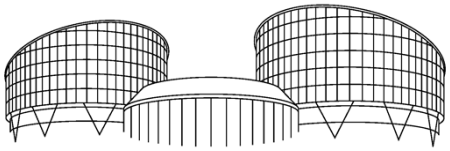

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF AL NASHIRI v. LITHUANIA

(Application no. 31908/22)

JUDGMENT

Art 1 • Jurisdiction of respondent State for alleged Convention violations of a terrorist suspect's right during the United States ("US") Central Intelligence Agency extraordinary rendition operations • Responsibility capable of being engaged
Art 35 § 2 (b) • Art 3 (substantive and procedural) • Art 5 • Art 13 (+ Art 3) • Matter already submitted to another international procedure • Complaints substantially the same as those examined in an individualised manner by the UN Working Group on Arbitrary Detention
Art 8 • Interference with the applicant's private and family life not "in accordance with the law" and without justification • Incommunicado detention and solitary confinement denying him contact with his family
Art 6 § 1 (criminal) • Art 2 (+ Art 1 P6) • Art 3 (+ Art 1 P6) • Extraordinary rendition and transfer out of Lithuania despite real and foreseeable risk of a flagrantly unfair trial before the US military commission in Guantánamo and a real and serious risk of being subjected to the death penalty
Art 46 • Execution of judgment • Individual measures • Respondent State required to seek assurances that US authorities would not impose death penalty in respect of applicant following extraordinary rendition

Prepared by the Registry. Does not bind the Court.

STRASBOURG

7 July 2026

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Al Nashiri v. Lithuania,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Arnfinn Bårdsen*, President*,
Saadet Yüksel,
Jovan Ilievski,
Lorraine Schembri Orland,
Oddný Mjöll Arnardóttir,
Gediminas Sagatys,
Stéphane Pisani*, judges*,
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 31908/22) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Saudi Arabian national of Yemeni descent, Mr Abd Al Rahim Hussein Al Nashiri ("the applicant"), on 20 June 2022;

the decision to give notice to the Lithuanian Government ("the Government") of the application;

the decision to grant priority treatment to the case under Rule 41 of the Rules of Court;

the parties' observations;

Having deliberated in private on 16 June 2026,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns allegations of torture, ill-treatment and unacknowledged, incommunicado detention of Mr Al Nashiri, one of the CIA's so-called "high value detainees" who was captured during the "war on terror" launched by President Bush in the aftermath of the 9/11 attacks and detained secretly in CIA clandestine detention facilities in various countries, allegedly including Lithuania, during the CIA's extraordinary rendition operations in Europe in 2002-2006. The applicant alleged that as from 6 October 2005 until 25 March 2006 he had been detained in a CIA secret detention facility in Lithuania. He complains under Articles 2 and 3 of the Convention in conjunction with Article 1 of Protocol No. 6, and Articles 3, 5, 6 § 1, 8 and 13 of the Convention.

THE FACTS

2. The applicant was born in 1966 and is currently detained in the Internment Facility at the US Guantánamo Bay Naval Base in Cuba. The

applicant was represented by Ms M. Taube, a lawyer practising in Romford, Essex.

3. The Government were represented by their Agent, Mr R. Dzikovič.

4. The facts of the case may be summarised as follows.

I. PRELIMINARY CONSIDERATIONS REGARDING THE ESTABLISHMENT OF THE FACTS

5. It is to be noted that in the present case involving, as several previous similar applications before the Court, complaints of secret detention, torture and ill-treatment to which the applicant was allegedly subjected during the extraordinary rendition operations by the United States authorities (see paragraphs 10 et seq. below) the Court is deprived of the possibility of obtaining any form of direct account of the events complained of from the applicant (see *Al Nashiri v. Poland*, no. 28761/11, § 397, 24 July 2014; *Husayn (Abu Zubaydah) v. Poland*, no. 7511/13, § 397, 24 July 2014; *Al Nashiri v. Romania*, no. 33234/12, §§ 16-17, 31 May 2018; *Abu Zubaydah v. Lithuania*, no. 46454/11, §§ 16-17, 31 May 2018; and *Al-Hawsawi v. Lithuania*, no. 6383/17, § 5, 16 January 2024). This has resulted from the secrecy of the CIA rendition operations and the classification regime imposed by the military commission in Guantánamo, before which the applicant is standing trial.

6. As in the above mentioned cases, the facts of the present case as adduced by the applicant were to a considerable extent a reconstruction of dates and other elements relevant to his rendition, detention and treatment in the CIA custody, based on various publicly available sources of information and expert evidence collating various pieces of data from materials documenting the CIA rendition operations, which have gradually been declassified or made available since 2009.

II. PRELIMINARY REMARKS ON EVIDENCE BEFORE THE COURT

7. Apart from documentary evidence supplied by the applicant and the Government, in order to establish the facts of the present case the Court has relied, first of all, on the facts that were judicially established – to the standard of proof beyond reasonable doubt – in *Abu Zubaydah v. Lithuania,* cited above, in particular its findings as to the existence of a CIA secret detention facility in Lithuania from 17 or 18 February 2005 to 25 March 2006 and the Lithuanian authorities' knowledge of and complicity in the CIA rendition and secret detention operations on its territory (see *Abu Zubaydah v. Lithuania*, cited above, §§ 18-19). The Court has also relied on expert and other evidence collected in *Abu Zubaydah v. Lithuania*, including the public verbatim record of the fact-finding hearing devoted to taking oral evidence from experts – Senator Marty, Mr J.G.S. and Mr Crofton Black – in that case. It has further

taken into account the extensive material relating to the CIA rendition and secret detention gathered in *Abu Zubaydah v. Lithuania, Husayn (Abu Zubaydah) v. Poland, Al Nashiri v. Poland* and *Al Nashiri v. Romania* (all cited above).

III. BACKGROUND TO THE CASE

A. Terrorist attacks of which the applicant has been suspected

1. East Africa Embassy bombings in 1998 and USS Cole bombing in 2000

8. The United States authorities considered the applicant to have been one of the most senior figures in al-Qaeda who had been involved in the 1998 East Africa U.S. Embassy bombings. He has also been considered a suspect in the bombing of the United States Navy guided-missile destroyer *USS Cole*, which took place on 12 October 2000 in Aden, Yemen. The ship was attacked by a small bomb-laden boat. The explosion opened a 40-foot hole in the warship, killing 17 American sailors and injuring 40 other personnel.

2. MV Limburg bombing in 2002

9. On 6 October 2002 a French oil tanker, *MV Limburg*, while it was in the Gulf of Aden some miles offshore, was rammed by a small explosives-laden boat which detonated. The tanker caught fire and approximately 90,000 barrels (14,000 sq.m.) of oil leaked into the Gulf of Aden. One crew member was killed and twelve others injured. The style of the attack resembled the suicide *USS Cole* bombing described above. The United States authorities have suspected the applicant of playing a role in the attack.

B. The so-called "High-Value Detainee Programme"

10. On an unspecified date following 11 September 2001 the CIA established a programme in the Counterterrorist Centre ("CTC") to detain and interrogate terrorists at sites abroad. In further documents the United States authorities referred to it as "the CTC program" but, subsequently, it was also called "the High-Value Detainee Program" ("the HVD Programme") or the Rendition Detention Interrogation Program ("the RDI Programme"). In the Council of Europe's documents it is also described as "the CIA secret detention programme" or "the extraordinary rendition programme". For the purposes of the present case, it is referred to as "the HVD Programme".

11. A detailed account of the HVD Programme can be found in the Court's judgments in *Al Nashiri v. Poland*, §§ 47-68; *Husyan (Abu Zubaydah) v. Poland*, §§ 47-69; *Abu Zubaydah v. Lithuania*, §§ 20-60; and

Al Nashiri v. Romania, §§ 22-61, all cited above). The abridged description of the programme given below is based on that account.

1. Setting up the CIA programme "to detain and interrogate terrorists at sites abroad

12. On 24 August 2009 the United States authorities released a report prepared by John Helgerson, the CIA Inspector General, in 2004 ("the 2004 Report"). The document, dated 7 May 2004 and entitled "Special Review Counterterrorism Detention and Interrogation Activities September 2001-October 2003", with appendices A-F, had previously been classified as "top secret". It was considerably redacted; overall, more than one-third of the 109-page document was blackened out.

13. The report, which covers the period from September 2001 to mid-October 2003, begins with a statement that in November 2002 the CIA Deputy Director for Operations informed the Office of Inspector General that the Agency had established a programme in the CTC "to detain and interrogate terrorists at sites abroad".

14. The background of the HVD Programme was explained in paragraphs 4-5 as follows:

> "4. [REDACTED] the Agency began to detain and interrogate directly a number of suspected terrorists. The capture and initial Agency interrogation of the first high-value detainee, Abu Zubaydah, in March 2002, presented the Agency with a significant dilemma. The Agency was under pressure to do everything possible to prevent additional terrorist attacks. Senior Agency officials believed Abu Zubaydah was withholding information that could not be obtained through then-authorized interrogation techniques. Agency officials believed that a more robust approach was necessary to elicit threat information from Abu Zubaydah and possibly from other senior Al'Qaeda high value detainees.
>
> 5. [REDACTED] The conduct of detention and interrogation activities presented new challenges for CIA. These included determining where detention and interrogation facilities could be securely located and operated, and identifying and preparing qualified personnel to manage and carry out detention and interrogation activities. With the knowledge that Al'Qaeda personnel had been trained in the use of resistance techniques, another challenge was to identify interrogation techniques that Agency personnel could lawfully use to overcome the resistance. In this context, CTC, with the assistance of the Office of Technical Service (OTS), proposed certain more coercive physical techniques to use on Abu Zubaydah. All of these considerations took place against the backdrop of pre-September 11, 2001 CIA avoidance of interrogations and repeated US policy statements condemning torture and advocating the humane treatment of political prisoners and detainees in the international community."

15. As further explained in the 2004 CIA Report, "terrorist targets" and detainees referred to therein were generally categorised as "high value" or "medium value". This distinction was based on the quality of intelligence that they were believed likely to be able to provide about current terrorist threats against the United States. "High-value detainees" (also called "HVDs") were

given the highest priority for capture, detention and interrogation. In some CIA documents they are also referred to as "high-value targets" ("HVTs").

2. Enhanced Interrogation Techniques

16. According to the 2004 CIA Report, in August 2002 the US Department of Justice had provided the CIA with a legal opinion determining that 10 specific "Enhanced Interrogation Techniques" ("EITs"), to be applied to suspected terrorists, would not violate the prohibition of torture.

17. The EITs are described in paragraph 36 of the 2004 CIA Report and are reproduced in, *inter alia*, *Al Nashiri v. Poland* (cited above, § 54).

18. Appendix F to the 2004 CIA Report (Draft OMS Guidelines on Medical and Psychological Support to Detainee Interrogations, of 4 September 2003) refers to "legally sanctioned interrogation techniques". It states, among other things, that "captured terrorists turned over to the CIA for interrogation may be subjected to a wide range of legally sanctioned techniques. ... These are designed to psychologically 'dislocate' the detainee, maximize his feeling of vulnerability and helplessness, and reduce or eliminate his will to resist ... efforts to obtain critical intelligence".

19. The techniques included, in ascending degree of intensity:

(1) Standard measures (that is, without physical or substantial psychological pressure): shaving; stripping; diapering (generally for periods not greater than 72 hours); hooding; isolation; white noise or loud music (at a decibel level that will not damage hearing); continuous light or darkness; uncomfortably cool environment; restricted diet, including reduced caloric intake (sufficient to maintain general health); shackling in upright, sitting, or horizontal position; water dousing; sleep deprivation (up to 72 hours).

(2) Enhanced measures (with physical or psychological pressure beyond the above): attention grasp; facial hold; insult (facial) slap; abdominal slap; prolonged diapering; sleep deprivation (over 72 hours); stress positions: on knees body slanted forward or backward or leaning with forehead on wall; walling; cramped confinement (confinement boxes) and waterboarding.

20. Appendix C to the 2004 CIA Report (Memorandum for John Rizzo Acting General Counsel of the Central Intelligence Agency of 1 August 2002) was prepared by Jay S. Baybee, Assistant Attorney General in connection with the application of the EITs to Abu Zubaydah, the first high-ranking al-Qaeda prisoner who was to be subjected to those interrogation methods. This document, a classified analysis of specific interrogation techniques proposed for use in the interrogation of Abu Zubaydah, was declassified in 2009. It concludes that, given that "there is no specific intent to inflict severe mental pain or suffering ..." the application "of these methods separately or a course of conduct" would not violate the prohibition of torture as defined in section 2340 of title 18 of the United States Code.

21. According to the 2009 Department Of Justice Report "Investigation into the Office of Legal Counsel's Memoranda Concerning Issues Relating to the Central Agency's Use of 'Enhanced Interrogation Techniques' on Suspected Terrorists" ("DOJ Report"), the CIA psychologists eventually proposed twelve EITs to be used in the interrogation of Mr Abu Zubaydah: attention grasp, walling, facial hold, facial or insult slap, cramped confinement, insects, wall-standing, stress positions, sleep deprivation, use of diapers, waterboarding – the name of the twelfth EIT was redacted.

22. In developing the Rendition Detention Interrogation Programme ("RDI programme"), the CIA contracted with two staff psychologists from the U.S. Air Force SERE[1] school, Doctor James Mitchell and Doctor Bruce Jessen. During their employment at the Air Force SERE school, they were responsible for monitoring the mental health of the cadre administering the course and the servicemembers going through the course. Both Mitchell and Jessen were highly familiar with the SERE techniques as well as the techniques used by foreign adversaries. The CIA employed them to implement a program of interrogation for use on high-value detainees in CIA custody. The objective of the program was to service CIA intelligence requirements. In so doing, the program officers sought to put detainees in a "compliance condition" and to force the detainees to answer questions from debriefers. In the event a detainee in the program was not providing the type, amount, or quality of information the agency desired, EITs would be employed – or escalated – in an attempt to extract that information. Dr Mitchell's and Dr Jessen's purpose for the EITs was to impart in the detainees a belief that the detainees themselves could end or even prevent their own suffering if they would comply and answer questions from the interrogator or debriefer. After the EITs phase, detainees generally had a fear of going back into the EIT phase. Dr Jessen described their program as creating a "contract" between the interrogators and detainees, whereby the interrogators made sure the detainees understood that they would not go back into EITs if they continued to cooperate and provide intelligence. The interrogators wanted the detainee to realise that he had a "pathway" whereby, if he provided even a little information, he could start to find a way out of captivity. The interrogators tried to ensure the detainees understood the contract was valid and EITs would not happen unless the detainee became non-compliant again[2].

[1] SERE stands for "Survival, Evasion, Resistance and Escape".

[2] This information has been extracted from a ruling of the Military Commissions Trial Judiciary in Guantánamo Bay (no. AE 467CCC), issued by military judge Lanny J. Acosta, Jr. on 18 August 2023 (see paragraph 69 below).

3. Expanding the use of the EITs beyond Abu Zubaydah's interrogations

23. The 2004 CIA Report states that, subsequently, the CIA Office of General Counsel ("OGC") continued to consult with the US Department of Justice in order to expand the use of EITs beyond the interrogation of Abu Zubaydah. The application of the EITs to other terrorist suspects in CIA custody began in November 2002.

4. Conditions of detention at CIA "Black Sites"

24. From the end of January 2003 to September 2006 the conditions of detention at CIA detention facilities abroad were governed by the Guidelines on Confinement Conditions for CIA Detainees ("the DCI Confinement Guidelines"), signed by the CIA Director, George Tenet, on 28 January 2003. This document, together with "the Guidelines on Interrogations Conducted Pursuant to the Presidential Memorandum of Notification of 17 September 2001" ("the DCI Interrogation Guidelines"), also signed by the CIA Director on the same date, set out the first formal interrogation and confinement guidelines for the HVD Programme. The 2014 US Senate Committee Report (see paragraph 37 below) relates that, in contrast to earlier proposals of late 2001, when the CIA expected that any detention facility would have to meet US prison standards, the guidelines set forth minimal standards and required only that the facility be sufficient to meet "basic health needs". According to the report, that meant that even a facility comparable to the "Detention Site Cobalt" in which detainees were kept shackled in complete darkness and isolation, with a bucket for human waste, and without heat during the winter months, met the standard.

25. According to the guidelines, at least the following "six standard conditions of confinement" were in use during that period:

(i) blindfolds or hooding designed to disorient the detainee and keep him from learning his location or the layout of the detention facility;

(ii) removal of hair upon arrival at the detention facility such that the head and facial hair of each detainee is shaved with an electric shaver, while the detainee is shackled to a chair;

(iii) incommunicado, solitary confinement;

(iv) continuous noise up to 79dB, played at all times, and maintained in the range of 56-58 dB in detainees' cells and 68-72 dB in the walkways;

(v) continuous light such that each cell was lit by two 17-watt T-8 fluorescent tube light bulbs, which illuminated the cell to about the same brightness as an office;

(vi) use of leg shackles in all aspects of detainee management and movement.

26. The Memorandum for John A. Rizzo, Acting General Counsel at the CIA, entitled "Application of the Detainee Treatment Act to Conditions of Confinement at Central Intelligence Agency Facilities", dated 31 August

2006, which was released on 24 August 2009 in a heavily redacted form, referred to conditions in which High-Value Detainees were held as follows:

> "... the CIA detainees are in constantly illuminated cells, substantially cut off from human contact, and under 24-hour-a-day surveillance. We also recognize that many of the detainees have been in the program for several years and thus that we cannot evaluate these conditions as if they have occurred only for a passing moment ... .
>
> Nevertheless, we recognize that the isolation experienced by the CIA detainees may impose a psychological toll. In some cases, solitary confinement may continue for years and may alter the detainee's ability to interact with others. ..."

5. The scale of the HVD Programme

27. According to the US Senate Committee Report (see paragraph 37 below), the CIA held detainees from 2002 to 2008. Early 2003 was the most active period of the programme. Of the 119 detainees identified by the Senate Intelligence Committee as held by the CIA, fifty-three were brought into custody in 2003. Of thirty-nine detainees who, as found by the Committee, were subjected to the EITs, seventeen were subjected to such methods of interrogation between January 2003 and August 2003. During that time the EITs were primarily used at the Detention Site Cobalt and the Detention Site Blue. By the end of 2004 the overwhelming majority of CIA detainees –113 of the 119 identified in the report – had already entered CIA custody. Most of the detainees remaining in custody were no longer undergoing active interrogations; rather, they were infrequently questioned and awaiting a "final disposition". The CIA took custody of only six new detainees between 2005 and January 2009: four detainees in 2005, one in 2006, and one in 2007.

6. Closure of the HVD Programme

28. On 6 September 2006 President Bush delivered a speech announcing the closure of the HVD Programme. According to information disseminated publicly by the United States authorities, no persons were held by the CIA as of October 2006 and the detainees concerned were transferred to the custody of the US military authorities in the US Naval Base in Guantánamo Bay.

29. In January 2009 President Obama signed Executive Order 13491 that prohibited the CIA from holding detainees other than on a "short-term, transitory basis" and limited interrogation techniques to those included in the Army Field Manual.

7. Military Commissions

30. On 13 November 2001 President Bush issued the Military Order of November 13, 2001 on Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism ("the 2001 Military Commission Order"). It was published in the Federal Register on 16 November 2001. On 21 March 2002 D. Rumsfeld, the US Secretary of Defense at the relevant

time, issued the Military Commission Order No. 1 (effective immediately) on Procedures for Trials by Military Commission of Certain Non-United States Citizens in the War Against Terrorism ("the 2002 Military Commission Order"). The order was promulgated on the same day.

31. On 29 June 2006 the Supreme Court ruled in *Hamdan v. Rumsfeld*, 548 U.S. 557, 635 (2006), that:

> "4. The military commission at issue lacks the power to proceed because its structure and procedures violate both the UCMJ and the four Geneva Conventions signed in 1949. Pp. 49.72.
>
> (a) The commission's procedures, set forth in Commission Order No. 1, provide, among other things, that an accused and his civilian counsel may be excluded from, and precluded from ever learning what evidence was presented during, any part of the proceeding the official who appointed the commission or the presiding officer decides to 'close'. Grounds for closure include the protection of classified information, the physical safety of participants and witnesses, the protection of intelligence and law enforcement sources, methods, or activities, and 'other national security interests.' Appointed military defense counsel must be privy to these closed sessions, but may, at the presiding officer's discretion, be forbidden to reveal to the client what took place therein. Another striking feature is that the rules governing Hamdan's commission permit the admission of *any* evidence that, in the presiding officer's opinion, would have probative value to a reasonable person. Moreover, the accused and his civilian counsel may be denied access to classified and other 'protected information', so long as the presiding officer concludes that the evidence is 'probative' and that its admission without the accused's knowledge would not result in the denial of a full and fair trial."

