



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

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Committee on Enforced Disappearances

**Concluding observations on the report submitted by
Lithuania under article 29 (1) of the Convention**

Addendum

**Information received from Lithuania on follow-up
to the concluding observations***

[Date received: 7 September 2018]

* The present document is being issued without formal editing.



I. Introduction

1. At its 231st meeting held on 12 September 2017, the Committee on Enforced Disappearances adopted its concluding observations on the report submitted by the Republic of Lithuania under Article 29 (1) of the Convention (CED/C/LTU/1) (hereinafter referred to as the “Concluding Observations”). Pursuant to paragraph 37 of the Concluding Observations, the relevant information on the implementation of the Committee’s recommendations made under paragraphs 22, 24, 26 is to be provided by 15 September 2018 at the latest.

2. The Government of the Republic of Lithuania would like to thank the Committee for the frank and constructive dialogue on the report submitted by the Republic of Lithuania under Article 29 (1) of the Convention, held at its 219th and 220th meetings on the 4th and 5th of September 2017, and hereby submits information and its remarks on the implementation of the above-mentioned recommendations.

II. Information on the implementation of the recommendations made under paragraph 22 of the Concluding Observations

Paragraph 22 of the Concluding Observations

While welcoming the ongoing investigations into allegations of the State party’s involvement in the rendition and secret detention programmes, the Committee, reiterating the recommendations made by the Committee against Torture in 2014 (see CAT/C/LTU/CO/3, para. 16) and the Human Rights Committee in 2012 (see CCPR/C/LTU/CO/3, para. 9):

(a) Urges the State party to complete the investigation into allegations of its involvement in the rendition and secret detention programmes within a reasonable time, that those responsible be held accountable, and that victims be duly recognized and provided with appropriate redress and reparation;

(b) Recommends that the State party inform the public and ensure that its investigation process is transparent;

(c) Requests the State party to provide it with updated information on the findings of such investigation and, if appropriate, sanctions for those responsible.

3. To supplement the information already provided to the Committee in the Responses to the List of issues (CED/C/LTU/Q/1), we would like to note that, in the course of the pretrial investigation No 01-2-00015-14, requests for legal assistance (hereinafter referred to as “RLA”) were submitted to the US Department of Justice in order to obtain data potentially relevant for the investigation, but the response received stated that the information requested was not available to the United States in this case. Additionally, requests for information on the alleged transportation and/or detention in special detention centres of Mustafa al-Hawsawi, a national of Saudi Arabia, or other individuals were also directed to the competent authorities of the Kingdom of Morocco, the Republic of Poland, the Republic of Romania and the Islamic Republic of Afghanistan. The Republic of Poland, the Kingdom of Morocco and the Republic of Romania responded to the RLA, however the competent authorities of these countries did not provide any data of relevance for the investigation. It is not possible to finalise the pretrial investigation by adopting definitive procedural decisions because no response to the request for legal assistance has been received from the Islamic Republic of Afghanistan, and, consequently, no active investigative actions are being conducted presently in the pretrial investigation No 01-2-00015-14, yet the investigation has not been suspended or closed either.

4. It is also noteworthy that the 31 May 2018 judgement of the European Court of Human Rights (hereinafter referred to as “ECHR”) in *Abu Zubaydah v. Lithuania* declared the Republic of Lithuania to have breached the European Convention of Human Rights and Fundamental Freedoms (hereinafter referred to as the “Human Rights Convention”), Article

