed his rendition out of the country and exposed him to a foreseeable serious risk of further ill-treatment, in violation of Article 3.

Article 5 (right to liberty and security)

The Court reiterated that the rationale behind the CIA secret detainee programme had been specifically to remove terrorist suspects from any legal protection against torture and enforced disappearance. The whole scheme had to operate in absolute secrecy outside the jurisdiction of the US courts and in cooperation with the host countries. Such cooperation, involving customising of the secret site for the CIA's needs, security and logistics, had been necessary for the effective operation of the CIA secret detention facilities.

Lithuania had therefore been responsible for Mr al-Hawsawi's secret detention on its territory and his transfer from Lithuania to another CIA detention site, in violation of Article 5.

Article 8

The interference with Mr al-Hawsawi's right to respect for his private and family life had taken place in the context of fundamentally unlawful and undisclosed detention. There had been no conceivable justification for it under Article 8 and it had to be regarded as "not in accordance with the law".

Article 6 § 1 (right to a fair trial)

When Mr al-Hawsawi had been transferred out of Lithuania, the authorities had to have been aware of widely expressed public concern that trials before the US military commission did not meet the most basic guarantees of a fair trial. Despite the real and foreseeable risk that he could face a flagrant denial of justice in the USA, Lithuania had assisted in his transfer from its territory, in breach of Article 6 § 1.

Articles 2 (right to life) and 3 and Article 1 of Protocol No. 6 (abolition of the death penalty)

Lithuania was responsible for the CIA transferring Mr al-Hawsawi to the US military commission's jurisdiction where he has since been arraigned and is currently on trial and facing the death penalty. There had therefore been a violation of Articles 2 and 3 of the Convention taken together with Article 1 of Protocol No. 6.

Article 13 (right to an effective remedy) in conjunction with Articles 3, 5 and 8

The Court observed that it had already found that the criminal investigation in Lithuania had fallen short of Convention standards. Mr al-Hawsawi had had no effective remedy available at national level to complain about the violations of his rights. There had been a breach of Article 13, in conjunction with Articles 3, 5 and 8.

Article 46 (binding force and execution of judgments)

Although Lithuania had already asked for assistance and judicial cooperation from the US authorities, the Court recommended that it make further representations to remove, or at the very least, seek to limit the effects of the violations of the applicant's rights.

In addition, all necessary steps had to be taken without delay to reactivate and make progress with the still ongoing criminal investigation which should be concluded as swiftly as possible once the circumstances of Mr al-Hawsawi's transport into, detention and removal from Lithuania had, as far as possible, been clarified. The investigation should also aim to allow the domestic authorities to identify and, where appropriate, punish those responsible.

Article 41 (just satisfaction)

The Court held that Lithuania was to pay the applicant 100,000 euros (EUR) in respect of non-pecuniary damage, and EUR 30,000 to the non-governmental organisation REDRESS which represented him in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.