32. In consequence, the Military Commission Order was replaced by the Military Commissions Act of 2006 ("the 2006 MCA"), an Act of Congress, passed by the US Senate and US House of Representatives, respectively, on 28 and 29 September 2006 and signed into law by President Bush on 17 October 2006. On 28 October 2009 President Obama signed into law the Military Commissions Act of 2009 ("the 2009 MCA").

33. On 27 April 2010 the Department of Defense released new rules governing the military commission proceedings. The rules (amendments to Title 10) include some improvements of the procedure, such as the prohibition of statements obtained by torture or by cruel, inhuman, or degrading treatment except against a person accused of such treatment, but they still continue, as did the rules applicable in 2001-2009, to permit the introduction of coerced statements under certain circumstances if "use of such evidence would otherwise be consistent with the interests of justice".

34. A detailed description of the procedure before the military commission and publicly raised concerns regarding that procedure prior to the 2006 amendments can be found in *Al Nashiri v. Romania* (cited above, §§ 71-77).

8. The 2014 US Senate Committee Report

35. In March 2009 the US Senate Intelligence Committee initiated a review of the CIA's activities involved in the HVD Programme, in particular the secret detention at foreign "black sites" and the use of the EITs. That review originated in an investigation that had begun in 2007 and concerned the CIA's destruction of videotapes documenting interrogations of Mr Abu Zubaydah and the applicant at Detention Site Green located in Thailand (see also paragraphs 52-53 below). The destruction was carried out in November 2005.

36. The US Senate Committee on Intelligence, together with their staff, reviewed thousands of CIA cables describing the interrogations of Mr Abu Zubaydah, Mr Al-Hawsawi, the applicant and other CIA prisoners, and more than six million pages of CIA material, including operational cables, intelligence reports, internal memoranda and emails, briefing materials, interview transcripts, contracts and other records.

37. On 9 December 2014 the United States authorities released the Findings and Conclusions and, in a heavily redacted version, the Executive Summary of the US Senate Select Committee on Intelligence's "Study of the Central Intelligence Agency's Detention and Interrogation Program". The full Committee Study – as stated therein, "the most comprehensive review ever conducted of the CIA Detention and Interrogation Program" – which is more than 6,700 pages long, remains classified. The declassified Executive Summary ("the 2014 US Senate Committee Report") comprises 499 pages (for further details concerning the US Senate's review of the CIA's activities involved in the HVD Programme see *Abu Zubaydah v. Lithuania*, cited above, §§ 70-89).

38. The Committee made twenty findings and conclusions. They can be summarised, in so far as relevant, as follows.

39. Conclusion 2 states that "the CIA's justification for the use of its enhanced interrogation techniques rested on inaccurate claims of their effectiveness".

40. Conclusion 3 states that "[t]he interrogations of the CIA were brutal and far worse than the CIA represented to policymakers and others". It reads, in so far as relevant, as follows:

> "Beginning with the CIA's first detainee, Abu Zubaydah, and continuing with numerous others, the CIA applied its enhanced interrogation techniques with significant repetition for days or weeks at a time. Interrogation techniques such as slaps and 'wallings' (slamming detainees against a wall) were used in combination, frequently concurrent with sleep deprivation and nudity. Records do not support CIA representations that the CIA initially used an 'an open, nonthreatening approach', or that interrogations began with the 'least coercive technique possible' and escalated to more coercive techniques only as necessary.
>
> The waterboarding technique was physically harmful, inducing convulsions and vomiting. Abu Zubaydah, for example, became 'completely unresponsive, with bubbles

rising through his open, full mouth'. Internal CIA records describe the waterboarding of Khaled Shaykh Mohammad as evolving into a 'series of near drownings'.

Sleep deprivation involved keeping detainees awake for up to 180 hours, usually standing or in stress positions, at times with their hands shackled above their heads. At least five detainees experienced disturbing hallucinations during prolonged sleep deprivation and, in at least two of those cases, the CIA nonetheless continued the sleep deprivation."

41. Conclusion 4 states that "the conditions of confinement for CIA detainees were harsher than the CIA had represented to the policymakers and others" and that "conditions at CIA detention sites were poor, and were especially bleak early in the programme". As regards conditions at later stages, the following findings were made:

"Even after the conditions of confinement improved with the construction of new detention facilities, detainees were held in total isolation except when being interrogated or debriefed by CIA personnel.

Throughout the program, multiple CIA detainees who were subjected to the CIA's enhanced interrogation techniques and extended isolation exhibited psychological and behavioral issues, including hallucinations, paranoia, insomnia, and attempts at self-harm and self-mutilation.

Multiple psychologists identified the lack of human contact experienced by detainees as a cause of psychiatric problems."

42. Conclusion 8 states that "the CIA operation and management of the program complicated, and in some cases impeded, the national security missions of other Executive Branch Agencies", including the Federal Bureau of Investigation ("the FBI"), the State Department and the Office of the Director of National Intelligence ("the ODNI"). In particular, the CIA withheld or restricted information relevant to these agencies' missions and responsibilities, denied access to detainees, and provided inaccurate information on the HVD Programme to them.

43. The findings under Conclusion 8 also state that, while the United States authorities' access to information about "black sites" was restricted or blocked, the local authorities in countries hosting CIA secret detention facilities were generally informed of their existence. In that respect, it is stated:

"The CIA blocked State Department leadership from access to information crucial to foreign policy decision-making and diplomatic activities. The CIA did not inform two secretaries of state of locations of CIA detention facilities, despite the significant foreign policy implications related to the hosting of clandestine CIA detention sites and the fact that the political leaders of host countries were generally informed of their existence. Moreover, CIA officers told U.S. ambassadors not to discuss the CIA program with State Department officials, preventing the ambassadors from seeking guidance on the policy implications of establishing CIA detention facilities in the countries in which they served.

In two countries, U.S. ambassadors were informed of plans to establish a CIA detention site in the countries where they were serving after the CIA had already entered

into agreements with the countries to host the detention sites. In two other countries where negotiations on hosting new CIA detention facilities were taking place, the CIA told local government officials not to inform the U.S. ambassadors."

44. Conclusion 14 states that "CIA detainees were subjected to coercive interrogation techniques that had not been approved by the Department of Justice or had not been authorised by the CIA Headquarters". It was confirmed that prior to mid-2004 the CIA routinely subjected detainees to nudity and dietary manipulation. The CIA also used abdominal slaps and cold water dousing on several detainees during that period. None of these techniques had been approved by the Department of Justice. At least seventeen detainees were subjected to the EITs without authorisation from CIA Headquarters.

45. Conclusion 15 states that "the CIA did not conduct a comprehensive or accurate accounting of the number of individuals it detained, and held individuals who did not meet the legal standard for detention". It was established that the CIA had never conducted a comprehensive audit or developed a complete and accurate list of the persons it had detained or subjected to the EITs. The CIA statements to the Committee and later to the public that the CIA detained fewer than 100 individuals, and that less than a third of those 100 detainees were subjected to the CIA's EITs, were inaccurate. The Committee's review of CIA records determined that the CIA detained at least 119 individuals, of whom at least thirty-nine were subjected to the CIA's enhanced interrogation techniques. Of the 119 known detainees, at least twenty-six were wrongfully held.

46. Conclusion 19 states that "the CIA's Detention and Interrogation Program was inherently unsustainable and had effectively ended by 2006 due to unauthorized press disclosures, reduced cooperation from other nations, and legal and oversight concerns".

47. It was established that the CIA required secrecy and cooperation from other nations in order to operate clandestine detention facilities. According to the 2014 US Senate Committee Report, both had eroded significantly before President Bush publicly disclosed the programme on 6 September 2006. From the beginning of the programme, the CIA faced significant challenges in finding nations willing to host CIA clandestine detention sites. These challenges became increasingly difficult over time. With the exception of one country (whose name was redacted) the CIA was forced to relocate detainees out of every country in which it established a detention facility because of pressure from the host government or public revelations about the program. Moreover, lack of access to adequate medical care for detainees in countries hosting the CIA's detention facilities caused recurring problems. The refusal of one host country to admit a severely ill detainee into a local hospital due to security concerns contributed to the closing of the CIA's detention facility in that country.

48. In early 2004, the anticipation of the US Supreme Court's decision to grant certiorari in the case of *Rasul v. Bush* (where the Supreme Court held that foreign nationals detained in Guantánamo could petition federal courts for writs of habeas corpus to review the legality of their detention) prompted the CIA to move detainees out of a CIA detention facility at Guantánamo Bay. In mid-2004 the CIA temporarily suspended the use of the EITs after the CIA Inspector General recommended that the CIA seek an updated legal opinion from the Office of Legal Counsel. In late 2005 and in 2006, the Detainee Treatment Act and then the US Supreme Court decision in *Hamdan v. Rumsfeld* (548 U.S. 557,635 (2006)) (see paragraph 31 above) caused the CIA to again temporarily suspend the use of the EITs.

49. According to the report, by 2006, press disclosures, the unwillingness of other countries to host existing or new detention sites, and legal and oversight concerns had largely ended the CIA's ability to operate clandestine detention facilities. By March 2006 the program was operating in only one country. The CIA last used its EITs on 8 November 2007. The CIA did not hold any detainees after April 2008.

50. Finally, Conclusion 20 states that "the CIA's Detention and Interrogation Program damaged the United States' standing in the world, and resulted in other significant monetary and non-monetary costs". It was confirmed that, as the CIA records indicated, the HVD Programme costed well over USD 300 million in non-personnel costs. This included funding for the CIA to construct and maintain detention facilities, including two facilities costing nearly [number redacted] million that were never used, in part due to the host country's political concerns.

51. According to the 2014 US Senate Committee Report:

> "to encourage governments to clandestinely host CIA detention sites, or to increase support for existing sites, the CIA provided millions of dollars in cash payments to foreign government officials. The CIA Headquarters encouraged CIA Stations to construct 'wish lists' of proposed financial assistance to [phrase REDACTED] [entities of foreign governments] and to 'think big' in terms of that assistance".

9. Identification of locations of the colour code-named CIA detention sites in the 2014 US Senate Committee Report by experts heard by the Court in Al Nashiri v. Romania and Abu Zubaydah v. Lithuania

52. In the 2014 US Senate Committee Report all names of the countries on whose territories the CIA carried out its extraordinary rendition and secret detention operations were redacted, and all foreign detention facilities were colour code-named. It is explained that the CIA requested that the names of countries that hosted CIA detention sites, or with which the CIA negotiated hosting sites, as well as information directly or indirectly identifying those countries be redacted. The countries were accordingly listed by a single letter of the alphabet, a letter which was nevertheless blackened throughout the document. The report refers to eight specifically colour code-named CIA

detention sites located abroad: “Detention Site Green”, “Detention Site Cobalt”, “Detention Site Black”, “Detention Site Blue”, “Detention Site Gray”, “Detention Site Violet”, “Detention Site Orange” and “Detention Site Brown”.

53. The experts heard by the Court in *Abu Zubaydah v. Lithuania* and *Al Nashiri v. Romania* identified the locations of the above detention sites as follows: Detention Site Green was located in Thailand, Detention Site Blue in Poland, Detention Site Violet in Lithuania, Detention Site Black was identified as having been located in Romania and the remaining four sites were located in Afghanistan (see *Al Nashiri v. Romania,* cited above, § 159; and *Abu Zubaydah v. Lithuania,* cited above, § 166).

10. Summary of the Court’s findings as to existence of CIA secret detention sites, and the applicant’s situation in Poland and Romania

54. In *Al Nashiri v. Poland* (cited above, § 417) the Court held as follows:

> “Assessing all the above facts and evidence as a whole, the Court finds it established beyond reasonable doubt that:
>
> (1) on 5 December 2002 the applicant, together with Mr Abu Zubaydah, arrived in Szymany on board the CIA rendition aircraft N63MU;
>
> (2) from 5 December 2002 to 6 June 2003 the applicant was detained in the CIA detention facility in Poland identified as having the codename “Quartz”[3] and located in Stare Kiejkuty;
>
> (3) during his detention in Poland under the HVD Programme he was interrogated by the CIA and subjected to EITs and also to unauthorised interrogation techniques as described in the 2004 CIA Report, 2009 DOJ Report and the 2007 ICRC Report;
>
> 4) on 6 June 2003 the applicant was transferred by the CIA from Poland on the CIA rendition aircraft N379P.”

55. In *Al Nashiri v. Romania* (cited above, § 542), the Court held:

> “... [T]he Court finds it established beyond reasonable doubt that:
>
> (a) On 12 April 2004 the applicant was transferred by the CIA from Guantánamo to Romania on board N85VM.
>
> (b) From 12 April 2004 to 6 October 2005 or, at the latest, 5 November 2005, the applicant was detained in the CIA detention facility in Romania code-named “Detention Site Black” according to the 2014 US Senate Committee Report.
>
> (c) On 6 October 2005 on board N308AB or, at the latest, on 5 November 2005, on board N1HC via a double-plane switch the applicant was transferred by the CIA out of Romania to one of the two remaining CIA detention facilities, code-named Detention Site Violet and Detention Site Brown according to the 2014 US Senate Committee Report.”

[3] In the 2014 US Senate Committee Report referred to as “Detention Site Blue”.

C. The circumstances of the case

1. Restrictions on information about the applicant's secret detention and his communication with the outside world

56. The applicant submitted that during the entirety of his detention since his capture in October 2002 he had no contact with the outside world, except for the CIA interrogators and personnel, his counsel representing him before the military commission in Guantánamo, the Guantánamo Prison Camp personnel and members and personnel of the military commission. He has been prevented under the military commission's rules from speaking publicly – either directly or through his US military counsel – about his torture, ill-treatment, secret detention and rendition.

2. The applicant's capture, transfer to CIA custody and secret detention before his alleged rendition to Lithuania

57. The sequence of the applicant's secret detention and transfers from the end of October 2002 when he was captured in Dubai and then transferred to CIA custody up to 6 October 2005 (the date of his alleged rendition to Lithuania) has been established in *Al Nashiri v. Poland* (cited above, §§ 91-109 and 401-417) and in *Al Nashiri v. Romania* (cited above, §§ 98-139 and 499-542). The Court's findings, established beyond reasonable doubt, are set out at paragraphs 54 and 55 above.

3. The applicant's alleged rendition to Lithuania, his secret detention at Detention Site Violet and his rendition from Lithuania

58. The applicant stated that on 5 October 2005 he had been transferred together with Khaled Sheikh Mohammed to Lithuania in a rendition operation involving two aircrafts: N308AB and N787WH. Plane N787WH landed at Vilnius International Airport on 6 October 2005. He submitted that, subsequently, he had been detained in a secret CIA prison, codenamed "Detention Site Violet" in the 2014 US Senate Committee Report and referred to as "Project No. 2" in an inquiry conducted by the Lithuanian Parliament (see paragraphs 99-101 below; see also *Abu Zubaydah v. Lithuania,* cited above, §§ 167-178). He was held there from 6 October 2005 for over five months, until Detention Site Violet closed on 25 March 2006. He and a number of other High-Value Detainees, including Khaled Sheikh Mohammed and Abu Zubaydah, were transferred out of Lithuania on 25 March 2006 on board the rendition plane N733MA via Cairo and another "double-plane switch", involving N733MA and the CIA rendition plane registered as N740EH, which both made a connection in Cairo on the night of 26 March 2006. The applicant was subsequently detained at the CIA secret prison codenamed Detention Site Orange in the 2014 US Senate Committee Report, which was located in Afghanistan.

59. In so far as it was relied on by the parties, the relevant extract of p. 72 of the 2014 US Senate Committee Report reads as follows:

> "(~~TS~~ //[REDACTED]//~~NF)~~ Beginning in June 2003, the CIA transferred al-Nashiri to five different CIA detention facilities before he was transferred to U.S. military custody on September 5, 2006[366]. In the interim, he was diagnosed by some CIA psychologists as having "anxiety" and "major depressive" disorder,[367] while others found no symptoms of either illness.[368] He was a difficult and uncooperative detainee and engaged in repeated belligerent acts, including attempts to assault CIA detention site personnel and efforts to damage items in his cell.[369]...
>
> ---
>
> 366 HEADQUARTERS [REDACTED] (03I945Z SEP 06); [REDACTED] 1242 (050744Z SEP 06); HEADQUARTERS [REDACTED] (051613Z SEP 06)
>
> 368 [REDACTED] 1502 (021841Z AUG 04); [REDACTED] 2709 (271517Z APR 06); [REDACTED] 3910 (241852Z JAN 06); [REDACTED] 2709 (271517Z APR 06);"

60. In support of his allegations, in the present case the applicant produced, among other documentary evidence, a witness statement of Dr Sam Raphael, professor at the University of Westminster and an expert specialising in collecting and analysing records of the CIA rendition programme. His work comprises the creation of the CIA Flights Database, the CIA Prisoner Database (which includes findings in relation to where and when each of the 119 CIA prisoners named in the 2014 US Senate Committee Report was held in secret detention) and the CIA Cable Database (which includes cable series from the CIA "black sites" allowing to pinpoint geographically the originating location of cables discussing secret detention, rendition and torture of individual prisoners). He also runs the UK Economic and Social Research Council (ESRC)-funded project which works with non-governmental organisations and human rights investigators to uncover and understand human rights violations in the "War on Terror". Together with others, including Dr Crofton Black, in 2019 he authored and published the book CIA Torture Unredacted: An investigation into the CIA torture programme (hereinafter "CIA Torture Unredacted").

61. Dr Raphael's statement, dated 18 June 2021, explains the content and workings of this book as follows (with page references from "CIA Torture Unredacted"):

> "6. CIA Torture Unredacted provides, without doubt, the most detailed public account to date of the RDI programme. It moves significantly beyond the findings of past investigations. This includes moving beyond the heavily-redacted executive summary of the Senate Select Committee[4] on Intelligence's 'Committee Study of the Central Intelligence Agency's Detention and Interrogation Program' ("Committee Study"), published in December 2014.
>
> 7. CIA Torture Unredacted, and supporting material on The Rendition Project's website, sheds new light on the inner workings of the programme, and tracks in detail the operation of the CIA's black sites, the use of private aircraft to transfer prisoners

[4] Referred to in this text as "the 2014 US Senate Committee Report".

secretly between these sites, and the fate and whereabouts of those subjected to secret detention, rendition and torture.

8. These findings have been made possible through the collection and analysis of thousands of records relating to the RDI programme, including flight records, corporate invoices and billing records, declassified CIA documents, court records and prisoner testimonies. In turn, we have created several unique datasets, public versions of which are hosted on The Rendition Project website.

9. The CIA Flights Database is the world's largest and most comprehensive database of flight data in the public domain relating to aircraft associated with the RDI program. This database includes over 11,000 flights by more than 100 aircraft.

10. We have collected the flight data from numerous authoritative sources, including: Eurocontrol (an official international organisation coordinating air travel in European airspace); the U.S. Federal Aviation Administration (FAA); national civil aviation authorities of numerous states (including Lithuania); parliamentary investigations at a national level; corporate invoices and other documentation submitted in the *Richtnor Aviation v. Sportsflight Air* litigation; and corporate invoices and other documentation obtained through investigation by Reprieve, and published jointly by The Rendition Project and Reprieve.

11. By bringing together flight data from numerous authoritative sources, and by linking individual flights into 'flight circuits', it has been possible to establish an account of the movements of renditions aircraft around the world.

12. Through triangulation with information concerning the fate and whereabouts of specific CIA prisoners, we have been able to identify over 120 specific rendition operations, where named prisoners were transferred between CIA black sites.

13. The CIA Prisoner Database provides a summary of each of the 119 CIA prisoners named in the Committee Study, including our findings in relation to where and when each prisoner was captured; where and when each prisoner was held in secret detention (both before and during the period of their detention by the CIA); and what happened to each prisoner after their time in CIA detention.

14. The CIA Cable Database provides the locational metadata for many of the thousands of CIA cables referenced throughout the Committee Study and enables the construction of cable series from individual black sites. These series allow us to pinpoint the location from which many of the cables were sent, including those which discuss the secret detention, rendition and torture of individual prisoners.

15. The unprecedented account of the RDI programme published in CIA Torture Unredacted is built up through multiple triangulation of these datasets, which themselves are constructed from thousands of individual data points. A full discussion of our methodology, and our overall findings, can be found in CIA Torture Unredacted [pp. 23-63].

16. CIA Torture Unredacted provides an account of the overall evolution of the RDI programme, from its inception immediately after the attacks of 11 September 2001 until its closure in January 2009 [pp. 73-135]. This account tracks the shifting network of black sites, secret detentions and rendition operations, so as to situate the detention and torture of individual prisoners (including Mr. al-Nashiri) within a broader, programmatic context.

17. Of particular importance, although the Committee Study disguises the locations of the CIA's black sites through the use of pseudonyms, our analysis of the Committee Study and other declassified documents, combined with prisoner testimony, flight data

and cable metadata, has allowed us to prove beyond reasonable doubt the location and operational periods of each of the CIA's black sites."