3 (Prohibition of torture, inhuman or degrading treatment or punishment). It also found violations of Article 5 (Right to liberty and security), Article 8 (Right to respect for private and family life) and Article 13 (Right to an effective remedy). In that case, the ECHR held that Article 3 of the Human Rights Convention was violated because of the actions of the Central Intelligence Agency of the United States, a third country, at the secret detention centres in the jurisdiction of Lithuania. The ECHR judgement states that Lithuanian authorities knew about the CIA operations on the Lithuanian territory, although they did not themselves carry out any degrading acts against the alleged perpetrators of terrorist acts committed in the USA. It held that Lithuania was thus complicit in the programme of transportation and detention of the persons apprehended by the CIA and was therefore responsible for the inhuman treatment of suspected terrorists, who were in US control. The ECHR found a violation of the procedural limb of Article 3 of the Human Rights Convention due to an inadequate and inefficient investigation – the judgement maintains that no substantial progress was achieved in the pretrial investigation. When determining the facts in the case *Abu Zubaydah v. Lithuania*, the ECHR primarily relied on the report of the US Senate, released on 9 December 2014, concerning the CIA detention programme implemented within the framework of fight against terrorism. The ECHR rejected the Lithuanian Government's arguments claiming that Lithuania had been unaware of the CIA's actions on its territory. Lithuania based its position on the data gathered during the parliamentary inquiry and the ongoing pretrial investigation, mainly witness testimony. The ECHR judgement notes that Lithuania submitted RLA to the US competent authorities, but recommends that Lithuania should make further representations to the US authorities in order to remove or limit the effects of the violations of the applicant's rights. Lithuania is also advised to conclude a full investigation of the transportation, detention and removal from Lithuania of Husayn Abu Zubaydah as quickly as possible and, if necessary, punish any persons responsible.

5. Importantly, the ECHR judgement does not identify any new circumstances and relies on the available pretrial investigation documents and the US Senate report of 9 December 2014. State responsibility under the Human Rights Convention in the context of public international law and personal criminal liability are based on different principles as well as different interpretation of facts as well as standards of reliability and sufficiency thereof. Although the ECHR held the State to be responsible for enabling the authorities of a third State to perform the alleged human rights violations, the data of the pretrial investigation are not sufficient to hold beyond any reasonable doubt that the acts violating human rights and resulting in criminal liability were actually performed on the Lithuanian territory and to identify the persons responsible. As already mentioned above, the pretrial investigation is continuing in order to conduct all possible procedural steps and to dissolve any doubt concerning the fact that Lithuania failed to exercise all possible efforts in investigating the suspected human rights violations on its territory. The Republic of Lithuania would like to inform you that it will comply with a final judgement of the ECHR.

III. Information on the implementation of the recommendations made under paragraph 24 of the Concluding Observations

Paragraph 24 of the Concluding Observations

The Committee recommends:

(a) **That the State party guarantee that all persons deprived of liberty have access to a lawyer from the outset of deprivation of liberty and can communicate without delay with their relatives or any person of their choosing, and in the case of foreigners, with their consular authorities;**

(b) **That the State party guarantee in practice that any acts hindering the observance of these rights are adequately sanctioned.**

6. We would like to draw your attention to the following amendments to Lithuanian legislation, adopted in April through May of 2017, which are significant in ensuring the implementation of the recommendations issued under paragraph 24 of the Concluding Observations.

7. Law No XIII-324 amending Articles 8, 711 and 80 of the Code of Criminal Procedure of the Republic of Lithuania was passed on 27 April 2017 to expand the rights and procedural guarantees of non-Lithuanian speaking parties to criminal proceedings. The following amendments are worth mentioning in relation to compliance with the recommendations under paragraph 24 of the Concluding Observations:

(a) Article 8 (2) of the Code of Criminal Procedure (hereinafter referred to as “the CCP”) lays down a general norm applicable in all the cases specified in the CCP that obliges the pretrial investigation authorities, prosecutor or court to determine in the course of criminal proceedings, within the shortest time possible, whether a party to the criminal proceedings (including the suspect or the accused) knows Lithuanian (i.e. the language of the proceedings) and whether, in order to be able to comprehend the criminal proceedings, the party concerned must be assisted by an interpreter;

(b) Article 8 (4) of the CCP states clearly that in the course of criminal proceedings a defence attorney must communicate with non-Lithuanian speaking suspected, accused, convicted or acquitted persons in the language that they can understand or, where that is not possible, oral translation of their communication must be ensured. At the same time, in order to unconditionally guarantee and ensure the confidentiality of communication between a suspected, accused, convicted or acquitted person and his defence, Article 80 of the CCP has added a rule prohibiting in all cases the examination of the interpreter on the circumstances that he learned in the course of his duties as an interpreter under Article 8 (4) of the CCP.

8. Law No XIII-357 amending Articles 10, 44, 48, 50, 52, 69, 691, 711, 72, 128, 140, 168, 190, 192, 196, 197 and 233 and the Annex to the Code of Criminal Procedure of the Republic of Lithuania, Law No XIII-358 amending Articles 45 and 46 and the Annex to Law No IX-2066 of the Republic of Lithuania on the Bar and Law No XIII-359 amending Articles 14, 23 and 31 and the Annex to Law No I-1175 of the Republic of Lithuania on Execution of Detention (hereinafter collectively referred to as the “Laws”) were passed on 11 May 2017, transposing into Lithuanian law the provisions of Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty. The following amendments are worth mentioning in relation to compliance with the recommendations under paragraph 24 of the Concluding Observations:

(a) The CCP Article 10 provides suspected, accused and convicted persons with the right to defence. The Laws updated this provision by specifying that the said right shall be ensured immediately upon detention or first interrogation. Accordingly, in line with Article 10 (2) of the CCP, a court, prosecutor and pretrial investigation officer must ensure the possibility for the suspected, accused or convicted person to defend against the suspicions and charges using the instruments and methods provided for in the laws, while under Article 50 (1) of the CCP, a pretrial investigation officer, prosecutor and court shall explain to the suspected and accused person his right to be represented by a defence attorney from the moment of detention or first interrogation and give him an opportunity to exercise that right;

(b) The Law amending the CCP modified its Article 50 (1) by specifying that, pursuant to the procedure laid down in Article 140 of the CCP, an arrested suspect shall be provided with an opportunity to meet with a defence attorney in private before the first interrogation;

(c) In order to reinforce the guarantees of confidentiality of communication between suspected and accused persons (including persons to be surrendered by the Republic of Lithuania under a European Arrest Warrant) and their defence, Article 44 (8) of the CCP now prohibits control of communications, such as meetings, correspondence, telephone conversations or other forms of communication between a suspected, accused, convicted or acquitted person and their defence attorney. An analogous guarantee has been enshrined in Article 46 (5) of the Law on the Bar, which states that a defence attorney’s professional secret consists not only of the fact of contacting the attorney, the terms and

conditions of the contract concluded with the attorney, the information and data provided by the client, the nature of consultation and the information collected by the attorney according to the client's instructions, but also other contents of communication between the attorney and the client (meetings, correspondence, telephone conversations or other forms of communication), which cannot be accessed in public or in private or used as evidence under the provisions of the Law on the Bar. The amendment to the Law on Execution of Detention also reinforced the confidentiality of communication between detained persons and their defence attorney: Articles 14 (2) and 23 (2) stipulate that the confidentiality of communication between the detainee and his defence attorney must be ensured during their meetings or telephone calls between them;

(d) The Laws have significantly expanded the competence of the defence attorney as well as the scope and content of the right of a suspect or the accused to have a defence attorney in criminal proceedings. Article 48 of the CCP has enshrined the following additional rights and powers of the defence attorney: to attend the interrogation of the suspect or the accused and to meet with the suspect or the accused in private before the interrogation or before the court hearing; to freely communicate with the suspect or the accused and to meet with them in private throughout the criminal proceedings (the number and duration of meetings between the defence attorney and the detained or arrested suspect or accused person shall not be limited); to be present during any actions in relation to the suspect or the accused person as well as any actions performed at the request of the suspect or the accused person or their defence attorney (when present in such actions, the defence attorney may ask any questions of interest to the defence, request clarifications and make statements); to contact the defence attorney appointed in the country that issued or that executes the European Arrest Warrant and to obtain and submit the documents and objects required for the defence, etc. Article 45 of the Law on the Bar provides the defence attorney not only with the right to meet with a client but also to communicate with him without interference, adding that any data from the meeting or communication between the defence attorney and the client cannot be used as evidence. The Law on Execution of Detention has also expanded the content of the detainees' right to communication with a defence attorney by stipulating that the restrictions to the detainees' right to a telephone call under Article 23 (1) of that law do not apply to their telephone communication with the defence attorney;