62. Dr Raphael's statement, dated 18 June 2021, recapitulated the fate and whereabouts of Mr Al Nashiri as follows:

"22. Mr. al-Nashiri was captured in Dubai in mid-October 2002 and held in Emirati detention for the first month [p. 176].

23. Mr. al-Nashiri was rendered to Afghanistan on 10 November 2002, on board the CIA aircraft N85VM [Circuit 13, p. 309].

24. While in Afghanistan, Mr. al-Nashiri was detained at the CIA black site "DETENTION SITE COBALT" for five days, 10-15 November 2002, during which time he was hung from the ceiling, naked, with his feet just touching the floor [p. 176].

25. Mr. al-Nashiri was rendered from Afghanistan to Thailand on 15 November 2002, on board the CIA aircraft N379P [Circuit 14, p. 310].

26. While in Thailand, Mr. al-Nashiri was detained at the CIA black site "DETENTION SITE GREEN" for nearly three weeks, until 4 December 2002. He was held alongside another CIA prisoner, Abu Zubaydah, and both were subjected to ongoing torture, including confinement in small boxes and waterboarding [pp. 79-103].

27. On 4 December 2002, the black site in Thailand was closed and Mr. al-Nashiri was rendered to Poland, alongside Abu Zubaydah. This took place on board the CIA aircraft N63MU [Circuit 15, p. 311].

28. While in Poland, Mr. al-Nashiri was held at the CIA black site "DETENTION SITE BLUE" for just over six months. He was held at the site alongside a number of other prisoners, including Abu Zubaydah, Ramzi bin al-Shibh, Khaled Sheikh Mohammed and Abu Yasir al-Jaz'iri. Mr. al-Nashiri was subjected to sustained torture, including being hung from the ceiling for weeks on end and mock executions with a handgun and power drill [pp. 109-114].

29. On 6 June 2003, Mr. al-Nashiri was rendered to Morocco, alongside Ramzi bin al-Shibh. This took place on board the CIA aircraft N379P [Circuit 23, pp. 320-321].

30. While in Morocco, Mr. al-Nashiri was held in a locally-run facility alongside Ramzi bin al-Shibh, with the site used as a 'temporary patch' while discussions continued around the construction of a permanent CIA black site in the country [pp. 123-124].

31. On 22 September 2003, Mr. al-Nashiri was rendered from Morocco to Guantanamo Bay on board the CIA aircraft N313P [Circuit 31, pp. 328-329]. Abu Zubaydah was also on board this flight, having been detained in the CIA black site in Poland until its closure in September 2003 [p. 114].

32. Between 23 September 2003 and 12 April 2004, Mr. al-Nashiri was held alongside four other prisoners at the two CIA black sites in Guantanamo Bay: "DENTENTION SITE MAROON" and "DETENTION SITE INDIGO". Abu Zubaydah had been rendered to the sites alongside Mr. al-Nashiri in September 2003. Ibn Sheikh al-Libi and Mustafa al-Hawsawi were rendered from Afghanistan in November 2003 [Circuit 33, p. 332]. The final prisoner, Ramzi bin al-Shibh, was transferred to the sites from Morocco in December 2003 [Circuit 34, p. 333].

33. All five prisoners, including Mr. al-Nashiri, were rendered from Guantanamo Bay in April 2004, on board two flights: one on 12 April 2004 to Romania and then

Morocco, by the CIA aircraft N85VM [Circuit 42, p. 344]; the other on 13 April 2004 direct to Morocco, by the CIA aircraft N368CE [Circuit 43, p. 345].

34. Mr. al-Nashiri was rendered on board the first of these flights and transferred to the CIA black site in Romania, "DETENTION SITE BLACK". He was held at the site for almost 18 months, alongside at least nine other prisoners: Khaled Sheikh Mohammed, Wahd bin Attash and Ammar al-Baluchi (detained at the site from September 2003); Hassan Ghul and Muhammad Ibrahim (detained from January 2004); Janat Gul (from July 2004); Ramzi bin al-Shibh (from, October 2004); and Abu Faraj al-Libi and Abu Munthir al-Magrebi (from May 2005) [pp. 124-129]. Mustafa al-Hawsawi may also have been held at the site after his time at Guantanamo Bay, either from April 2004 (rendered alongside Mr. al-Nashiri) or October 2004 (rendered from Morocco alongside Ramzi bin al-Shibh).

35. CIA cables cited in the Committee Study, which our analysis has categorically confirmed originate from the CIA black site in Romania, document Mr. al-Nashiri's depression, anxiety and insomnia at the site throughout 2004 and 2005, as well his torture (including so-called "rectal feeding"). The final cable from the site relating to Mr. al-Nashiri is dated 30 September 2005.

36. Between 5-6 October 2005, Mr. al-Nashiri and Khaled Sheikh Mohammed were rendered to the CIA black in Lithuania, "DETENTION SITE VIOLET", on board two CIA aircraft, N308AB and N787WH, which met in Albania to disguise the transfer [Circuit 58, pp. 362-363]. ...

37. Crofton Black, an author of CIA Torture Unredacted, published in January 2015 a briefing and dossier which set out the documentary evidence regarding the movements of these two aircraft in October 2005, and their indisputable connection with the CIA rendition programme. This briefing, and Black's testimony to the European Court of Human Rights in the case of Abu Zubaydah v. Lithuania, were cited heavily in the Court's judgment.

38. Flight data shows that the two aircraft met on the ground in Tirana, Albania, between 22:38 and 23:35 on 5 October 2005. The first of these had just come from Bucharest, while the second flew onward to Vilnius, thus connecting the black site locations in Romania and Lithuania.

39. Eurocontrol data shows that the first aircraft, N308AB, was operated by Prime Jet. One email set out the itinerary for the aircraft, specifying the flight from Romania to Albania, where it was to 'drop all PAX'. A 'preliminary requirements' document stated that two passengers were to be picked up in Romania, and also confirmed that all passengers were to be dropped in Albania. Customs help was to be denied.

40. Eurocontrol data also shows that the second aircraft, N787WH, was operated by Victory Aviation, with Baseops International filing the flight plans, including false plans to disguise the landing in Lithuania. The true flight, from Albania to Lithuania on 6 October 2005, is confirmed by the Lithuanian Parliament investigation, which noted that it was 'unscheduled', and that customs officials 'were prevented from inspecting the aircraft.' According to one customs officer, 'civil aviation officers prevented the SBGS [State Border Guard Service] officer from approaching the aircraft.... A car drove away from the aircraft and left the territory of the airport border control point. Upon contacting the civil aviation officers, it was explained that the heads of the SBGS had been informed of the landing... The letter from the SSD [State Security Department] marked as 'CLASSIFIED'... was received by the SBGS on 7 October 2005, i.e., post factum. Data from the Lithuanian Civil Aviation Administration, and airport documents from Vilnius, also confirm the landing.

41. Billing documents for this circuit also include invoices from SportsFlight Air to Computer Sciences Corporation, and 'subcontract task order modifications' between SportsFlight Air and Computer Sciences Corporation.

42. While detained in the CIA black site in Lithuania, Mr. al-Nashiri was held alongside Khaled Sheikh Mohammed, Abu Zubaydah and Mustafa al-Hawsawi. ...

43. A second CIA aircraft, registration N724CL, also flew from Morocco to Lithuania in February 2005, stopping in Jordan en route [Circuit 54, p. 357]. However, analysis presented before the Court in Abu Zubaydah v. Lithuania by my colleague Dr Crofton Black has concluded that it is likely that all prisoners transferred on board this aircraft were removed in Jordan before its onward flight to Lithuania. This is confirmed by pilot logs relating to the circuit, which show no passengers on the leg between Jordan and Lithuania.

44. Mr. al-Nashiri was held at the CIA black site in Lithuania for over five months, from 6 October 2005 until 25 March 2006. Of particular importance, our analysis of the CIA cable number 3910, sent at 18:52 on 24 January 2006, shows categorically that it originated from the Lithuanian black site. The cable confirms conclusively Mr al-Nashiri's detention at this site and contains a report from a CIA psychologist who assessed the prisoner while detained there.

45. All prisoners held at the CIA black site in Lithuania, including Mr. al-Nashiri, Abu Zubaydah, Mustafa al-Hawsawi and Khaled Sheikh Mohammed, were rendered to Afghanistan on 25 March 2006, on board two aircraft N733MA and N740EH.

46. Mr. al-Nashiri was held at this CIA black site in Afghanistan from 26 March 2006 until 4-5 September 2006, with CIA cables documenting his presence at the facility throughout the summer [p. 178].

47. Mr. al-Nashiri was rendered from Afghanistan to DoD detention at Guantanamo Bay on 4-5 September 2006, where he remains [p. 178].

IV. CONCLUSIONS

48. Having reviewed our analysis of CIA flight records, prisoner testimony, CIA cables, declassified documents and the public findings contained within the Committee Study[5], all set out in detail in our book CIA Torture Unredacted, I conclude that:

a. The CIA facility referred to as DETENTION SITE VIOLET in the Committee Study has been established as certain to have been in Lithuania; and

b. Mr. al-Nashiri was held in secret detention at DETENTION SITE VIOLET from 6 October 2005 until 25 March 2006."

63. In the context of the present case the Government contested the findings in relation to the applicant in Lithuania (see paragraphs 127 et seq. below). In reply to the Government's submissions Dr Raphael issued another statement, dated 12 June 2024, which in so far as relevant reads as follows:

"3. In fact, my statement refers to his detention in only five facilities: (1) Morocco; (2) Guantanamo Bay; (3) Romania; (4) Lithuania; (5) Afghanistan. Although, ..., there were two facilities in operation at Guantanamo Bay, I have not suggested that he was held in both, and there is no evidence to suggest that he was held in both. Indeed, when discussing the specific period that al-Nashiri was held at Guantanamo Bay, the Senate

[5] Referred to in this text as the "2014 US Senate Committee Report".

report (pp. 140-141) refers to ‘the five CIA detainees [of whom al-Nashiri was one] then being held at a CIA detention facility [singular] at Guantanamo Bay.’

4. On consideration of all the facts at my disposal, including information disclosed in the Senate report, it is still my reasoned and certain opinion that al-Nashiri was held in two further detention facilities after his time detained in the Romanian black site.

5. Furthermore, it is still my reasoned and certain opinion that - given that all of the CIA detainees transferred to Guantanamo Bay for US military detention on 4-5 September 2006 had been held in Afghanistan immediately prior to that transfer, and given that at that stage (Mar-Sep 2006) all CIA prisoners were held in Afghanistan (first statement, para 45) al-Nashiri was held in one additional location before his transfer to Afghanistan.

6. As I have previously set out (first statement, para 35), CIA cable traffic from the Romanian black site refers to his detention at the facility up to and including at least 30 September 2005. Since the date of my first statement, the cable from this detention facility, dated 30 September 2005, has been released through FOIA litigation in the United States and passed to me. It clearly shows al-Nashiri present at the site. I exhibit this cable as SR1.

7. Al-Nashiri’s transfer from Romania to his penultimate black site would therefore need to occur on or after 30 September 2005. My analysis of CIA rendition flight data, which continues to be the most exhaustive public collection of such information in the world, has confirmed that only two flights left Romania between 30 September 2005 and the closure of the site in early November 2005. The first of these transferred detainees to the black site in Lithuania; the second transferred detainees to a black site in Afghanistan.

8. Given that al-Nashiri was held in one further location between his detention in Romania and his detention in Afghanistan, it is still my reasoned and certain opinion that he was transferred on board the first of these flights, to Lithuania, 5-6 October 2005 (first statement, para 36-41).

II. CABLE 2709

...

10. ..., I have never suggested that all cables within the Senate report footnotes come from black sites (they do not), and I have not anywhere suggested that this particular cable came from Afghanistan.

III CABLE 3910

11. ... [the Respondent Government] suggests that cable 3910 may not have originated from the black site in Lithuania. However, since the date of my first statement, the cable from this detention facility, dated 24 January 2006, has been released through FOIA litigation in the United States and passed to me. The cable refers to a psychological assessment of al-Nashiri by a "special mission psychologist" who was present with him in the black site, and clearly shows al-Nashiri present at the site, I exhibit this cable as SR2.

12. Given my findings at paragraph 8, above, it follows that this cable emanates from the Lithuanian black site.

13. This finding is confirmed by my findings in relation to a similar case in front of the European Court of Human Rights, AL-HAWSAWI v. LITHUANIA (6383/17). My statement in this case incorporated an analysis of cable 3223, also from the black site

in Lithuania and with the same structure and cable series metadata as cable 3910 (therefore confirming that both cables emanate from the same location)."

64. Mr J.G.S. and Dr Crofton Black, experts who were heard by the Court at the fact-finding hearing in *Al Nashiri v. Romania* (cited above, §§ 131-132), had testified at the time, *inter alia,* as follows. Mr J.G.S. stated:

"... [I]n respect of Mr Al Nashiri, it is stated explicitly and unredacted in the Senate Report that from June 2003 Al Nashiri was moved to five different detention facilities before his ultimate transfer to Guantánamo Bay in September 2006. This provides us with a precise timeframe, June 2003 to September 2006, and it provides us with a precise number of transfers which we then have to correlate with his interrogation schedule and the available flight data to determine where he was held. It is on that basis that we have been able to arrive at the conclusion that he was transported from Poland first to Morocco, then onwards to Guantánamo Bay, then onwards to Romania, to one further site, and with a high degree of probability, Lithuania, before being transferred back to Afghanistan as no. 5, and finally to Guantánamo Bay. There are very limited possibilities as to where the CIA could take its detainees because it always maintained a very small range of sites, and because the planes are the same, they operate upon systematic methodologies, notably dummy flight planning, switching of aircraft and all the other tactical elements described. One can narrow down that probability to a certitude, with the right rigour of investigation, and it is that which we have applied to arrive at these conclusions, which have subsequently been validated in the official record.

...

There are two known and documented junctures at which CIA detainees at the 'black site' in Romania were removed from Romania. The first of those, I illustrated with my last set of graphics, on 5 and 6 October, which took detainees from Bucharest, Romania via switching of aircraft in Albania, to Vilnius, Lithuania. The second took place on 5 November 2005, within three to four days of the *Washington Post'*s report, and at the insistence of the Romanian authorities, which took detainees via Amman, Jordan to Kabul, Afghanistan. We know that at 1 January 2006 there were only two CIA detention sites in active operation, that much is stated in the Senate Report. Those were the sites known as 'Violet' and 'Orange': the former, 'Violet', in Lithuania, the latter, 'Orange', in Afghanistan. And so Al Nashiri, in all likelihood and without any other information to refer to, was taken to one of those two destinations on one of those two flights. Based upon my earlier rationale about the five different facilities in which he was held, I would aver that it is more likely than not that he was taken from Romania to Lithuania on 5 and 6 October 2005 and was held there until onwards transfer in March 2006 to Afghanistan and subsequently on to Guantánamo Bay. That would, logically, complete the number and nature of detention experiences chronicled in the Senate Committee Report and other documents released by the United States."

Dr Black stated:

" ... [T]here are two possibilities, and I believe only two possibilities: one is that [the applicant] left [Romania] in October 2005, on 5 October 2005, and the other is that he left on the 5 November 2005. If the flight on 5 October 2005 was a dual flight, it was a kind of a two-plane switch that took prisoners from Romania into Lithuania, and the flight the following month in November 2005 was again a two-plane switch that took prisoners from Romania into Afghanistan. I think there is an indication in the data that we have, based on the Senate Report, that Mr Nashiri was taken to Lithuania, which should mean he was taken in October rather than November, but it is, I would not say

it is a hundred per cent clear, unambiguous. I would say it is an indication that seems probable. There is no doubt that the flight in November signalled the end of the Romanian site, I mean it came, I do not know, 72 hours after the existence of the site had been revealed in *The Washington Post*, the government had demanded the site shut down, the Senate Report is very clear that at that point everyone who was remaining in Romania was shipped out to Afghanistan, so at that point, after the 5 November 2005, the CIA 'black site' programme was operating only in Lithuania and in Afghanistan."

65. The book "CIA Torture Unredacted", 2019, mentioned above and referred to by the parties to the present case, contains a Chapter entitled "CIA Cable database" (p. 32), which, in so far as relevant, reads as follows:

"Our analysis of redactions in the Committee Study has enabled us to identify the location from which many of the CIA station cables were sent. Cable traffic between CIA Headquarters and individual stations form the primary evidential material in the Committee Study, with thousands of individual references throughout. Importantly, it is the cables from the stations back to Headquarters which provide the detailed accounts of prisoner transfers, detentions and torture, and identifying the location of these provides a crucial window into the programme as a whole. Cable references in the Committee Study have three parts. First, there is the locational data, which we call the 'originator ID', identifying the site from where the cable was sent. Cables from the US mainland have this identifier shown (e.g., HEADQUARTERS, WASHINGTON, ALEC), but those of all cables from field stations are redacted. Second, there is what we call the 'cable ID'. This is a unique identifier for each cable, and tends to be 4-6 figures in length. In this case, cable IDs from the US are all redacted, whereas those of cables from field stations are not. Third, cables have a date-time stamp, in the format '(ddhhmmZ MTH yy)'. 'Z' here stands for 'Zulu time' (Greenwich Mean Time, GMT). For example, a cable with date-time stamp (040952Z SEP 04) would have been sent at 09:52 GMT on 4 September 2004. Most cable references in the Committee Study have their date-time stamp unredacted, although some are redacted in part or in full.

...

Crucially, the redacted originator IDs are of different lengths, depending on the field stations from which they came. Thus, all cables from the black site referred to in the Study as DETENTION SITE GREEN have originator IDs of the same length as each other, and this length is different to the IDs of cables from DETENTION SITE BLUE. With this observation as a starting point, we have measured the length of redacted originator IDs for each of the hundreds of cables referenced in the Study. This has enabled us to build our CIA Cable Database. Here, each record relates to one reference of one cable in the Committee Study, and has a number of fields: the length of the redacted originator ID; the (unredacted) cable ID; the (mainly unredacted) date-time stamp; the location of the cable reference in the Study; and the content which the cable supports as a footnote. Once this dataset was built, we could order chronologically all cables with the same length of originator ID. When this happens, the cable IDs are also ordered sequentially, confirming the coherence of each cable series. Using this approach, we have built a number of cable series, and connected these to particular locations (through triangulation with other data concerning the location of where particular events took place)."

66. In so far as relevant, according to the CIA Cable database[6], six cables have been considered as falling in the Violet Series, cables 2166, 3223, 3910, 4118, 31147 and 31148.

67. The book "CIA Torture Unredacted" also contains a Chapter entitled "Cable Analysis and Al-Nashiri's locations" (p. 34), which reads as follows:

> "The following specific cables are the first and last in each series which document al-Nashiri's presence at particular black sites, thus confirming the dates and locations during his period of secret CIA detention. Possible values for the redacted dates in the first two cables can be suggested according to their place in the relevant cable series, as well as through triangulation with flight data and other documents (see below).
>
> Afghanistan 29768 ([redacted] NOV 02)
>
> DETENTION SITE GREEN 11293 ([redacted] NOV 02)
>
> DETENTION SITE GREEN 11357 (021242Z DEC 02)
>
> DETENTION SITE BLUE 10030 (111541Z DEC 02)
>
> DETENTION SITE BLUE 11701 (191640Z MAY 03)
>
> Morocco 1756 (190800Z SEP 03)
>
> Guantánamo 1091 (031835Z NOV 03)
>
> Guantánamo 1630 (271440Z MAR 04)
>
> DETENTION SITE BLACK 1202 (231644Z MAR 04)
>
> DETENTION SITE BLACK 3051 (301235Z SEP 05)
>
> DETENTION SITE VIOLET 3910 (241852Z JAN 06)
>
> DETENTION SITE BROWN 1029 (291750Z JUN 06)
>
> DETENTION SITE BROWN 1242 (050744Z SEP 06)
>
> This analysis is powerful, especially when other findings confirm the locations of the black sites (see below). This allows us to independently confirm that al-Nashiri was held at black sites in Afghanistan, Thailand, Poland, Morocco, Guantánamo Bay, Romania, Lithuania and Afghanistan again, as well as identify the dates on which he was in each country."

68. A further Chapter set out at its page 35 and entitled "Triangulation", reads as follows:

> "Our account of the torture programme has been built up through multiple triangulation of a range of sources. For example, analysis of the redactions in the Committee Study can often reveal the date of an individual's transfer to CIA custody, while the CIA Cable Database can reveal the location to which he was first brought. This can be matched with flight data, which might confirm a flight into the black site location by a known CIA rendition aircraft on the date in question. Billing documentation can confirm that the flight was undertaken pursuant to the overall contract with the CIA, and provide confirmation of where the prisoner was before transfer to CIA custody. With the entry date for that prisoner confirmed, the range of

[6] Available in excel format at https://www.therenditionproject.org.uk/unredacted/the-data.html (last accessed June 2026).

possible exit dates is narrowed (as are the entry date ranges for other prisoners, given the chronological relationship between individuals' entry into the programme). This can then often be matched with witness testimony by the prisoner, or information in declassified documents, which independently confirms a particular exit date. Again, flight data on that date may include a flight by a known CIA rendition aircraft, leaving from a known black site location, suggesting that this was the individual's final detention location while in CIA custody."

4. The ruling of the military commissions, the applicant's transfer and conditions of his detention

69. The applicant produced a ruling of the Military Commissions Trial Judiciary in Guantánamo Bay (no. AE 467CCC), issued by military judge Lanny J. Acosta, Jr. on 18 August 2023. The ruling concerned the applicant's US defence counsel's motion to suppress custodial statements made by the applicant to US government officials from January to March 2007 (see also paragraphs 89-90 below). The ruling gives a detailed description (entitled "The Accused's 'Sojourn through Captivity'") of the applicant's treatment in CIA custody at each black site as from his capture in mid-October 2002 to his rendition to Guantánamo on 5 September 2006. In its part relating to the applicant's transfer from Detention Site Black in Romania to Detention Site Violet, it reads as follows:

"jj. ...In June 2005, the Chief of Base at DETENTION SITE BLACK suspended debriefings of the [applicant] because it was rare for the [applicant] to recognize any photographs being shown to him and the repeat debriefings often caused outbursts. In July 2005, the CIA was concerned that the [applicant] was depressed, uncooperative, and on the "verge of a breakdown.

kk. In late 2005 the Accused was then rendered to DETENTION SITE VIOLET (Location 8), which also included solitary confinement and bright lights. There were no EITs, as Mitchell and Jessen concluded physical pressures were no longer necessary because the contract could be maintained with emotional and psychological coercion."

70. The ruling further states that in mid-2006 the applicant was rendered to Detention Site Orange (located in Afghanistan), which was an open compound, but detainees were still held in solitary confinement. They had access to a library and food choices.

71. In its ruling the military commission found that between 2002 and 2006 in the HVD Programme the applicant had been subjected to physical coercion and abuse amounting to torture as well as living conditions which constituted cruel, inhuman and degrading treatment.

5. Detention Site Violet in the 2014 US Senate Committee Report

72. The 2014 US Senate Committee Report refers to "Detention Site Violet" in several sections concerning various events (see also *Abu Zubaydah v. Lithuania,* cited above, §§ 147-149). In the chapter entitled "The CIA establishes DETENTION SITE BLACK in COUNTRY [REDACTED] and

DETENTION SITE VIOLET in Country [REDACTED]" the section referring to Detention Site Violet reads as follows:

> "[REDACTED] In a separate [from country hosting Detention Site Black], Country [name blackened], the CIA obtained the approval of the [REDACTED] and the political leadership to establish a detention facility before informing the U.S. ambassador. As the CIA chief of Station stated in his request to CIA Headquarters to brief the ambassador, Country [REDACTED]'s [REDACTED] and the [REDACTED] probably would ask the ambassador about the CIA detention facility. After [REDACTED] delayed briefing the [REDACTED] for [number blackened] months, to the consternation of the CIA Station, which wanted political approval prior to the arrival of CIA detainees. The [REDACTED] Country [REDACTED] official outside of the [REDACTED] aware of the facility, was described as 'shocked', but nonetheless approved.
>
> [REDACTED] By mid-2003 the CIA had concluded that its completed, but still unused 'holding cell' in Country [REDACTED] was insufficient, given the growing number of CIA detainees in the program and the CIA's interest in interrogating multiple detainees at the same detention site. The CIA thus sought to build a new, expanded detention facility in the country. The CIA also offered $ [one digit number blackened] million to the [REDACTED] to 'show appreciation' for the [REDACTED] support for the program. According to a CIA cable however [long passage blackened]. While the plan to construct the expanded facility was approved by the [REDACTED] of Country [REDACTED], the CIA and [passage redacted] developed complex mechanisms to [long passage REDACTED] in order to provide the $ [one digit number blackened] million to the [REDACTED].
>
> [REDACTED] in Country [REDACTED] complicated the arrangements. [long passage REDACTED] when the Country [REDACTED] requested an update on planning for the CIA detention site, he was told [REDACTED] – inaccurately – that the planning had been discontinued. In [date REDACTED], when the facility received its first detainees, [REDACTED] informed the CIA [REDACTED] that the [REDACTED] of Country [REDACTED] 'probably has an incomplete notion [regarding the facility's] actual function, i.e., he probably believes that it is some sort of [REDACTED] center."

73. In the chapter entitled "The Pace of CIA Operations Slows; Chief of Base Concerned About 'Inexperienced, Marginal, Underperforming' CIA Personnel; Inspector General Describes Lack of Debriefers As 'Ongoing Problem'", the section referring to Detention Site Violet reads as follows:

> "[REDACTED] In 2004, CIA detainees were being held in three countries: at DETENTION SITE BLACK in Country [REDACTED], at the [redacted] facility [REDACTED] in Country [REDACTED], as well as at detention facilities in Country [REDACTED]. DETENTION SITE VIOLET in Country [REDACTED] opened in early 2005."

74. In the chapter entitled "Press Stories and the CIA's Inability to Provide Emergency Medical Care to Detainees Result in the Closing of CIA Detention Facilities in Countries [REDACTED] and [REDACTED]", the section referring to the closure of Detention Site Black and events at the Detention Site Violet reads as follows:

> "In October 2005, the CIA learned that the *Washington Post* reporter Dana Priest had information about the CIA's Detention and Interrogation Program, [REDACTED]. The

CIA then conducted a series of negotiations with *The Washington Post* in which it sought to prevent the newspaper from publishing information on the CIA's Detention and Interrogation Program.

...

After publication of the *Washington Post* article, [REDACTED] Country [REDACTED] demanded the closure of DETENTION SITE BLACK within [REDACTED two-digit number] hours. The CIA transferred the [REDACTED]| remaining CIA detainees out of the facility shortly thereafter.

...

[long passage REDACTED] In [REDACTED] Country [REDACTED] officers refused to admit CIA detainee Mustafa Ahmad al-Hawsawi to a local hospital despite earlier discussions with country representatives about how a detainee's medical emergency would be handled. While the CIA understood the [REDACTED] officers' reluctance to place a CIA detainee in a local hospital given media reports, CIA Headquarters also questioned the 'willingness of [REDACTED] to participate as originally agreed/planned with regard to provision of emergency medical care'. After failing to gain assistance from the Department of Defense, the CIA was forced to seek assistance from three third-party countries in providing medical care to al-Hawsawi and four other CIA detainees with acute ailments. Ultimately, the CIA paid the [REDACTED] more than $ [two-digit number redacted] million for the treatment of [name REDACTED] and [name REDACTED], and made arrangements for [name REDACTED] and [name REDACTED] be treated in [REDACTED]. The medical issues resulted in the closing of DETENTION SITE VIOLET in Country [REDACTED] in [five characters for the month REDACTED] 2006. The CIA then transferred its remaining detainees to DETENTION SITE BROWN. At that point, all CIA detainees were located in Country [REDACTED].

...

The lack of emergency medical care for detainees, the issue that had forced the closing of DETENTION SITE VIOLET in Country [REDACTED] was raised repeatedly in the context of the construction of the CIA detention facility in Country [REDACTED]. On March [REDACTED two-digit number], 2006 the CIA Headquarters requested that the CIA Station in Country [REDACTED] ask Country [REDACTED] to arrange discreet access to a nearest hospital and medical staff."

6. The applicant's further transfers during CIA custody (until 5 September 2006)

75. Dr Raphael, in his witness statement, said that from 26 March 2006 to 4-5 September 2006 the applicant had been held in Afghanistan at Detention Site Brown and had subsequently been rendered to Guantánamo. According to the military commission's ruling of 18 August 2023, in mid-2006 the applicant was rendered to Detention Site Orange (located in Afghanistan) (see paragraph 70 above).

7. The applicant's detention at the US Guantánamo Bay facility and his trial before the military commission from 6 September 2006 to present

76. On 6 September 2006 President Bush publicly acknowledged that fourteen high-value detainees, including the applicant, had been transferred from the HVD Programme run by the CIA to the custody of the Department of Defense in the Guantánamo Bay Internment Facility (see also paragraph 28 above).

(a) Hearing before the Combatant Status Review Tribunal

77. On 14 March 2007 the applicant was heard by the Combatant Status Review Tribunal, which purported to review all the information related to the question whether he met the criteria to be designated as an "enemy combatant" (i.e. an individual who was part of or supporting Taliban or al-Qaeda forces, or associated forces that are engaged in hostilities against the United States or its coalition partners, including one who has committed a belligerent act or has directly supported hostilities in aid of enemy armed forces). The hearing was closed to the public. The applicant was not afforded legal counsel at this hearing. A "personal representative" was appointed for him, but this person did not act as counsel and the applicant's statements to this representative were not privileged. He did not have access to any classified evidence that was introduced against him. Nor did he have the right to confront any of the accusations that were introduced at this hearing.

78. According to a partially redacted transcript of that hearing, the applicant stated that he "[had been] tortured into confession and once he [had] made a confession his captors [had been] happy and they [had] stopped torturing him". He also stated that he had made up stories during the torture in order to get it to stop.

(b) Trial before the military commission

79. On 30 June 2008 the US Government brought charges against the applicant for trial before a military commission, including those relating to the bombing of the *USS Cole* on 12 October 2000.

80. On 19 December 2008 the Convening Authority authorised the Government to seek the death penalty before the military commission.

81. The applicant's arraignment – before a military commission – was set for 9 February 2009.

82. On 22 January 2009 President Obama issued an Executive Order requiring that all commission proceedings be halted pending the Administration's review of all detentions at Guantánamo Bay.

83. On 5 February 2009 the US Government officially withdrew the charges from the military commission.

84. In March 2011 President Obama announced that he would be lifting a 2-year freeze on new military trials for detainees at the US Naval Base in Guantánamo Bay.

85. On 20 April 2011 United States military commission prosecutors brought capital charges against the applicant relating to his alleged role in the attack on the *USS Cole* in 2000 and the attack on the French civilian oil tanker *MV Limburg* in the Gulf of Aden in 2002 (see paragraphs 8-9 above). The charges against him included terrorism, attacking civilians, attacking civilian objects, intentionally causing serious bodily injury, hazarding a vessel, using treachery or perfidy, murder in violation of the laSw of war, attempted murder in violation of the law of war, conspiracy to commit terrorism and murder in violation of the law of war, destruction of property in violation of the law of war and attempted destruction of property in violation of the law of war.

86. The military commission prosecutors announced that the capital charges against the applicant would be forwarded for independent review to Bruce MacDonald, the "convening authority" for the military commissions, for a decision whether to reject the charges or to refer some, all or none of them for trial before the military commission.

87. On 28 September 2011 the capital charges against the applicant were approved.

88. The military commission hearing in the applicant's (pre-trial) case began on 17 January 2012.

89. On 17 February 2022 the applicant's defence counsel made a motion to the military commission to suppress custodial statements made by the applicant in January, February and March 2007. The US Government opposed the motion. The commission had evidentiary hearings from July 2022 through June 2023 and heard oral arguments following the presentation of evidence on 30 June 2023 in Guantánamo. The United States Government conceded that the applicant had been tortured by the CIA.

90. On 18 August 2023 the military judge, Mr Lanny J. Acosta, Jr. gave a ruling (see also paragraph 69 above) granting the motion in respect of January-February 2007 interviews by the FBI agents and rejecting it in respect of the applicant's statements before the Combatant Status Review Tribunal in March 2007 (see also paragraphs 77-78 above, and paragraphs 112 et seq. below).

91. According to publicly available press reports, the applicant's trial which was scheduled to take place in 2025, has been postponed to June 2026[7].

[7] See for example, U.S. Department of War (via Public) / Military Commissions Media Invitation Announced for United States v. Abd al-Rahim al-Nashiri Trial
(last accessed June 2026).

8. Psychological and physical effects of the HVD Programme on the applicant

92. Upon the applicant's transfer to Guantánamo, CIA officials diagnosed him with anxiety and major depressive disorder.

93. In *Al Nashiri v. Romania* (cited above, § 157) the applicant's representative produced a psychological evaluation of the applicant by US government psychiatrists, which had been conducted at the request of the US government. It stated that Mr Al Nashiri suffered from Post-Traumatic Stress Syndrome.

94. In the 2014 US Senate Committee Report, in the chapter "CIA Detainees Exhibit Psychological and Behavioral Issues", it is stated that psychological and behavioural problems experienced by CIA detainees, who had been held in austere conditions and in solitary confinement, had also posed "management challenges" for the CIA.

The section referring to the applicant reads as follows:

> "... Abd al-Rahim al-Nashiri's unpredictable and disruptive behavior in detention made him one of the most difficult detainees for the CIA to manage. Al-Nashiri engaged in repeated belligerent acts, including throwing his food tray, attempting to assault detention site personnel, and trying to damage items in his cell. Over a period of years, al-Nashiri accused the CIA staff of drugging or poisoning his food and complained of bodily pain and insomnia. As noted, at one point, al-Nashiri launched a short-lived hunger strike, and the CIA responded by force feeding him rectally.
>
> An October 2004 psychological assessment of al-Nashiri was used by the CIA to advance its discussions with National Security Council officials on establishing an 'endgame' for the program.
>
> In July 2005, CIA Headquarters expressed concern regarding al-Nashiri's 'continued state of depression and uncooperative attitude'. Days later a CIA psychologist assessed that al-Nashiri was on the 'verge of a breakdown'."

95. In March 2012 Dr Sondra S. Crosby, an expert in internal medicine and the treatment of victims of torture, was appointed by the U.S. Defense Department to conduct an evaluation of the applicant. After meeting with him for approximately 30 hours, she submitted her declaration in October 2015, stating, among other things, that Mr Al Nashiri suffered from complex posttraumatic stress disorder as a result of extreme physical, psychological, and sexual torture inflicted upon him by the CIA. She added that, in her opinion, the CIA had also succeeded in inducing "learned helplessness" and that he was most likely irreversibly damaged by torture that had been unusually cruel and designed to break him. In her view, the applicant presented as one of the most severely traumatised individuals she had ever seen.

9. Parliamentary inquiry in Lithuania

96. On 9 September 2009, in connection with various media reports and publicly expressed concerns regarding the alleged existence of a CIA secret

detention facility in Lithuania, the Seimas Committee on National Security and Defence ("the CNSD") and the Seimas Committee on Foreign Affairs held a joint meeting at which they heard representatives of State institutions in relation to the media reports concerning the transportation and detention of CIA prisoners in the Republic of Lithuania. The committees did not receive any data confirming the existence of a CIA prison in Lithuania. Written replies submitted to them by State institutions denied that such a prison had ever existed.

97. On 20 October 2009, during his visit to Lithuania, the Commissioner for Human Rights of the Council of Europe, Mr Thomas Hammarberg, urged the authorities to carry out a thorough investigation concerning the suspicions that a secret CIA prison had operated in the country.

98. On 20 October 2009, at a press conference, the President of the Republic, Ms Dalia Grybauskaitė, in reply to questions regarding the alleged existence of a CIA prison in Lithuania, said that she had "indirect suspicions" that it could have been in Lithuania.

10. The Seimas investigation and findings

99. On 5 November 2009 the Seimas adopted Resolution No. XI-459, assigning the CNSD to conduct a parliamentary investigation into the allegations of transportation and confinement of individuals detained by the CIA on Lithuanian territory.

The following questions were posed to the CNSD:

(1) whether CIA detainees were subject to transportation and confinement on the territory of the Republic of Lithuania;

(2) whether secret CIA detention centres had operated on the territory of the Republic of Lithuania;

(3) whether State institutions of the Republic of Lithuania (politicians, officers, civil servants) considered issues relating to activities of secret CIA detention centres or transportation and confinement of detainees in the Republic of Lithuania.

100. The findings of the inquiry are included in the Annex to the Seimas' Resolution No. XI-659 of 19 January 2010 – "Findings of the parliamentary investigation by the Seimas Committee on National Security and Defence concerning the alleged transportation and confinement of persons detained by the Central Intelligence Agency of the United States of America on the territory of the Republic of Lithuania" ("CNSD Findings"). The relevant passages from that document are extensively cited in *Abu Zubaydah v. Lithuania* and can be found in paragraph 174 of that judgment.

101. The principal findings of the CNSD can be summarised as follows:

> "In 2002-2005, the aircraft which official investigations link to the transportation of CIA detainees crossed the airspace of the Republic of Lithuania on repeated occasions. The data collected by the Committee indicate that CIA-related aircraft did land in Lithuania within the mentioned period of time.

The Committee failed to establish whether CIA detainees were transported through the territory of the Republic of Lithuania or were brought into or out of the territory of the Republic of Lithuania; however, conditions for such transportation did exist.

...

The Committee established that the SSD had received a request from the partners to equip facilities in Lithuania suitable for holding detainees.

While implementing Project No. 1 in 2002, conditions were created for holding detainees in Lithuania; however, according to the data available to the Committee, the premises were not used for that purpose.

The persons who gave testimony to the Committee deny any preconditions for and possibilities of holding and interrogating detainees at the facilities of Project No. 2; however, the layout of the building, its enclosed nature and protection of the perimeter as well as fragmented presence of the SSD staff in the premises allowed for the performance of actions by officers of the partners without the control of the SSD and use of the infrastructure at their discretion.

...

According to the country's top officials (Presidents of the Republic, Prime Ministers, and Speakers of the Seimas), the members of the CNSD of the Seimas were informed about the international cooperation between the SSD and the CIA in a general fashion, without discussing specific operations or their outcomes. The mention of wide-scale direct cooperation between the SSD and CIA was made only once, at a sitting of the State Defence Council (19 September 2001) when considering the issue of international terrorism and anti-terrorist actions and prevention, crisis management and the legal bases for all these. Transportation and detention of detainees were not discussed at the sitting of the State Defence Council of Lithuania. The CNSD of the Seimas was not informed of the nature of the cooperation taking place.

On the basis of the information received, the Committee established that when carrying out the SSD partnership cooperation Project No. 1 and Project No. 2, the then heads of the SSD did not inform any of the country's top officials of the purposes and content of the said Projects."

11. Criminal investigation in Lithuania

102. On 22 January 2010 the pre-trial investigation no. 01-2-00016-10 was instituted under Article 228 § 1 of the Criminal Code into abuse of office taking into account the findings of the CNSD regarding alleged transportation and detention of persons by the Central Intelligence Agency of the United States of America in the territory of the Republic of Lithuania (concerning Mr Zyan Al-Abidin Muhammad Husayn). The pre-trial investigation was terminated on 14 January 2011 on the ground that no crime was committed but was reopened on 22 January 2015 having regard to the release of the 2014 US Senate Committee Report. The investigation was joined to investigation no. 01-2-00015-14 regarding offences of unlawful transportation of persons across the State border and abuse of office by State officials which was initiated on the ground of information submitted by the non-governmental organisations REDRESS and Human Rights Monitoring Institute concerning another CIA high value detainee, Mr Al-Hawsawi (see also *Al-Hawsawi*,

cited above, § 92). That investigation had been instituted on 13 February 2014 and, as stated in the decision, concerned the offence under Article 100 of the Criminal Code[8] and "the treatment of human beings prohibited by international law in the framework of the rendition and detention programme of persons detained by the CIA on the territory of the Republic of Lithuania".

103. On 30 November 2020 the applicant's Lithuanian representative asked the Prosecutor General of the Republic of Lithuania to open an investigation into the involvement of Lithuanian officials and government bodies in the applicant's extraordinary rendition, secret detention, torture and ill-treatment in Lithuania. The prosecution authorities were requested to clarify the circumstances and conditions in which Mr Al Nashiri had been brought into Lithuania, treated in Lithuania and thereafter removed from Lithuania so as to enable the identification and, where appropriate, the punishment of those responsible. The applicant's representative also asked them to grant the applicant victim status and allow his representatives to participate in the proceedings.

104. On 10 December 2020 the Prosecutor General's Office – Organised Crime and Corruption Investigation Division – issued a decision refusing to recognise the applicant as victim in the framework of pre-trial investigation no. 01-2-00015-14.

105. On 17 September 2021, following the applicant's representative appeal, this decision was upheld by the Chief Prosecutor at the Prosecutor General's Office. A further appeal by the applicant's representative was dismissed by the Vilnius District Court on 29 November 2021. This decision was upheld on appeal by the Vilnius Regional Court on 30 December 2021.