(e) In order to reduce the number of unreasonable waivers of a defence attorney, Article 52 (1) of the CCP states that, prior to such waiver, the pretrial investigation body or the court must immediately explain to the suspect or the accused, in the language he can understand, the consequences of refusing the defence attorney, including the possibility of having a new defence attorney at any stage of the proceedings;

(f) The amendments to Articles 72, 128, 140 and 233 of the CCP made by the CPP Amendment Law have significantly expanded the procedural guarantees of detained suspects, the accused and persons whose surrender from the Republic of Lithuania is requested under the European Arrest Warrant, as well as persons arrested under the procedure prescribed by Article 140 in relation to these persons' right to contact third persons upon detention/arrest and to request that a third person be notified of their deprivation of liberty. In accordance with the amendments to Articles 72, 128, 140 and 233 of the CCP, the prosecutor (or court in the case of detention of an accused person) are required to immediately notify detention of a suspect or person sought to be surrendered from the Republic of Lithuania under the European Arrest Warrant or arrest of a person to the family member or close relative or another person specified by the detainee/arrestee. In all cases, the arrestee/detainee must be able to specify the persons to be notified of his detention/arrest. For underage arrestees/detainees, the detention/arrest must be immediately notified to their parents or other legal representatives or, where such notification would be against the minor's interests, to another appropriate adult. Moreover, in line with the CCP amendments, the detainee/arrestee must be immediately allowed to contact any of his family members, close relatives or another person of his choice on his own. Also, the prosecutor is allowed, by means of a reasoned decision, to temporarily withhold notification of the detention/arrest or to prevent contact with the person specified by the detainee/arrestee if that would compromise the success of the investigation or endanger the safety of the detainee's family members, close relatives or other persons. However, in that case, as well as where the detained/arrested minor does not have any parents or other legal

representatives or they cannot be identified, also where notifying such persons would go against the interests of the detained/arrested minor, it is required that the minor's detention/arrest be immediately notified to the State children's rights protection authority. A possibility has also been provided to file an appeal with the pretrial judge against such a decision by the prosecutor (refusing notification or preventing contact). The pretrial judge must examine the appeal within seven days of the filing and adopt a ruling. This ruling shall be final;

(g) The amendments to Articles 72, 128, 140 and 233 made by the CCP Amendment Law reinforced the guarantees of detained or arrested foreign nationals with regard to their right to keep active contacts with the representatives of their States. In line with the CCP amendments, detention/arrest of a foreign national must be immediately notified by the prosecutor (or by the court if detention is ordered in the course of judicial proceedings) to the Ministry of Foreign Affairs of the Republic of Lithuania and, if the detainee so desires, to the diplomatic mission or consular body of his State. If the detainee/arrestee has two or more nationalities, he may, where possible, choose the State whose diplomatic mission or consular body should be informed of his detention/arrest. Also, where requested by the foreign detainee/arrestee, he must be immediately provided with a possibility of contacting the representatives of his national diplomatic mission or consular body by himself. The right to contact the said bodies must be explained to the detained/arrested foreign national without delay, in the language he can understand. The provisions of Article 31 of the Law on Execution of Detention were also updated by specifying that detained foreign nationals shall be entitled to keep contacts with their national diplomatic missions and consular bodies, including the right to meet or have a telephone conversation or written communications with the officials of the diplomatic mission or consular body of their State. At the detainee's request, the consular bodies of his State are allowed to provide legal representation for the detainee, including the detainee's right to defence.

IV. Information on the implementation of the recommendations made under paragraph 26 of the Concluding Observations

Paragraph 26 of the Concluding Observations

The Committee recommends that the State party ensure that all law enforcement personnel, whether civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty – including judges, prosecutors and other officials responsible for the administration of justice – receive appropriate and regular training on the provisions of the Convention, in conformity with article 23 of the Convention.