12. Proceedings before the Human Rights Council Working Group on Arbitrary Detention

106. In its *Opinion No. 29/2006, Mr Ibn al-Shaykh al-Libi and 25 other persons v. United States of America,* UN Doc. A/HRC/4/40/Add.1 at 103 (2006), the UN Working Group on Arbitrary Detention ("WGAD") found that the detention of the persons concerned, which included the applicant in the present case, held in facilities run by the United States secret services or

[8] Article 100 of the Criminal Code reads: "*A person who intentionally, by carrying out or supporting the policy of the State or an organisation, attacks civilians on a large scale or in a systematic way and commits their killing or causes serious impairment to their health; inflicts on them such conditions of life as to bring about their death; engages in trafficking in human beings; commits deportation of the population; tortures, rapes, involves another in sexual slavery, forces someone to engage in prostitution, forcibly inseminates or sterilises a person; persecutes any group or community of persons for political, racial, national, ethnic, cultural, religious, sexual or other reasons prohibited under international law; detains, arrests or otherwise deprives a person of liberty, where such a deprivation of liberty is not recognised, or fails to report the fate or whereabouts of a person; or carries out the policy of apartheid, shall be punished by imprisonment for a term of five to twenty years or by life imprisonment.*"

transferred, often by secretly run flights, to detention centres in countries with which the United States authorities cooperated in their fight against international terrorism, fell outside all national and international legal regimes pertaining to the safeguards against arbitrary detention. In addition, it found that the secrecy surrounding the detention and inter-State transfer of suspected terrorists could expose the persons affected to torture, forced disappearance and extrajudicial killing (see *Al Nashiri v. Romania*, cited above, § 215).

107. While the initial petition against the United States (see previous paragraph) focused on the applicant's detention in Central Intelligence Agency black sites, a further submission was made sometime after wherein the applicant complained that i) there was no legal basis for his indefinite detention in international law or the domestic law of the United States, which made it arbitrary ; ii) his right to fair trial and due process had been repeatedly violated and he had suffered the most egregious violations of the rights to liberty and security of the person (Article 9 ICCPR) and to a fair trial (Article 14 ICCPR) of such a gravity as to render his detention arbitrary; and iii) he was being held in indefinite detention on a discriminatory basis. The latter complaints led to a further opinion adopted by the WGAD at its 95th session, 14-18 November 2022: *Opinion No. 72/2022 concerning the applicant in the present case, Abd al-Rahim Hussein al-Nashiri (Afghanistan, Lithuania, Morocco, Poland, Romania, Thailand, United Arab Emirates and United States of America)* UN Doc. A/HRC/WGAD/2022/72. In respect of Lithuania, the WGAD considered that the relevant complaints concerning the potentially arbitrary detention fell within the scope of Category I (when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty) and III (when the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character) to the extent that it concerned torture and cruel, inhuman or degrading treatment.

108. In its most relevant parts, it held as follows in respect of Category I:

> "Lithuania
>
> 69. The source submits that on 5 October 2002 [*recte* 2005], Mr. al-Nashiri was transferred to Lithuania in a rendition operation and was held at a secret location for over five months, until March 2006. In its late reply, while Lithuania refers to the decision of the European Court of Human Rights in the case of *Abu Zubaydah v. Lithuania* (application No. 46454/11), which acknowledges the participation of Lithuania in the implementation of the Central Intelligence Agency high-value detainee programme in 2005–2006, it submits that there is no objective data demonstrating that Mr. al-Nashiri was detained in Lithuania through that programme. The Working Group concludes that it is sufficiently demonstrated that Lithuanian authorities were aware of the arbitrariness of his detention, noting the lack of any demonstrated lawful basis for it, particularly in the light of the involvement of the Central Intelligence Agency,

including Mr. al-Nashiri's reported status as a high-value detainee. Thus, Lithuania is responsible for complicity in the extraordinary rendition programme and for violating Mr. al-Nashiri's rights while he was on its territory and when he was transferred from its territory as it was aware of the foreseeable risk of further violations. Because the involvement of Lithuania in Mr. al-Nashiri's mistreatment concerned the lack of any demonstrated lawful basis for his deprivation of liberty but did not concern the subsequent proceedings in the United States and Guantanamo Bay (and deficiencies therein), the Working Group considers that it participated in the violation of article 9 of the Covenant and thereby his arbitrary detention under category I.

...

71. The Working Group recalls that the principle of joint responsibility applies to States that aid or assist other States in the commission of an internationally wrongful act, as elaborated, inter alia, in article 16 of the articles on responsibility of States for internationally wrongful acts. In the light of its findings above, the Working Group is satisfied that the Governments of Afghanistan, Lithuania, Morocco, Poland, Romania, Thailand, the United Arab Emirates and United States played a role in the extraordinary rendition programme, whether through directly detaining persons subjected to it or through knowingly assisting the implementation of the programme through transport access and the provision of locations for unregistered detention sites. These States are all jointly responsible for the arrest, rendition and arbitrary detention of Mr. al-Nashiri, which amount to violations of article 9 of the Covenant and render his detention arbitrary under category I.

72. The Working Group recalls that the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism recommended the establishment–or, where applicable, the reopening–by the Governments of Lithuania, Morocco, Poland, Romania and Thailand of effective independent judicial or quasi-judicial inquiries into credible allegations that secret Central Intelligence Agency "black sites" were established on their territories."

109. In its opinion, the WGAD, further held as follows in relation to the arbitrary detention under category III:

"73. Under category III, the first key issue is whether the governmental authorities played a role in the torture or cruel, inhuman or degrading treatment that the source alleges Mr. al-Nashiri suffered or had substantial grounds to believe that the extraordinary rendition programme that they participated in involved torture or cruel, inhuman or degrading treatment.

74. Individuals should not be expelled to another country when there are substantial grounds for believing that their lives would be at risk or that they would be in danger of being subjected to torture or cruel, inhuman or degrading treatment. This is sometimes considered under the principle of non-refoulement. Torture itself is a peremptory norm of international law, article 5 of the Universal Declaration of Human Rights, article 7 of the Covenant and articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The prohibition of torture, which is non-derogable, including during the fight against terrorism because of its status as a jus cogens norm, encompasses the obligation to investigate alleged violations promptly and bring perpetrators to justice and the prohibition of the use of evidence obtained under torture in legal proceedings.

75. The Working Group notes that Mr. al-Nashiri was transferred from the United States to the custody of (or under the control of or with the assistance of) Afghanistan, Lithuania, Morocco, Poland, Romania, Thailand and the United Arab Emirates as part

of the extraordinary rendition programme. Given that the whole extraordinary rendition programme system was established outside of the usual legal controls, and given the information set out above regarding the role of those States in carrying out mistreatment on behalf of the United States or participating in the programme with knowledge of its nature, the Working Group considers that, along with the United States, Afghanistan, Lithuania, Morocco, Poland, Romania, Thailand and the United Arab Emirates had, at minimum, substantial grounds to believe that Mr. al-Nashiri would be subjected to torture or cruel, inhuman or degrading treatment as a result of his inclusion in the extraordinary rendition programme. The Working Group recalls the conclusion of the European Court of Human Rights that the rationale behind the programme was specifically to remove those persons from any legal protection against torture and enforced disappearance and to strip them of any safeguards afforded by both the United States Constitution and international law against arbitrary detention. The whole scheme had to operate outside the jurisdiction of the United States courts and in conditions securing its absolute secrecy, which required setting up, in cooperation with the host countries, overseas detention facilities.

76. The Working Group notes with grave concern the allegations regarding the use of enhanced interrogation techniques by the Central Intelligence Agency on Mr. al-Nashiri. Considering the source's detailed submissions, and in the absence of a governmental response, the Working Group finds credible the source's allegations of extreme physical and psychological torture against Mr. al-Nashiri, in violation of the absolute prohibition of torture as a peremptory norm of international law, article 5 of the Universal Declaration of Human Rights, article 7 of the Covenant and articles 2 and 16 of the Convention against Torture. It is also cognizant of the determination of the European Court of Human Rights that he was tortured and ill-treated. The Working Group further notes that the denial of medical care can constitute a form of torture. The Working Group calls upon the Governments of Afghanistan, Lithuania, Morocco, Poland, Romania, Thailand, the United Arab Emirates and the United States to investigate the alleged torture and mistreatment of Mr. al-Nashiri, in accordance with their obligations under articles 4, 12 and 13 of the Convention against Torture, and to prosecute anyone found to have been involved.

77. Taking into account the severity of the alleged torture and its impact upon Mr. al-Nashiri, as detailed above, the Working Group considers it extremely unlikely that he would have been able to effectively participate in the legal proceedings that were conducted (or in any future legal proceedings), reinforcing the conclusion that his right to a fair trial was violated. The Working Group refers the case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

78. The Working Group recalls the articles on responsibility of States for internationally wrongful acts, particularly article 16, on aid or assistance. For the reasons set out above, it considers that the Governments of Afghanistan, Lithuania, Morocco, Poland, Romania, Thailand, the United Arab Emirates and the United States are jointly responsible for the torture and cruel, inhuman or degrading treatment of Mr. al-Nashiri, and that this deprives him of the meaningful ability to benefit from a fair trial, should a trial ever occur. These violations of article 5 of the Universal Declaration of Human Rights, article 7 of the Covenant and articles 2, 15 and 16 of the Convention against Torture result in serious violations of article 14 of the Covenant, which render the detention arbitrary under category III."

110. In the light of, *inter alia*, the foregoing, the WGAD rendered the following opinion:

"**Disposition**

Regarding the United States: The deprivation of liberty of Abd al-Rahim Hussein al-Nashiri, being in contravention of articles 2, 5, 7, 9 and 10 of the Universal Declaration of Human Rights and articles 2 7, 9, 10, 14 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V.

Regarding Afghanistan, Lithuania, Morocco, Poland, Romania, Thailand and the United Arab Emirates:

The deprivation of liberty of Abd al-Rahim Hussein al-Nashiri, being in contravention of articles 5, 9 and 10 of the Universal Declaration of Human Rights and articles 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

93. The Working Group requests the Governments of Afghanistan, Lithuania, Morocco, Poland, Romania, Thailand, the United Arab Emirates and the United States, found to be responsible for the violations of the rights of Mr. al-Nashiri, to take the steps necessary to remedy the situation of Mr. al-Nashiri without delay and to bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

94. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. al-Nashiri immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

95. The Working Group urges the Governments found to be responsible for the violations of his rights, as detailed herein, to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. al-Nashiri, including an independent inquiry into his allegations of torture, and to take appropriate measures against those responsible for the violation of his rights.

96. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on counter-terrorism and human rights, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

97. The Working Group requests the Governments to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

98. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and Afghanistan, Lithuania, Morocco, Poland, Romania, Thailand, United Arab Emirates and the United States to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Mr. al-Nashiri has been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. al-Nashiri;

(c) Whether an investigation has been conducted into the violation of Mr. al-Nashiri's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the States concerned with their international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

99. Afghanistan, Lithuania, Morocco, Poland, Romania, Thailand, the United Arab Emirates and the United States are invited to inform the Working Group of any difficulties that they may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

100. The Working Group requests the source and Afghanistan, Lithuania, Morocco, Poland, Romania, Thailand, the United Arab Emirates and the United States to provide the abovementioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

101. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken."

13. Further developments

(a) Dialogue with the United States authorities

111. According to the Respondent Government, within the course of the execution of the Court's judgment in the *Abu Zubaydah* case, the Lithuanian authorities took action aiming to hold bilateral consultations with the relevant United States authorities. In December 2022 an on-line meeting at the expert level with the representatives of the United States Department of State was held with the participation of the representatives of the Ministries of Justice and Foreign Affairs of the Republic of Lithuania. During the consultations with the US Department of State the Lithuanian authorities sought to clarify the convenient procedures for possible further cooperation. Following this meeting the Lithuanian authorities sent an informal written request for information presenting the findings of the Court in *Abu Zubaydah v. Lithuania* (cited above) and the necessary individual execution measures, particularly aimed at getting updated information about the situation of Mr Abu Zubaydah and the general context of the regime applicable to Guantánamo detainees.

112. At the end of May 2023 the US Department of State submitted its reply, enclosing numerous documents together with specifications of how this non-classified information may address some concerns raised by the Committee of Ministers in its decisions in the *Abu Zubaydah* case, including those concerning evidence obtained by torture. Referring to the filing before

the US Court of Appeal for the District of Columbia (D.C. Cir) in the *Al-Nashiri* case for a writ of mandamus[9], the following position of the US Government on non-admission of evidence obtained by torture was presented:

> "The government recognizes that torture is abhorrent and unlawful, and unequivocally adheres to humane treatment standards for all detainees. See Executive Order 13491. In the absence of direct authority interpreting [10 U.S.C.] Section 948r(a), the government took the position below that Section 948r(a)'s prohibition on admission of statements obtained through torture or cruel, inhuman, or degrading treatment applies only to the trial and sentencing phases of a military commission and not to pretrial proceedings. Since that filing, the government has reconsidered its interpretation of Section 948r(a) and, as a result of that review, has concluded that Section 948r(a) applies to all stages of a military commission case, including pretrial proceedings. In accordance with that conclusion, the government will not seek admission, at any stage of the proceedings, of any of petitioner's statements while he was in CIA custody."

(b) Information provided in the context of the execution of the Court's judgments in cases against Poland and Romania

113. With regard to non-admission of torture-related evidence the Committee of Ministers within the course of the supervision of the execution of the Court's judgments against Poland and Romania in the applicant's cases has noted the following in the context of "Developments in the proceedings before the military commission and US courts"[10]:

> "At the time of the Court's judgment, the rules governing military commission proceedings allowed the introduction of coerced statements if "the use of such evidence would otherwise be consistent with the interests of justice", thereby exposing the applicant to a risk of a flagrant denial of justice ([*Al Nashiri v. Romania*,] § 74).
>
> However, in proceedings brought by Mr Al-Nashiri before the US Court of Appeals for the District of Columbia Circuit, the US Government indicated, in a brief submitted in January 2022, that it had reconsidered its position that the prohibition on admission of statements obtained through torture, or cruel, inhuman or degrading treatment applies only to the trial and sentencing phases of a military commission case. It conceded that this prohibition applies to all stages of such a case and stated that it would not seek admission, at any stage of the proceedings, of any of Mr Al-Nashiri's statements while he was in CIA custody. During oral argument, the US Government also indicated that it would not oppose an order by the military commission to identify any further statements obtained by torture in the record. The circuit judge was satisfied with these representations and the US Government's withdrawal of the evidence identified to have been made under torture, and dismissed the applicant's petition on 2 September 2022.
>
> In parallel proceedings, the military commission judge granted on 30 June 2022 the applicant's motion to suppress from the file custodial statements made under torture by

[9] See Response of the US of 31 January 2022 in case no. 21-1208 https://www.justsecurity.org/wp-content/uploads/2022/01/Document.pdf (last accessed June 2026).

[10] See for example the overview of the execution in *Al Nashiri v. Romania* https://hudoc.exec.coe.int/eng?i=004-50873 (last accessed June 2026).

a third-party witness and reserved the issue of derivative evidence for a later stage, if such evidence was offered at trial.

More recently, the prosecution sought to admit incriminating statements made by Mr Al Nashiri to agents from the Federal Bureau of Investigations (FBI) and the Naval Criminal Investigative Service (NCIS) in early 2007, after his transfer from CIA black sites. On 18 August 2023, the military commission judge decided to supress those statements on the ground that the US Government "has not proven by a preponderance of the evidence that the presumed taint from the prior years of physical and psychological torment was dissipated" when Mr Al Nashiri had made them. The prosecution appealed this ruling before the Court of Military Commissions Review, where proceedings are pending. At the same time, Mr Al Nashiri's counsel filed a motion to exclude several pieces of evidence, including statements allegedly made by him from 2006 to 2009. This question is being examined by the military commission judge, who also set the dates for the applicant's trial (from 6 October to 19 December 2025)."

(c) Other developments

114. With the assistance of EUROJUST, in March 2024, a coordination meeting was held between the Lithuanian and Polish prosecuting authorities in charge of the domestic investigations concerning the CIA's Detention and Interrogation Programme with a view to share the experience in investigating similar cases, including on the best practices for collecting the relevant data. It was agreed to meet once again to discuss in more detail some questions raised during the meeting.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

115. The relevant legal and other material, together with the domestic law and practice, are set out in *Abu Zubaydahv. Lithuania* (cited above) as follows:

(i) for relevant domestic law and practice see §§ 212-219;

(ii) for international material, including international law see §§ 220-250;

(iii) for selected media reports and articles on the CIA rendition operations see §§ 251-263;

(iv) for international inquiries relating to the CIA secret detention and rendition of suspected terrorists in Europe, including Lithuania see §§ 264-303.

THE LAW

I. THE APPLICANT'S COMPLAINTS

116. The applicant alleges a violation of Article 3 of the Convention in its substantive aspect in that Lithuania facilitated or acquiesced in his torture, cruel, inhuman or degrading treatment by unknown persons believed to be CIA agents and other US officials on its territory, at the CIA secret facility,

codenamed "Detention Site Violet", as part of the CIA Rendition Programme. Lithuania also failed to take measures to prevent his torture and ill-treatment, contrary to this provision.

117. Relying on Article 3 of the Convention in its procedural aspect, the applicant complains that Lithuania has failed to carry out an effective investigation into his allegations of serious violations of the Convention. The applicant's allegations concerning torture and ill-treatment in Lithuania, as well as his transfer out of Lithuania to a third State or States where he faced a real and immediate risk of torture, in violation of Article 3, have not been adequately or effectively investigated. Furthermore, the Prosecutor General refused to conduct a pre-trial investigation into the allegation that the applicant had been tortured and ill-treated at "Detention Site Violet" and the actions or omissions of the Lithuanian authorities in this respect. The Prosecutor General's decision-making on this matter lacked the requisite transparency, was not prompt, was wholly inadequate, and did not allow the applicant – as a victim – to participate in the proceedings.

118. The applicant alleges a breach of Article 5 of the Convention in that he was arbitrarily detained, unacknowledged and outside of any legal process in Lithuania, and without any access to legal representation. The applicant's transfers into and out of Lithuania were permitted and/or enabled by the Lithuanian authorities. He was exposed to the real and foreseeable risk that he would be subjected to further arbitrary, undisclosed and indefinite detention in flagrant violation of Article 5, and indeed his rendition from Lithuania led to such further and ongoing violations.

119. Under Article 8 of the Convention, the applicant complains that Lithuania's actions or omissions with respect to his detention, torture, ill-treatment, transfers and resulting prolonged separation from his family constituted an unlawful interference with his moral and physical integrity and his right to private and family life.

120. He also submits that, in breach of its obligations under Article 6 of the Convention, Lithuania cooperated and assisted in his transfer from its territory, in circumstances where the authorities knew – or ought to have known – that there was a real and serious risk that he would be transferred to a jurisdiction where he would be subjected to a flagrant denial of justice.

121. Invoking Articles 2 and 3 of the Convention read together with Article 1 of Protocol No. 6 to the Convention, the applicant complains that Lithuania knowingly enabled his transfer from its territory to other CIA-run detention facilities, despite that there were substantial grounds for believing that there was a real and serious risk that he would be subjected to the death penalty.

122. Lastly, the applicant alleged a breach of Article 13 alone and in conjunction with Article 3 of the Convention due to Lithuania's failure to grant him victim status and carry out an effective, prompt and thorough investigation into his allegations.

II. PRELIMINARY OBJECTIONS

A. Incompatibility *ratione personae* of the application

123. Article 1 of the Convention states:

> "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

124. Article 34 of the Convention states:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

1. The parties' submissions

(a) The Government

125. The Government submitted that while the Court had already concluded, in *Al-Hawsawi* and *Abu Zubaydah* (both cited above), that Detention Site Violet had been located in Lithuania, in none of those cases had the Court ruled on the rendition of the applicant in the present case to and from Lithuania.

126. They noted that contrary to Mr Al-Hawsawi, the applicant in the present case had not been mentioned in the 2014 US Senate Committee Report in relation to Detention Site Violet. All the more, in the proceedings against Romania in the applicant's case the experts testified that they could not confirm that the applicant was definitely transferred to Lithuania (see *Al Nashiri v. Romania*, cited above, §§ 104, 131-132[11], 139). Thus, the rendition to Lithuania of the applicant had not been established beyond reasonable doubt in the previous cases decided by the Court.

127. The Government noted that the 2014 US Senate Committee Report indicated that "Beginning in June 2003, the CIA transferred Al-Nashiri to five different CIA detention facilities before he was transferred to US military custody on 5 September 2006" (see also *Al Nashiri v. Romania,* cited above, § 102, and paragraph 59 above). However, according to the Government, the findings within the context of "CIA Torture Unredacted" and the statements of Dr S. Raphael as concerns Al-Nashiri locations (see paragraphs 62 and 67 above), indicated that he had been transferred from the Detention Site Blue (in Poland) to Morocco, then to Guantánamo where he was held in two different facilities, namely Detention Site Maroon and Detention Site Indigo, then to Detention Site Black (in Romania), subsequently to Detention Site Violet (in Lithuania) and lastly to Detention Site Brown (in Afghanistan), which in total would be six different CIA detention facilities, thus

[11] With reference to paragraph 64 above.

contradicting the information contained in the 2014 US Senate Committee Report. The Government emphasized that according to the 2014 US Senate Report (footnote 848) there were two facilities in Guantánamo and the applicant could have been held in both, moreover there were also two facilities in Afghanistan. In the latter connection they noted that, following the closure of Detention Site Violet, the cables in respect of the applicant are related to two different black sites – for example cable 2709 (referred to in footnote 368) and cable 1242 (referred to in footnote 366). Thus, in the Government's view, the five detention facilities that were mentioned in the 2014 US Senate Report could have been Morocco, Guantánamo, Romania and two facilities in Afghanistan.

128. In the application before the Lithuanian prosecuting authorities and initiating the present case before the Court, the applicant's representatives heavily relied on the CIA cable 3910, sent at 18:52 on 24 January 2006 (referred to in footnote 368 at page 72 of the 2014 US Senate Committee Report, see paragraph 59 above), which allegedly confirmed the presence of the applicant in the Detention Site Violet. However, that redacted cable only showed that the applicant had been examined but did not indicate Lithuania as a location. Having regard to the statements submitted by witness Dr S. Raphael, the Government noted that he had prepared his statement on the basis of the co-written book "CIA Torture Unredacted" which described the methodology of the examination of the 2014 US Senate Committee Report with regard to the CIA cables but still did not provide detailed investigation of the relevant cables which, in the Government's view, was necessary to conclude beyond reasonable doubt that the applicant was secretly detained in Lithuania. Furthermore, among the documents presented on the Rendition project website, cable 3910 was not listed as declassified information, it had no link to the information contained in other parts of the 2014 US Senate Committee Report in relation to the Detention Site Violet, therefore in the absence of more thorough explanations on how reference to the said cable proves the presence of the applicant in Lithuania, the Government did not accept this as evidence of the applicant's link to the Detention Site Violet.

129. In the "CIA Torture Unredacted" in the overview of the secret detention of Khaleed Sheikh Mohammed it was concluded that "CIA cables from DETENTION SITE VIOLET document Mohammed's presence at the site in December 2005", here the reference was made to cable 31147, 17 December 2005, 19:19. In this regard the Government noted the difference of figures in cable numbers which were invoked for the substantiation of the link to the Detention Site Violet, namely, cable 3910 of 24 January 2006 concerning the psychological assessment of Mr Al Nashiri had only four digits, whereas cable 31147 of 17 December 2005 had five digits. However, in explaining the methodology of the investigation of cables it had been indicated that all the cables from the same station would have the similar

structure and the same number of figures in the registration number. Therefore, it could be reasonably questioned whether cable 3910 was sent from Detention Site Violet.

130. In so far as the expert compared cable 3910 to cable 3223 related to Mr Al-Hawsawi (see paragraph 63 *in fine* above) to assert that they both came from Detention Site Violet, the Government noted that the reference to cable 3223 had been redacted and there was therefore no other data apart from the number enabling any comparison, thus there was no proof that it had the same cable series metadata as cable 3910 and was thus related to the timing of the operation which took place in Detention Site Violet.

131. Furthermore, in the footnote 368 of the 2014 US Senate Committee Report (see paragraph 59 above) to which the applicant's representatives referred extensively, in addition to the CIA cable allegedly sent from Lithuania, there was also a reference to cable 2709 (271517Z APR 06). Applying the methodology used within the context of the Rendition Project, it would have been a cable sent on 27 April 2006, i.e. after the applicant's transfer from Lithuania, at a time when the only operating detention site was in Afghanistan. However, cable 2709 exceeds the number of the last cable, namely 1242, indicated in "CIA torture unredacted" as documenting the applicant's presence in Detention Site Brown (Afghanistan) on 5 September 2006 (see the list of cables presented in "CIA Torture Unredacted" which document the applicant's presence at the different sites at paragraph 67 above). Thus, it could be reasonably questioned whether the cables indicated in the respective footnote were necessarily sent from the CIA black sites.

132. As regards the reference to the ruling of the Military Commissions Trial Judiciary in Guantánamo Bay (no. AE 467CCC) of 18 August 2023 (see paragraph 69 above), the Government submitted that in describing the "Accused's sojourn through captivity", the military judge noted that, with the consent of the parties, the Commission took judicial notice of the 2014 US Senate Committee Report, however the latter contains no references to any source of information proving the applicant's rendition to Detention Site Violet. As the motion was submitted by the applicant's representatives, it seems that such reading of the 2014 US Senate Committee Report was suggested by the defence, whereas the US Government's position in those proceedings was mainly related to the admissibility of evidence, namely the statements made by the applicant to the US government officials from January to March 2007, and not the contestation of the rendition of the applicant to various CIA black sites. The Government further noted that the applicant's transfers in that ruling were not without inaccuracies, for example, it stated that the applicant had been rendered from Detention Site Violet to Detention Site Orange in mid-2006, whereas, according to the 2014 US Senate Committee Report, Detention Site Violet had closed at the end of March 2006 and the remaining detainees were transferred to Detention Site Brown.

133. It could therefore not be concluded beyond reasonable doubt that on 6 October 2005 the applicant was transferred from Romania to Lithuania as there is a reasonable possibility that he was transferred to Afghanistan.

(b) The applicant

134. The applicant relied on the testimony of the experts who were heard by the Court at the fact-finding hearing in *Al Nashiri v. Romania* (cited above, §§ 131-132) (see also paragraph 62 et seq. above) and the 2014 US Senate Committee Report and in particular cable 3910, dated 24 January 2006 (referred to at page 72 of the report, see paragraph 59 above), detailing the applicant's mental state following a psychological assessment. In that connection, the applicant noted that while the country code preceding the cable was redacted, Dr Raphael had been able to confirm that the nature of this particular redaction denoted that the cable must have emanated from Detention Site Violet, namely Lithuania. The methodology deployed to determine the applicant's whereabouts was set out in full in "CIA Torture Unredacted" (at its p. 34, see paragraph 67 above).

135. The applicant further relied on Dr Raphael's second statement in the proceedings (see paragraph 63 above) dispelling the arguments raised by the Government and establishing to the relevant standard of proof the applicant's presence in Lithuania. In particular he had clarified that his first statement referred to five detention facilities; that his reasoned and certain opinion remained that the applicant was held at two detention facilities after his detention in Romania and his analysis of rendition flight data demonstrated that he must have been transferred to Lithuania prior to his rendition to Afghanistan; in relation to cable 2709 that not all cables emanated from black sites; and in relation to cable 3910 that the psychologist examination referred to therein had taken place in Lithuania, as confirmed by the comparison with cable 3223 featured in *Al-Hawsawi v. Lithuania* (cited above).

136. In so far as the Government had also tried to contest the findings of the Military Commission, the applicant considered that after years of proceedings the US Government would not have conceded that the applicant was present in Detention Site Violet if it did not believe that to be the correct position, nor would the tribunal take judicial notice of that without the parties' consent.

137. Thus, in the applicant's view sufficient evidence had been brought to the Court's attention, therefore the burden of proof should shift to the Government to provide a convincing explanation.

2. The Court's assessment

(a) General considerations

138. The Court notes that the Government have not contested the Court's findings in *Abu Zubaydah v. Lithuania* with respect to the existence of the CIA secret detention facility codenamed "Detention Site Violet" in Lithuania (see paragraphs 151-152 below) nor challenged the Court's assessment regarding the authorities' knowledge of and complicity in the CIA operations on its territory (see paragraphs 176-177 below). In the present case the respondent Government's objection is limited to whether the applicant was ever transferred to and from Lithuania.

139. However, the Lithuanian State's responsibility under the Convention is not only connected to the issue of whether its authorities knew, or ought to have known of the nature and purposes of the CIA's activities on its territory at the material time, but also to the issue of whether the facts alleged by the applicant, in respect of himself, actually took place on Lithuanian territory. Consequently, in order to determine whether the facts alleged by the applicant are capable of falling within the jurisdiction of Lithuania under Article 1 of the Convention and the applicant can be considered, under Article 34, a "victim of a violation ... of the rights set forth in the Convention" by the respondent State, the Court is required first to establish, in the light of the evidence in its possession, whether the events complained of indeed occurred on Lithuanian territory (see, *mutatis mutandis, Abu Zubaydah v. Lithuania*, cited above, § 411).

140. The Court will therefore rule on the Government's objection in the light of its findings regarding the facts of the case, which follows below.

(b) The Court's establishment of facts and assessment of evidence

(i) Applicable principles deriving from the Court's case-law

141. The Court is sensitive to the subsidiary nature of its role and has consistently recognised that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 154, ECHR 2012; *Al Nashiri v. Poland*, cited above, § 393; *Husayn (Abu Zubaydah) v. Poland*, cited above, § 393; and *Abu Zubaydah v. Lithuania*, cited above, § 480).

142. In assessing evidence, the Court has adopted the standard of proof "beyond reasonable doubt". However, it has never been its purpose to borrow the approach of the national legal systems which use that standard. Its role is not to rule on criminal guilt or civil liability but on the responsibility of Contracting States under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the

Convention – conditions its approach to the issues of evidence and proof. In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions and if necessary, material obtained *propriu motu* (see *Abu Zubaydah v. Lithuania*, cited above, § 481, and *Ukraine v. Russia (*re *Crimea)* (dec.) [GC], nos. 20958/14 and 38334/18, § 257, 16 December 2020).

143. According to the Court's established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof, are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25; *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII; *Creangă v. Romania* [GC], no. 29226/03, § 88, 23 February 2012; *El-Masri*, cited above, § 151; *Georgia v. Russia (I)* [GC], no. 13255/07, §§ 93-94, ECHR 2014 (extracts); *Nasr and Ghali v. Italy,* no. 44883/09, § 119, 23 February 2016, *Al Nashiri v. Poland*, cited above, § 394; *Husayn (Abu Zubaydah) v. Poland,* cited above, § 394; *Abu Zubaydah v. Lithuania*, cited above, § 481; and *Al-Hawsawi*, cited above, § 136).

144. While it is for the applicant to make a prima facie case and adduce appropriate evidence, if the respondent Government in their response to his or her allegations fail to disclose crucial documents to enable the Court to establish the facts or otherwise provide a satisfactory and convincing explanation of how the events in question occurred, strong inferences can be drawn (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 184, ECHR 2009, with further references; *Al Nashiri v. Poland*, cited above, § 395; *Husayn (Abu Zubaydah) v. Poland*, cited above, § 395; *Abu Zubaydah v. Lithuania*, cited above, § 482; and *Al-Hawsawi,* cited above, § 137).

145. Furthermore, the Convention proceedings do not in all cases lend themselves to a strict application of the principle *affirmanti incumbit probatio*. According to the Court's case-law under Articles 2 and 3 of the Convention, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, for instance as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. The burden of proof in such a case may be regarded as resting on the authorities to provide a

satisfactory and convincing explanation (see *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV; *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII; *El-Masri*, cited above, § 152; *Al Nashiri v. Poland*, cited above, § 396; *Husayn (Abu Zubaydah) v. Poland*, cited above, § 396; *Nasr and Ghali*, cited above, § 220; *Abu Zubaydah v. Lithuania*, cited above, § 483; and *Al-Hawsawi v. Lithuania,* cited above, § 138).

146. In the absence of such explanation the Court can draw inferences which may be unfavourable for the respondent Government (see *El-Masri*, cited above, § 152).

(ii) Preliminary considerations concerning the establishment of the facts and the assessment of the evidence in the present case

147. The Court has already noted that it is not in a position to receive a direct account of the events complained of from the applicant (see paragraphs 5-6 above, and *Al Nashiri v. Poland*, cited above, §§ 397-98, and *Al Nashiri v. Romania*, cited above, §§ 494-95; also compare and contrast with other previous cases involving complaints about torture, ill-treatment in custody or unlawful detention, for example, *El-Masri*, cited above, §§ 16-36 and 156-67; and also *Selmouni v. France* [GC], no. 25803/94, §§ 13-24, ECHR 1999-V; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, §§ 188-211, ECHR 2004-VII; and *Jalloh v. Germany* [GC], no. 54810/00, §§ 16-18, ECHR 2006-IX).

148. The regime applied to High Value Detainees such as the applicant during the CIA rendition operations is described in detail in, among other material, the CIA declassified documents and the 2014 US Senate Committee Report referred to in the present case and in the previous relevant judgments of the Court. That regime included transfers of detainees to multiple locations and involved holding them in continuous solitary confinement, incommunicado, throughout the entire period of their undisclosed detention. The transfers to unknown locations and unpredictable conditions of detention were specifically designed to accentuate their sense of disorientation and isolation. The detainees were usually unaware of their exact location (see *Al Nashiri v. Poland*, cited above, §§ 397-98; and *Al Nashiri v. Romania*, cited above, §§ 494-95; *Husayn (Abu Zubaydah) v. Poland*, cited above, §§ 397-98; and *Abu Zubaydah v. Lithuania*, cited above, § 485; see also paragraphs 10 et seq. above).

149. Given the restrictions on the applicant, the Court's establishment of the facts of the case is to a great extent based on circumstantial evidence, including a large amount of evidence obtained through the international inquiries, considerably redacted documents released by the CIA, the declassified 2014 US Senate Committee Report, other public sources and the testimony of the experts heard by the Court in the other relevant cases (see the above-cited judgments in *Husayn (Abu Zubaydah) v. Poland*, § 400;

Al Nashiri v. Poland, § 400; and *Abu Zubaydah v. Lithuania*, § 487), as well as their written testimony in these proceedings.

150. Furthermore, the Court observes that the facts complained of in the present case are part of a chain of events and concerning various countries. The examination of the case necessarily involves the establishment of links between the dates and periods relevant to the applicant's detention and a sequence of alleged rendition flights to those countries. Accordingly, the Court's establishment of the facts and assessment of evidence cannot be limited to the events that allegedly took place in Lithuania but must, in so far as is necessary and relevant for the findings in the present case, take into account the circumstances occurring before and after the applicant's alleged detention in Lithuania (see *Al Nashiri v. Poland*, §§ 401-417; *Husayn (Abu Zubaydah) v. Poland*, §§ 401-419; and *Abu Zubaydah v. Lithuania*, § 488, all cited above).

(iii) As regards the operation of Detention Site Violet in Lithuania

151. The Court observes that the following facts, namely that:

> "(a) the CIA secret detention facility codenamed "Detention Site Violet" operated in Lithuania from either 17 February 2005, the date of the CIA rendition flight N724CL into Vilnius airport, or from 18 February 2005, the date of the CIA rendition flight N787WH into Palanga airport until 25 March 2006, when it was closed; and
>
> (b) the closure was marked by the CIA rendition flight N733MA into Palanga airport, which arrived from Porto, Portugal and, having disguised its destination in its flight plan by indicating Porto, on the same day took off for Cairo, Egypt."

were already established, to the standard of proof beyond reasonable doubt, in *Abu Zubaydah v. Lithuania* after a thorough and meticulous analysis of extensive evidence in the Court's possession (see §§ 498-532 of that judgment).

152. The Government have not contested these facts. Nor does the Court find any element in the material before it that could alter this conclusion.

153. Accordingly, the Court must next establish whether the applicant's allegations concerning his rendition to Lithuania, his secret detention and his rendition from Lithuania can be said to have been proved before the Court.

(iv) As regards the establishment of facts and assessment of evidence relevant to the applicant's alleged rendition by the CIA to Lithuania, secret detention in Lithuania and transfer by the CIA out of Lithuania

154. The Court is mindful of the fact that, as regards the applicant's actual presence in Lithuania, there is no direct evidence to that effect. No trace of the applicant can, or will, be found in any official flight or border police records in Lithuania or in other countries because his presence on the planes and on their territories was, by the very nature of the rendition operations, purposefully not to be recorded. As confirmed by expert J.G.S. in *Al Nashiri*

v. Poland and *Husayn (Abu Zubaydah) v. Poland*, in the countries concerned the official records showing numbers of passengers and crew arriving and departing on the rendition planes neither included, nor purported to include detainees who were brought into or out of the territory involuntarily, by means of clandestine HVD renditions. Those detainees were never listed among the persons on board in documents filed with any official institution (see *Al Nashiri v. Poland*, cited above, §§ 410-411; and *Husayn (Abu Zubaydah) v. Poland*, cited above, §§ 410-411; see also *Al Nashiri v. Romania*, cited above, § 529; and *Al-Hawsawi*, cited above, § 147).

155. In view of the foregoing, in order to ascertain whether or not it can be concluded that the applicant was detained at Detention Site Violet in Lithuania at the relevant time, the Court will take into account all the facts that have already been found established beyond reasonable doubt and analyse all other material in its possession, including, the 2014 US Senate Committee Report and, in particular, expert evidence reconstructing the chronology of the applicant's rendition and detention at the relevant time (see, *mutatis mutandis*, *Al Nashiri v. Romania*, cited above, § 530).

156. The Court notes that in *Al Nashiri v. Romania* (cited above, § 542) it found it established beyond reasonable doubt that:

> "(c) On 6 October 2005 on board N308AB or, at the latest, on 5 November 2005, on board N1HC via a double-plane switch the applicant was transferred by the CIA out of Romania to one of the two remaining CIA detention facilities, code-named Detention Site Violet and Detention Site Brown according to the 2014 US Senate Committee Report" (see paragraph 55 above).

157. In *Abu Zubaydah v. Lithuania*, (cited above, § 548) it found it established beyond reasonable doubt that

> "(c) on 25 March 2006 on board the rendition plane N733MA and via a subsequent aircraft-switching operation the applicant [Mr Abu Zubaydah] was transferred by the CIA out of Lithuania to another CIA detention facility, identified by the experts as being codenamed "Detention Site Brown" according to the 2014 US Senate Committee Report."

158. In *Al-Hawsawi* (cited above, § 152), the Court established beyond reasonable doubt that:

> "(1) the applicant [Mr Al-Hawsawi] was rendered by the CIA to Lithuania either on 18 February 2005 on plane N787WH which arrived in Palanga from Rabat, Morocco or on 6 October 2005 on plane N787WH, which via an aircraft-switching operation in Tirana, arrived in Vilnius from Bucharest, Romania;
>
> (2) from 18 February or 6 October 2005 to 25 March 2006 the applicant [Mr Al-Hawsawi] was detained in the CIA detention facility in Lithuania codenamed "Detention Site Violet" according to the 2014 US Senate Committee Report; and
>
> (3) on 25 March 2006 on board the rendition plane N733MA and via a subsequent aircraft-switching operation the applicant [Mr Al-Hawsawi] was transferred by the CIA out of Lithuania to another CIA detention facility, codenamed "Detention Site Brown" according to the 2014 US Senate Committee Report, and identified by the experts as being located in Afghanistan."

159. It has also not been disputed and/or has been confirmed by other sources that on 6 October 2005, when plane N787WH landed at Vilnius airport, a certain R.R., the State Boarder Guard Service officer, was prevented from inspecting the aircraft and no customs inspection of the plane was carried out. The State Security Department ("SSD") high-ranking officers provided the US officers with unrestricted access to the aircraft on that occasion and that was one of three occasions where the SSD officers received the CIA aircraft and "escorted what was brought by them" with the knowledge of the heads of the SSD (see *Abu Zubaydah v. Lithuania*, cited above, § 499).

160. Thus, while it has been established that, on 6 October 2005, rendition plane N787WH, arrived in Vilnius, Lithuania, from Bucharest, Romania; and that on 25 March 2006 the rendition plane N733MA left Lithuania, towards Afghanistan, the question remains whether the applicant was on those rendition planes, and consequently detained in Lithuania during the relevant period.

161. The Court notes that the 2014 US Senate Committee Report contains a number of often extensive references to the applicant, however, the report does not mention the applicant explicitly by name in connection with Detention Site Violet (see paragraphs 35-51 above and compare *Abu Zubaydah v. Lithuania*, cited above, § 541, and contrast *Al-Hawsawi*, cited above, § 151). Nonetheless, the experts, particularly the authors of the book "CIA Torture Unredacted", following a comprehensive analysis of the entirety of the available documentary evidence concerning the CIA's extraordinary rendition operations at the material time, concluded that he had been detained at that site (see paragraph 67 above).

162. The Court notes that already in the earlier proceedings, namely in the fact-finding hearing in *Al Nashiri v. Romania*, the experts Mr J.G.S. and Dr Crofton Black indicated the likelihood of the applicant having been held in Lithuania with the only other alternative being Afghanistan (see paragraph 64 above), with Mr J.G.S. considering that there was a high degree of probability that the applicant was transferred to Lithuania and Dr Black considering the option of 6 October to Lithuania being the more likely (see also *Al Nashiri v. Romania*, cited above, § 538). In his first statement submitted to the Court in the present case, dated 18 June 2021, Dr Raphael concluded categorically that the applicant was held in Lithuania over the relevant period, as also confirmed in his second statement dated 12 June 2024 (see paragraphs 62 and 63, above). Indeed, in the book "CIA Torture Unredacted", published in 2019, which Dr Raphael and Dr Black co-authored with others, they found that the applicant was held in Detention Site Violet (in Lithuania) (see paragraph 67 above). The methodology used to reach their findings is explained in pages 23 to 63 thereof (see, for example, paragraph 68 above). In particular the Court notes their reliance on circuit 58 (see paragraph 62) to determine the applicant's arrival to Lithuania in

October 2005, Dr Raphael's statement that he must have been detained in one other site prior to Afghanistan (similar considerations having been made by J.G.S., see paragraph 64 above), and, in consequence (see paragraphs 8, 11 and 12 of Dr Raphael's second statement at paragraph 63 above), the determination that cable 3910 must have originated from Lithuania, confirming his detention thereafter.