9. Please be informed that, in the light of the recommendations made in the Concluding Observations concerning training under the provisions of the Convention, the competent authorities have taken requisite steps to organise such training for the officials of their respective authorities. For instance, the Ministry of National Defence has instructed all the instructors of the training course in international humanitarian law for members of the armed forces to include Convention-related topics into the courses and training conducted by them; the Prisons Department under the Lithuanian Ministry of Justice has indicated that the 2018 training plan would include training on the Convention that would be organised by the Training Centre of the Prisons Department under the Ministry of Justice of the Republic of Lithuania; the Police Department under the Ministry of the Interior has plans to implement officer qualification advancement measures in 2018 by organising training under the qualification advancement programme "The peculiarities of the work of operational management units", approved by Order No 5-V-803 of the Commissioner General of the Lithuanian Police of 25 September 2017 approving the qualification advancement programme "The peculiarities of the work of operational management units". The issued recommendations concerning training on the Convention will be taken into consideration when drafting the qualification advancement programme "Convoy operations" (intended to train convoy officers), organising training for the officers of local police detention facilities and drafting the qualification advancement programme "Conduct

of procedural actions in relation to a minor and tactical aspects of interrogation where a psychologist is present during procedural actions”. The primary professional development and qualification advancement at the Border Guard School of the State Border Guard Service under the Lithuanian Ministry of the Interior includes the provision of information on the implementation of the Convention. An introduction to the provisions of the Convention is also part of the Law and State Border Protection Programme at the Public Security Faculty of Mykolas Romeris University. The Office of the Prosecutor General has included training on the Convention in its 2018 training plans.

10. Additionally, we would like to inform you about the public lecture by Professor Jeremy Sarkin, “Practically preventing enforced disappearances: state duties and responsibilities”, held by Vilnius University together with the Ministry of Justice on 21 May 2018. It focused on state obligations and responsibility in combating enforced disappearance crimes and evaluated Lithuania’s legal regulation in connection with the implementation of the Convention, issued to Lithuania in the context of the recommendations. Also, insights were shared about the ways to improve that regulation for better compliance with the Convention. Importantly, the lecture of Professor Jeremy Sarkin was attended not only by Vilnius University students and professors but also by lawyers from various Lithuanian authorities, such as the Ministry of National Defence and the Lithuanian Armed Forces, the Ministry of Health, the Ministry of Justice and the Office of the Prosecutor General. Undoubtedly, the expertise and insights shared by the international law Professor Jeremy Sarkin, former Chair-Rapporteur of the United Nations Working Group on Enforced or Involuntary Disappearances, have contributed to better understanding of the significance, purpose and provisions of the Convention.

11. It must also be noted that for the purposes of organising training on the Convention, the Office of the Prosecutor General has contacted Henrikas Mickevičius, a member of the United Nations Working Group on Enforced or Involuntary Disappearances, concerning the possibility of conducting such training. It was agreed that in February 2019 Henrikas Mickevičius as well as Justinas Žilinskas, Professor at the Institute of International and European Union Law of Mykolas Romeris University, who teaches international humanitarian law, would conduct Convention training in the form of simulation at the Office of the Prosecutor General for prosecutors as well as other law enforcement officers, civilians, members of the armed forces, medical staff and civil servants potentially involved in the detention or treatment of any persons taken into custody, according to the requirements of Article 23 of the Convention. The topics of training are now being coordinated and other possible lecturers are being searched for.

12. Taking into account the function of national prevention of torture performed by the Seimas Ombudsmen as well as the goals and functions of the institution of the Seimas Ombudsmen as a national human rights institution, the Ministry of Justice of the Republic of Lithuania has asked this institution for assistance in providing public authorities, civic society, non-governmental organisations and the society at large with more information on the Convention and the international obligations set out therein as well as the importance of ensuring compliance with them. We believe that in this context, with a view to proper implementation of the Convention, especially the obligations under Article 17 thereof, the function of national torture prevention performed by the Seimas Ombudsmen by way of visiting places of custody and organising meetings with competent authorities as well as qualification raising events for relevant officers is of particular significance. It is expected that in carrying out national prevention of torture activities officers’ attention will be drawn to Lithuania’s obligations under the Convention as well.