163. The Court takes note of the Government's submission that "CIA Torture Unredacted" and Dr Raphael had concluded that the applicant had been transferred to six detention sites (two of which in Guantánamo) as of June 2003 while the 2014 US Senate report had referred to five detention sites in relation to the same period (see paragraph 127 above). Dr Raphael, by means of his second statement, replied that he had "not suggested that he [the applicant] was held in both [sites in Guantánamo], and there is no evidence to suggest that he was held in both" (see paragraph 3 of his second statement at paragraph 63 above). However, the Court notes that Dr Raphael's first statement indicated that "Between 23 September 2003 and 12 April 2004, Mr. al-Nashiri was held alongside four other prisoners at the two CIA black sites in Guantánamo Bay: "DENTENTION SITE MAROON" and "DETENTION SITE INDIGO"", which, admittedly, could give rise to some confusion. However, the Court also notes that in Mr J.G.S.'s testimony (see paragraph 64 above and *Al Nashiri v. Romania*, cited above, §§ 104 and 108 *in fine*), the stay in Guantánamo (after Morocco and before Romania) is considered as one step/facility. He then goes on to conclude that, based upon his earlier rationale about the five different facilities in which the applicant had been held, it was more likely than not that he had been taken to Lithuania on 5 and 6 October 2005 and in March 2006 to Afghanistan and subsequently on to Guantánamo Bay which would, logically, complete the number and nature of detention experiences chronicled in the 2014 US Senate Committee Report (see paragraph 64 above). Similarly, the conclusion in relation to Mr Al Nashiri's locations in "CIA Torture Unredacted" refers to the sites "Morocco, Guantánamo Bay, Romania, Lithuania and Afghanistan" (see paragraph 67 *in fine* above) thus totalling five sites over the relevant period, irrespective of how many facilities existed in each site.

164. As to the Government's challenge to the determination of cable 3910 deriving from Lithuania, admittedly this is the only cable which purportedly links the applicant to Lithuania. The Court observes that in *Al-Hawsawi* it rejected the Government's argument in relation to cable 3223 in the light of other relevant elements consistently demonstrating that there could not be any alternative account of the applicant's fate in the relevant period and noting in particular that Mr Al-Hawsawi's name and his presence at Detention Site Violet were explicitly mentioned in the 2014 US Senate Committee Report (see *Al-Hawsawi*, cited above, § 151). The same is not the case in the present application. Moreover, the Court takes note of the Government's submission that the metadata concerning cable 3910 could not be compared to that of

cable 3223, the content of which was entirely redacted. It notes nonetheless that its four-digit configuration provides for the possibility that cable 3910 emanated from Lithuania (or Afghanistan), which is also not categorically excluded by the fact that other cables purportedly from the Violet Series contain five digits (see paragraph 66 above). It is not for the Court to take the place of the experts to determine the origin of such cable, or any other cable.

165. As to the findings of the Military Commission Trial Judiciary in its ruling of 18 August 2023, firstly, as to the Government's reliance on the confusion between Detention Site Orange and Brown in that ruling, the Court notes that both sites are mentioned in the redacted 2014 US Senate Report, and experts have determined both sites to be situated in Afghanistan (see paragraphs 52-53 above). The respondent Government also accepted that there were two sites in Afghanistan (see paragraph 127 above), thus, their submission has of itself no bearing on the findings of the commission nor on the applicant's alleged transfer and detention in Lithuania. As to the ruling itself as evidence of the applicant's detention in Lithuania, while the Court accepts that no detailed factual findings were made therein it cannot ignore that note was taken of the fact that the applicant had also been held in Detention Site Violet – that is, in Lithuania – and the general conditions therein (see paragraph 69 above). It is not for the Court to speculate further in connection with these findings.

166. Lastly, the Court cannot ignore that despite Lithuania's objections, the WGAD ruled in its Opinion No. 72/2022 adopted in November 2022 that "Lithuania is responsible for complicity in the extraordinary rendition programme and for violating Mr. al-Nashiri's rights while he was on its territory and when he was transferred from its territory as it was aware of the foreseeable risk of further violations" (see the opinion at point 69, at paragraph 108 above).

167. Based on its free evaluation of all the material in its possession, the Court considers that there is strong prima facie evidence corroborating the applicant's allegation as to his secret detention in Lithuania, at Detention Site Violet, from 6 October 2005 to 25 March 2006. Consequently, in line with the applicable principles (see paragraphs 144-145 above), the burden of proof shifts to the respondent Government.

168. However, the Government, apart from their above contentions in relation to the cables at issue and the findings of the military commission (see paragraphs 127-133), have not adduced any counter-evidence capable of refuting the experts' conclusions. In particular, they have provided no elements indicating that the applicant was not on the mentioned flights and/or was transferred from Romania directly to Afghanistan, which was the only other alternative route according to the gathered material.

169. Having regard to the very nature of the CIA secret detention scheme, in the Court's view, it would be unacceptable if the Government, having failed to comply with their obligation to register duly and in accordance with

the domestic law all persons arriving on or departing from Lithuanian territory on the CIA planes and having relinquished any border control in respect of the rendition aircraft could take advantage of those omissions. When allowing the CIA to operate a detention site on Lithuanian soil the Government were, by virtue of Article 5 of the Convention, required to secure the information necessary to identify detainees brought to the country (see *Abu Zubaydah v. Lithuania*, cited above, § 547). The Court cannot accept that the Government's failure to do so should have adverse consequences for the applicant in its assessment of whether it has been adequately demonstrated by the Government, against the strong prima facie case made by the applicant, that his detention in Lithuania did not take place (compare *Abu Zubaydah v. Lithuania*, cited above, § 547).

170. In view of the foregoing, the Court considers the applicant's allegations sufficiently convincing. Consequently, on the basis of strong, clear and concordant inferences as related above, the Court finds it proven beyond reasonable doubt that:

(a) on 5/6 October 2005 the applicant was transferred by the CIA from Romania to Lithuania on board the rendition plane N787WH;

(b) from 6 October to 25 March 2006 the applicant was detained in the CIA detention facility in Lithuania codenamed "Detention Site Violet" according to the 2014 US Senate Committee Report; and

(c) on 25 March 2006 on board the rendition plane N733MA and via a subsequent aircraft-switching operation the applicant was transferred by the CIA out of Lithuania to another CIA detention facility in Afghanistan.

(v) The applicant's conditions of detention and treatment in Lithuania

171. The Government submitted that there was no concrete data concerning the treatment to which the applicant or any other detainee allegedly detained with him had been subjected at Detention Site Violet. The Government referred to the information provided in an Audit Report on "CIA-Controlled Facilities Operated Under the 17 September 2001 Memorandum of Notification", namely that during the period from July 2005 until February 2006 no enhanced interrogations had been conducted. Besides, according to the publicly available information, the transfer of "high value detainees" from Guantánamo to other locations in 2004 had not resulted in any need for further application of "enhanced interrogation techniques" but rather, had responded to the need to remove those CIA detainees from US jurisdiction, seeking to avoid any possible *habeas corpus* proceedings in the US courts.

172. The Court observes that, in contrast to treatment inflicted on the applicant during an early period of his secret detention, which included the EITs and the so called "water dousing", and which is documented in the 2014 US Senate Committee Report (see *Al Nashiri v. Poland*, cited above, § 86 et seq.), there is no evidence demonstrating any instances of similar acts at

Detention Site Violet. In the light of the material in the Court's possession, it does not appear that in Lithuania the applicant was subjected to EITs in connection with interrogations (see the findings of the Military Commissions Trial Judiciary in its ruling of 18 August 2023, at paragraph 69 above, and, *mutatis mutandis*, *Al-Hawsawi v. Lithuania*, cited above, § 153).

173. As regards recourse to harsh interrogation techniques at the relevant time, the 2014 US Senate Committee Report states in general terms that in mid-2004 the CIA temporarily suspended the use of EITs. While their use was at some point resumed and they were apparently applied throughout the most part of 2005, such techniques were again temporarily suspended in late 2005 and in 2006 (see paragraph 48 above).

174. According to the experts heard by the Court in the case of *Abu Zubaydah v. Lithuania* (cited above), it was not possible to be categorical about specific interrogation techniques or other forms of treatment or ill-treatment practised by the CIA in Lithuania, as in 2005-2006 there was less information about the treatment of prisoners in the HVD Programme than there had been in the previous years. However, the CIA documents and the 2014 US Senate Committee Report described the routine conditions of detention at "black sites", which included such practices as sensory deprivation, sleep deprivation, denial of religious rights and incommunicado detention (see paragraphs 24-26 and 41 above). According to the experts, those conditions alone passed the threshold of treatment prohibited by Article 3 of the Convention (see *Al-Hawsawi*, cited above, §§ 65-66 and 155).

175. Furthermore, the detailed rules governing conditions in which the CIA kept its prisoners leave no room for speculation as to the basic aspects of the situation in which the applicant found himself from 6 October 2005 to 25 March 2006. The Court therefore finds it established beyond reasonable doubt that the applicant was kept – as any other high-value detainee – in conditions described in the DCI Confinement Guidelines, which applied from the end of January 2003 to September 2006 to all CIA detainees (see paragraphs 24-26 above; see also *Husayn (Abu Zubaydah) v. Poland*, cited above, §§ 418-19 and 510; *Abu Zubaydah v. Lithuania*, cited above, § 552, and *Al-Hawsawi*, cited above, § 156).

(vi) The Court's finding concerning the Lithuanian authorities' knowledge of and complicity in the CIA HVD programme

176. In *Abu Zubaydah v. Lithuania*, §§ 571-576, and *Al-Hawsawi,* §§ 161-164, both cited above, the Court has already reached the relevant conclusions concerning the Lithuanian authorities' knowledge of and complicity in the CIA HVD programme. This matter has not been challenged by the Government in the present case. In particular, the Court notes that, in *Abu Zubaydah v. Lithuania*, cited above, § 576, it found it established beyond reasonable doubt that:

"(a) the Lithuanian authorities knew of the nature and purposes of the CIA's activities on its territory at the material time;

(b) the Lithuanian authorities, by approving the hosting of the CIA Detention Site Violet, enabling the CIA to use its airspace and airports and to disguise the movements of rendition aircraft, providing logistics and services, securing the premises for the CIA and transportation of the CIA teams with detainees on land, cooperated in the preparation and execution of the CIA rendition, secret detention and interrogation operations on its territory; and

(c) given their knowledge of the nature and purposes of the CIA's activities on their territory and their involvement in the execution of that programme, the Lithuanian authorities knew that, by enabling the CIA to detain terrorist suspects – including the applicant – on their territory, they were exposing them to a serious risk of treatment contrary to the Convention."

177. There is no reason to question that conclusion in the present case.

(c) Conclusion concerning the Government's objection *ratione personae*

178. Accordingly, the Court has established conclusively and beyond reasonable doubt that the Lithuanian authorities hosted CIA Detention Site Violet from 17 or 18 February 2005 to 25 March 2006 (see paragraph 151 above); that the applicant was transferred in and out of Lithuania by the CIA and secretly detained there during that period (6 October to 25 March 2006) (see paragraph 170 above); that the Lithuanian authorities knew of the nature and purposes of the CIA's activities in their country and cooperated in the execution of the HVD Programme (see paragraph 176 above); and that the Lithuanian authorities knew that, by enabling the CIA to detain terrorist suspects – including the applicant – on their territory, they were exposing them to a serious risk of treatment contrary to the Convention (see paragraphs 176-177 above).

179. The above findings suffice for the Court to conclude that the matters complained of in the present case fall within the "jurisdiction" of Lithuania within the meaning of Article 1 of the Convention and are capable of engaging the respondent State's responsibility under the Convention, and that the applicant can be considered a "victim" for the purposes of Article 34 of the Convention. Consequently, the Court dismisses the Government's preliminary objection as to compatibility *ratione personae* with the Convention.

180. The Court's decision on the preliminary issue at this stage of the proceedings is without prejudice to the issue of responsibility of the respondent State under the Convention for the acts complained of, which falls to be examined at the merits phase of the proceedings (see *Ukraine v. Russia* (dec.), cited above, § 266). The Court will accordingly examine the applicant's complaints and the extent to which the events complained of are attributable to the Lithuanian State in the light of the principles of State responsibility under the Convention, as deriving from its case-law (see for example *Al Nashiri v. Poland*, cited above, § 459; *Husayn (Abu Zubaydah)*

v. Poland, cited above, § 456, and *Al-Hawsawi*, cited above, § 165) as summed up in the *Abu Zubaydah v. Lithuania* judgment (§§ 581-587).

181. In particular, as regards the State's responsibility for an applicant's treatment and detention by foreign officials on its territory (ibid., § 581):

> "In accordance with the Court's settled case-law, the respondent State must be regarded as responsible under the Convention for internationally wrongful acts performed by foreign officials on its territory with the acquiescence or connivance of its authorities (see *Ilaşcu and Others*, cited above, § 318; *El-Masri,* cited above*,* § 206; *Al Nashiri v. Poland*, cited above, § 452; *Husayn (Abu Zubaydah) v. Poland*, cited above, § 449; and *Nasr and Ghali*, cited above, § 241)."

182. As regards the State's responsibility for an applicant's removal from its territory (ibid., §§ 582-587):

> "582. The Court has repeatedly held that the decision of a Contracting State to remove a person – and, *a fortiori*, the actual removal itself – may give rise to an issue under Article 3 where substantial grounds have been shown for believing that the person in question would, if removed, face a real risk of being subjected to treatment contrary to that provision in the destination country (see *Soering v. the United Kingdom*, 7 July 1989, §§ 90-91 and 113; Series A no. 161; *Saadi v. Italy* [GC], no. 37201/06, § 125, ECHR 2008; *Babar Ahmad and Others v. the United Kingdom*, nos. 24027/07 and 4 others, § 168, 10 April 2012; *El-Masri*, cited above, §§ 212-214, with further references; *Al Nashiri v. Poland*, cited above, § 454; *Husayn (Abu Zubaydah) v. Poland*, cited above, § 450; and *Nasr and Ghali*, cited above, § 242).
>
> Where it has been established that the sending State knew, or ought to have known at the relevant time, that a person removed from its territory was being subjected to "extraordinary rendition", that is, "an extra-judicial transfer of persons from one jurisdiction or State to another, for the purposes of detention and interrogation outside the normal legal system, where there was a real risk of torture or cruel, inhuman or degrading treatment", the possibility of a breach of Article 3 is particularly strong and must be considered intrinsic in the transfer (see *El-Masri*, cited above, §§ 218-221; *Al Nashiri v. Poland*, cited above, § 454; *Husayn (Abu Zubaydah) v. Poland*, cited above, § 450; and *Nasr and Ghali*, cited above, § 243).
>
> 583. Furthermore, a Contracting State would be in violation of Article 5 of the Convention if it removed, or enabled the removal, of an applicant to a State where he or she was at real risk of a flagrant breach of that Article (see *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, §§ 233 and 285, ECHR 2012 (extracts); and *El-Masri*, cited above, § 239).
>
> Again, that risk is inherent where an applicant has been subjected to "extraordinary rendition", which entails detention "outside the normal legal system" and which, "by its deliberate circumvention of due process, is anathema to the rule of law and the values protected by the Convention" (see *El-Masri*, ibid.; *Al Nashiri v. Poland*, cited above, § 455; *Husayn (Abu Zubaydah) v. Poland*, cited above, § 451; and *Nasr and Ghali*, cited above, § 244).
>
> 584. While the establishment of the host State's responsibility inevitably involves an assessment of conditions in the destination country against the standards set out in the Convention, there is no question of adjudicating on or establishing the responsibility of the destination country, whether under general international law, under the Convention or otherwise.

In so far as any responsibility under the Convention is or may be incurred, it is responsibility incurred by the host Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment or other alleged violations of the Convention (see *Soering*, cited above, §§ 91 and 113; *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, §§ 67 and 90, ECHR 2005-I, with further references; *Othman (Abu Qatada)*, cited above, § 258; and *El-Masri*, cited above, §§ 212 and 239).

585. In determining whether substantial grounds have been shown for believing that a real risk of the Convention violations exists, the Court will assess the issue in the light of all the material placed before it or, if necessary, material it has obtained *proprio motu*. It must examine the foreseeable consequences of sending the applicant to the destination country, bearing in mind the general situation there and his personal circumstances.

The existence of the alleged risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the removal. However, where the transfer has already taken place at the date of the Court's examination, the Court is not precluded from having regard to information which comes to light subsequently (see *Al-Saadoon and Mufdhi v. the United Kingdom*, no. 61498/08, § 125, ECHR 2010; and *El-Masri*, cited above, §§ 213-214, with further references; *Al Nashiri v. Poland*, cited above, § 458; *Husayn (Abu Zubaydah) v. Poland*, cited above, § 455; and *Nasr and Ghali*, cited above, § 246)."

183. Similar principles apply to cases where there are substantial grounds for believing that, if removed from a Contracting State, an applicant would be exposed to a real risk of being subjected to a flagrant denial of justice (see *Othman (Abu Qatada)*, cited above, §§ 261 and 285) or sentenced to the death penalty (see *Al-Saadoon and Mufdhi*, cited above, §§ 123-125; *Kaboulov v. Ukraine*, no. 41015/04, § 99, 19 November 2009; *Al Nashiri v. Poland*, cited above, § 456; *Husayn (Abu Zubaydah) v. Poland*, cited above, § 453; *Al Nashiri v. Romania*, cited above, § 597; and *Al-Hawsawi*, cited above, § 160).

B. The Government's objection under Article 35 § 2 (b) of the Convention in relation to the complaints under Articles 3 (substantive aspect), 5, 6 and 8 of the Convention

184. Article 35 § 2 (b) of the Convention reads as follows:

"2. The Court shall not deal with any application submitted under Article 34 that

...

(b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information."

1. The parties' submissions

(a) The Government

185. The Government submitted that the applicant's complaints under Articles 3 (substantive aspect), 5, 6 and 8 of the Convention were essentially the same as those that have already been assessed by another international investigation or settlement procedure within the meaning of Article 35 § 2 (b) of the Convention, namely by the UN Working Group on Arbitrary Detention ("WGAD") adopting the opinion no. 72/2022 (see paragraphs 107 et seq. above) which examined the relevant complaints submitted almost at the same time as the present application had been lodged. They considered that both proceedings concerned the arbitrariness of the applicant's detention, the conditions of his detention and the ill-treatment he had been subjected to in the course of the rendition programme as well as further shortcomings in the procedure before the military commission amounting to a flagrant denial of justice. Moreover, the WGAD considered that it had a broader jurisdiction with respect to the applicant's claims and continued its examination of the applicant's case in relation to Poland and Romania, despite this Court having already issued judgments on the matter (namely, *Al Nashiri v. Poland*, and *Al Nashiri v. Romania*, both cited above) "because the involvement of Poland/Romania in Mr. al-Nashiri's mistreatment concerned the lack of any demonstrated lawful basis for his deprivation of liberty but did not did not concern the subsequent proceedings in the United States and Guantánamo Bay (and deficiencies therein)".

186. The WGAD having established the liability of the Republic of Lithuania for the arbitrary deprivation of liberty of the applicant in contravention of Articles 5, 9 and 10 of the Universal Declaration of Human Rights and Articles 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights ("ICCPR"), the corresponding complaints lodged before the Court concerning the deprivation of liberty, conditions of detention and ill-treatment sustained, as well as allegations concerning denial of fair trial should be considered as essentially the same as those that have already been resolved by another international body of investigation or settlement.

(b) The applicant

187. With reference to the Court's case-law the applicant submitted that in *Gürdeniz v. Turkey* ((dec.), no. 59715/10, 18 March 2014), while *ex officio* declaring the complaint under Article 5 as being substantially the same as that submitted to the WGAD, the same had not applied to the Article 6 complaint concerning the fairness of the proceedings in Turkey. Similarly, in *Debelyy and Others v. Ukraine* ([Committee decision], no. 7174/11, 27 May 2011), the Court had found, in respect of one of the applicants, that notwithstanding the common facts giving rise to the application lodged before it and the communication submitted to the WGAD, his ill-treatment complaint and

allegations of an ineffective investigation in that regard, lodged under Article 3 of the Convention, could not be considered substantially the same as the complaint raised before the WGAD concerning his allegedly arbitrary detention.

188. The applicant referred to the content of his claims before the WGAD (see paragraph 107 above) and considered that they had not been "substantially the same" within the meaning of Article 35 § 2 (b) as those presented before the Court in respect of which the Government was raising this objection (see paragraphs 116, 118-120 above).

189. His complaint before the WGAD concerning his arbitrary detention was not made on the basis that Lithuania had violated Article 3 (or the equivalent Articles 7 and 10 ICCPR). The WGAD's consideration of Lithuania's involvement in and responsibility for torture and cruel, inhuman or degrading treatment provided the context in which the WGAD determined Lithuania (and the other States) to have committed serious violations of Article 14 ICCPR (right to a fair trial) and found his detention to be arbitrary.

190. As to his complaint under Article 5 (procedural) he noted that his complaint to the WGAD, and WGAD's findings, focused on Lithuania's responsibility for complicity in his arbitrary detention which was a separate question from that of Lithuania's responsibility for its failure to take positive measures to protect him from arbitrary detention. Whereas the WGAD urged Lithuania to conduct a full and independent investigation into the circumstances of the applicant's arbitrary detention (WGAD Opinion, § 95 at paragraph 110 above) it did not consider whether Lithuania was in violation of Article 5 of the Convention because of the failure to investigate the applicant's allegations that he was arbitrarily detained in a CIA black site in Lithuania.

191. As to Article 6, the applicant admitted that the WGAD had examined the claim that the applicant was arbitrarily detained by reference to the right to a fair trial. The WGAD concluded that the applicant had been transferred out of Lithuania's territory in circumstances that Lithuania knew, or should have known, included a risk of unfair trial because the torture suffered and its impact upon him meant that it was "*extremely unlikely"* that he would be able to effectively participate in proceedings thus finding that he was deprived of the meaningful ability to benefit from a fair trial (WGAD Opinion, §§ 77-78 at paragraph 109 above). However, the WGAD did not consider or determine whether Lithuania cooperated and assisted in the applicant's transfer in and out of its territory in circumstances where it knew or ought to have known of the serious risk that the applicant would face a flagrant denial of justice because of (i) admission of evidence obtained by torture and (ii) the failure by the US military commissions to provide the most basic guarantees of the right to a fair trial. The WGAD's concern was the applicant's ability to effectively participate in proceedings due to the extreme physical and psychological torture suffered by him.

192. In so far as the Government's objection was directed towards the complaint under Article 8, the applicant submitted that the complaint to the WGAD was not made on the basis of a breach of the applicant's right to private and family life, nor had the UN Working Group made such findings or requested the Lithuanian authorities to submit information concerning that matter.

193. Additionally, the redress sought from the WGAD on the grounds that the applicant is arbitrarily detained contrary to Articles 7, 9, 10 and 14 ICCPR and that sought from the ECtHR as an award of just satisfaction pursuant to Article 41 is not substantially the same. In circumstances where the WGAD considers that it is established that an individual is or has been arbitrarily detained, it may render an opinion to that effect and make recommendations to the Government if it considers it necessary. Whereas States are presumed to act in good faith, the Opinions of the WGAD are not binding on the State. Those recommendations may be, as in this case, for the Government to take certain measures to ensure compliance with their obligations and to ensure the individual concerned has access to an effective remedy (WGAD Opinion, §§ 93-94). The WGAD does not have the power to provide, or to order the wrongdoing State to provide, a remedy for the harmful consequences of his arbitrary detention; whether by compensation or other reparation. Accordingly, the WGAD is only able to afford declaratory relief to the applicant with respect to his arbitrary and unlawful detention.

2. The Court's assessment

(a) General principles

194. The Court reiterates that Article 35 § 2 (b) of the Convention is intended to avoid a situation where several international bodies would be simultaneously dealing with applications which are substantially the same. A situation of this type would be incompatible with the spirit and the letter of the Convention, which seeks to avoid a multiplicity of international proceedings relating to the same cases (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 119, 20 March 2018, and *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 180, 22 December 2020). In determining whether its jurisdiction is excluded by virtue of this Convention provision the Court would have to decide whether the case before it is substantially the same as a matter that has already been submitted to a parallel set of proceedings and, if that is so, whether the simultaneous proceedings may be seen as "another procedure of international investigation or settlement" within the meaning of Article 35 § 2 (b) of the Convention (see *Bryan and Others v. Russia*, no. 22515/14, § 38, 27 June 2023).

195. An assessment of whether cases are sufficiently similar would usually involve the comparison of the parties in the respective proceedings, the relevant legal provisions relied on by them, the scope of their claims and

the types of the redress sought (see *OAO Neftyanaya Kompaniya Yukos v. Russia*, no. 14902/04, §§ 520-22, 20 September 2011; *Bryan and Others*, cited above, § 38, and *Sanchez i Picanyol and Others v. Spain*, nos. 25608/20 and 2 others, § 172, 6 November 2025). In other words, an application is considered "substantially the same" where it concerns the same persons, facts and complaints (see *Gürdeniz*, cited above, § 41, and *Hilal Mammadov v. Azerbaijan*, no. 81553/12, § 104, 4 February 2016).

196. As to whether a matter raised in an individual application has already been submitted to "another procedure of international investigation or settlement" within the meaning of those terms as stipulated by Article 35 § 2 (b), the Court reiterates that its examination is not limited to a formal verification but extends, where appropriate, to ascertaining whether the nature of the supervisory body, the procedure it follows and the effect of its decisions are such that the Court's jurisdiction is excluded by that provision (see *Decision on the competence of the Court to give an advisory opinion* [GC], § 31, ECHR 2004-VI, and *Selahattin Demirtaş*, cited above, § 182).

(b) Application of the general principles to the present case

197. The Court notes that the issue being a matter concerning its jurisdiction it is necessary for the Court to examine it of its own motion (see *POA and Others v. the United Kingdom* (dec.), no. 59253/11, § 27, 21 May 2013). It follows that the examination must concern all the provisions complained of and not only those indicated by the Government.

198. The Court observes that it has previously examined the procedure before the UN Working Group on Arbitrary Detention and concluded that it was indeed a "procedure of international investigation or settlement" within the meaning of Article 35 § 2 (b) of the Convention (see, amongst many others, *Peraldi v. France* (dec.) no. 2096/05, 7 April 2009; *Gürdeniz*, cited above, § 39; *Hilal Mammadov*, cited above, § 106, and *Kavala v. Turkey*, no. 28749/18, § 92, 10 December 2019). It sees no reason to depart from those conclusions in the instant case.

199. There is also no reason to doubt that the parties can be considered the same, the WGAD procedure leading to Opinion No. 72/2022 having concerned the applicant specifically and it having concerned, *inter alia*, Lithuania (see paragraph 107 above, and contrast the earlier Opinion No. 29/2006 solely against the United States, at paragraph 106 above), and that the facts on which the complaints are based are the same. It remains to be determined whether the complaints are "substantially the same".

200. The Court notes that the WGAD opinion examined the complaints concerning the applicant's deprivation of liberty in the light of articles 5 (prohibition of torture), 9 (prohibition of arbitrary arrest) and 10 (fair trial) of the Universal Declaration of Human Rights and articles 7 (prohibition of torture), 9 (prohibition of arbitrary arrest), 10 (conditions of detention) and 14 (fair trial) of the International Covenant on Civil and Political Rights (see

paragraphs 108-110 above). It found, *inter alia*, that the "Lithuanian authorities were aware of the arbitrariness of his detention, noting the lack of any demonstrated lawful basis for it"; that Lithuania was "responsible for complicity in the extraordinary rendition programme and for violating Mr. al-Nashiri's rights while he was on its territory and when he was transferred from its territory as it was aware of the foreseeable risk of further violations"; and that those States including Lithuania were "all jointly responsible for the arrest, rendition and arbitrary detention of Mr. al-Nashiri" (see §§ 69 and 71 of the opinion at paragraph 108 above). It further found that the "prohibition of torture ... encompasses the obligation to investigate alleged violations promptly and bring perpetrators to justice", that Lithuania "had, at minimum, substantial grounds to believe that Mr. al-Nashiri would be subjected to torture or cruel, inhuman or degrading treatment as a result of his inclusion in the extraordinary rendition programme". "Taking into account the severity of the alleged torture and its impact upon Mr. al-Nashiri ...", the Working Group further considered it "extremely unlikely that he would have been able to effectively participate in the legal proceedings that were conducted (or in any future legal proceedings), reinforcing the conclusion that his right to a fair trial was violated". Accordingly, it considered that the Governments of the States involved, including Lithuania, were "jointly responsible for the torture and cruel, inhuman or degrading treatment of Mr. al-Nashiri, and that this deprives him of the meaningful ability to benefit from a fair trial, should a trial ever occur" (see §§ 77-78 of the opinion at paragraph 109 above).

201. The WGAD also called on the relevant States "to take the steps necessary to remedy the situation of Mr. al-Nashiri without delay and to bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights", suggesting that the appropriate remedy would be (apart from his release) to "accord him an enforceable right to compensation and other reparations, in accordance with international law". It also called on the Governments responsible for those violations "to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. al-Nashiri, including an independent inquiry into his allegations of torture, and to take appropriate measures against those responsible for the violation of his rights" (see §§ 93-95 of the opinion at paragraph 110 above; compare also §§ 74-76 of the opinion at paragraph 109 above). By so doing it clearly acknowledged that none of those measures had taken place, or that none had been in conformity with the requisite standards and called for measures of redress.

202. In that light the Court considers that the applicant's complaints before this Court under both the substantive and procedural aspects of Articles 3 and 5 of the Convention, and Article 13 in conjunction with Article 3 (see paragraphs 116-118 and 122 above), which precisely

concerned Lithuania's role in the Rendition programme with respect to the applicant, namely, its actions and omissions which facilitated his secret and arbitrary detention and torture and ill-treatment at Detention Site Violet as well as his transfer to places where he faced further abuse under the same provisions, and the State's failure to properly investigate these claims, are substantially the same as those examined in an individualised manner by the WGAD and which concerned, in respect to, *inter alia*, Lithuania, the applicant's detention, the conditions of his detention and the ill-treatment he had been subjected to in the course of the rendition programme, seen in the wider context as explained in the preceding paragraphs, with reference to the knowledge about the risk entailed by further transfers and the obligation to investigate (compare *Hilal Mammadov*, cited above, §§ 108-09, and *Piskorski v. Poland* (dec.), no. 80959/17, §§ 55-57, 22 October 2019, in respect of Article 5, and, for illustrative purposes, *M.J. v. Azerbaijan* (dec.) [Committee], no. 19657/18, §§ 11-12, 22 February 2024, where the Court found that the applicant's complaints under Articles 3, 5 § 1 (f) and 13 of the Convention concerning his arrest, detention and expulsion to Türkiye were substantially the same as the matter submitted to the WGAD and dealt with in its Opinion; compare and contrast also *Sanchez i Picanyol and Others*, cited above, §§ 174-75).

It follows that, the applicant's complaints under both the substantive and procedural aspects of Articles 3 and 5 of the Convention, and Article 13 in conjunction with Article 3 (see paragraphs 116-118 and 122 above) are inadmissible under Article 35 § 2 (b) of the Convention.

203. The same cannot be said about the applicant's complaints under Articles 6 (concerning the risk that he would be transferred to a jurisdiction where he would be subjected to a flagrant denial of justice) and 8 of the Convention (concerning the prolonged separation from his family amounting to an unlawful interference with his right to private and family life) as well as the complaint under Articles 2 and 3 of the Convention read together with Article 1 of Protocol No. 6 to the Convention (concerning transfer with the risk that he would be subjected to the death penalty), the WGAD having made no findings in respect of the complaints under those provisions as raised by the applicant in this application (see, for more detail, paragraphs 119-121 above) (compare *Sanchez i Picanyol and Others*, cited above, § 175, where the WGAD in finding the detention arbitrary had made no individualised findings in relation to the consequences of the detention on the relevant applicants' political rights under Article 3 of Protocol No. 1 invoked before the Court). In particular, the Court notes that, although it is possible for Article 3 complaints to encompass complaints under Article 8 (an approach not adopted by this Court in rendition cases, see, for example, *Al Hawsawi*, §§ 231 et seq., and *Abu Zubaydah v. Lithuania,* §§ 659 et seq., both cited above), despite the WGAD's wide assessment of the applicant's case, it stopped short of covering the implications of the situation on his right to

private and family life, in particular his prolonged separation from his family. Further, while the WGAD concluded that the applicant would be unable to have a fair trial due to his physical and mental condition, this was not his complaint under Article 6 before this Court, where he argued that Lithuania cooperated and assisted in his transfer from its territory, in circumstances where the authorities knew – or ought to have known – that there was a real and serious risk that he would be transferred to a jurisdiction where he would be subjected to a flagrant denial of justice, in view of the trial being held before a military commission and the use of evidence obtained by torture (see paragraphs 218 et seq. below). Lastly, no findings were made in relation to the risk that he would be subjected to the death penalty, which is the applicant's complaint raised under Articles 2 and 3 of the Convention read in conjunction with Article 1 of Protocol No. 6 to the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

204. The applicant complained that Lithuania's actions or omissions with respect to his detention, torture, ill-treatment, transfers and resulting prolonged separation from his family constituted an unlawful interference with his moral and physical integrity and his right to private and family life contrary to Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

205. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

206. The applicant submitted that the interference with his right to respect for his private and family life occurred in the context of his serious ill-treatment and fundamentally unlawful and undisclosed detention in Lithuania, thus could not be considered lawful. He noted that any assurances by the US Government that in 2019 detainees were treated humanely was irrelevant and could not provide a basis to find that the interference with the

applicant's right to family life was lawful or justified. Moreover, they had been given in a case unrelated to the applicant.

207. The Government referred to their submissions at paragraph 171 above. They further referred to diplomatic assurances given by the United States Government in the context of the Abu Zubaydah case to the effect that the latter and other detainees are treated humanely in Guantánamo, notably that they are no longer held in incommunicado detention and that they are treated in accordance with international standards, including communication with family members.

2. The Court's assessment

(a) General principles

208. The notion of "private life" is a broad one and is not susceptible to exhaustive definition; it may, depending on the circumstances, cover the mental and physical integrity of the person. These aspects of the concept extend to situations of deprivation of liberty (see *El-Masri*, cited above, § 248, with further references to the Court's case-law; *Al Nashiri v. Poland*, cited above, § 538; and *Husayn (Abu Zubaydah) v. Poland*, cited above, § 532).

209. Article 8 also protects a right to personal development, the right to establish and develop relationships with other human beings and the outside world. A person should not be treated in a way that causes a loss of dignity, as "the very essence of the Convention is respect for human dignity and human freedom" (see *Pretty v. the United Kingdom*, no. 2346/02, §§ 61 and 65, ECHR 2002-III). Furthermore, the mutual enjoyment by members of a family of each other's company constitutes a fundamental element of family. In that context, the Court would also reiterate that an essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities (see *El-Masri*, cited above, § 248; *Al Nashiri v. Poland*, cited above; and *Husayn (Abu Zubaydah) v. Poland*, cited above). There may, in addition to this primary negative undertaking, be positive obligations inherent in an effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for these rights even in the sphere of relations between individuals (see *Đorđević v. Serbia*, no. 11212/23, § 57, 7 October 2025).

(b) Application of the above principles to the present case

210. The Court notes that in cases similar to the present one the Court found that the Lithuanian authorities must have been aware of the serious risk of treatment contrary to Article 3 occurring in the CIA detention facility on Lithuanian territory; accordingly, on account of their "acquiescence and connivance" in the HVD Programme they were regarded as responsible for the violation of the respective applicants' rights committed on their territory

(see *Abu Zubaydah v. Lithuania*, cited above, § 642, and *Al-Hawsawi*, cited above, § 216). Furthermore, the Court found that the Lithuanian authorities were aware that the transfer of those applicants to and from their territory was effected by means of "extraordinary rendition", that is, "an extra-judicial transfer of persons from one jurisdiction or State to another, for the purposes of detention and interrogation outside the normal legal system". Consequently, by enabling the CIA to transfer those applicants out of Lithuania to another detention facility, the authorities had exposed them to a foreseeable serious risk of further ill-treatment and conditions of detention in breach of Article 3 of the Convention (see *Abu Zubaydah*, cited above, § 643, and *Al-Hawsawi*, cited above, § 217). On the same basis the Court found the State's responsibility to be engaged and a breach of Article 5 arising from secret detention under the CIA HVD Programme in various European countries, including Lithuania, on account of their complicity in that programme and cooperation with the CIA (see *El-Masri*, cited above, § 241; *Al Nashiri v. Poland*, cited above, §§ 531-32; *Husayn (Abu Zubaydah) v. Poland*, cited above, §§ 525-26; *Nasr and Ghali*, cited above, §§ 302-03; *Abu Zubaydah v. Lithuania*, cited above, § 657, and *Al-Hawsawi*, cited above, § 226). Those considerations were likewise valid in the context of Article 8 where Lithuania's responsibility was engaged and a violation was found (see *Abu Zubaydah*, cited above, §§ 665-666, and *Al-Hawsawi*, cited above, §§ 236-37).

211. The Court finds no reason to consider otherwise in the present case, limited to the scope of the complaint before it, namely Article 8.

212. Bearing in mind all the material in its possession and its preliminary findings at paragraphs 175 and 178 above, the Court finds that on account of their "acquiescence and connivance" in the HVD Programme the Lithuanian authorities were responsible for the violation of the applicant's rights under Article 8 committed on their territory, in respect of which the Court considers that it suffices for the present case to note that the applicant was kept in conditions described in the DCI Confinement Guidelines which included incommunicado detention and solitary confinement (see paragraph 25 above) and therefore was denied any contact with his family.

213. Furthermore, the Court finds that the Lithuanian authorities were aware that the transfer of the applicant to and from their territory was effected by means of "extraordinary rendition", that is, "an extra-judicial transfer of persons from one jurisdiction or State to another, for the purposes of detention and interrogation outside the normal legal system". Consequently, by enabling the CIA to transfer the applicant out of Lithuania to another detention facility (see paragraph 170 above), the authorities had exposed him to a foreseeable serious risk of further Convention violations. Thus, the Court is of the view that Lithuania's actions and omissions in respect of the applicant's transfer likewise engaged its responsibility under Article 8 of the Convention (see, *mutatis mutandis*, *Al-Hawsawi*, cited above, § 236).

214. The Government have not brought anything to the Court's attention which could put into doubt its previous findings that any resulting interference with the applicant's right to respect for his private and family life under Article 8 was not "in accordance with the law" or justified under Article 8 § 2 (compare *El-Masri*, cited above, § 249; *Al Nashiri v. Poland*, cited above, § 539; *Husayn (Abu Zubaydah) v. Poland*, cited above, § 533, and *Al-Hawsawi*, cited above, § 236).

215. There has accordingly been a violation of Article 8 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

216. The applicant complained that Lithuania cooperated and assisted in his transfer from its territory, in circumstances where the authorities knew – or ought to have known – that there was a real and serious risk that he would be transferred to a jurisdiction where he would be subjected to a flagrant denial of justice, contrary to Article 6 of the Convention which reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

A. Admissibility

217. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

218. The applicant reiterated his complaint and relied on the findings in previous cases lodged by him and decided by the Court against Romania and Poland. He noted that in assessing Lithuania's responsibility under Article 6, the relevant consideration for the assessment of the risk and whether it was foreseeable were the circumstances that existed at the time of his transfer, in 2006, and not events or positions taken fifteen years later.

(b) The Government

219. The Government submitted that, according to the Court's case-law, a "flagrant denial of justice" was a stringent test in which the unfairness of the proceedings had to go beyond mere irregularities or lack of safeguards in

the trial procedures. What would be required for a denial of justice was a breach of the principles of fair trial amounting to a nullification or destruction of the very essence of the right guaranteed by Article 6 of the Convention. In that regard, they relied on the judgment in *Othman (Abu Qatada)* (cited above).

220. They further emphasised that in the proceedings in the Al-Nashiri case for a writ of mandamus the US Government recognised that torture was abhorrent and unlawful and that prohibition on admission of statements obtained through torture or cruel, inhuman, or degrading treatment applied not only to the trial proceedings but extended to all stages and sentencing phases of a military commission. As a result it was confirmed that the Government would not seek admission, at any stage of the proceedings, of any of the applicant's statements while he was in CIA custody (see paragraph 112 above). Importantly, when recently the prosecution sought to admit, among others, incriminating statements made by the applicant to agents from the FBI and the Naval Criminal Investigative Service in early 2007, after his transfer from CIA black sites, the military commission judge decided to suppress those statements on the ground that the US Government "has not proven by a preponderance of the evidence that the presumed taint from the prior years of physical and psychological torment was dissipated" when Al-Nashiri had made them (see paragraph 113 above).

221. Moreover, all current military commission proceedings at Guantánamo were governed by the 2009 Military Commission Act, which had instituted significant reforms to the system of military commissions. These reforms included a prohibition on the admission at trial of statements obtained through cruel, inhuman or degrading treatment, in addition to torture, except for the use of statements by individuals alleging that they had been subjected to torture or similar treatment as evidence against the persons accused of committing the torture or mistreatment. Since the procedure before the military commission had improved, it could not be regarded as violating the essence of the fair trial guarantees under Article 6 § 1 of the Convention, which had to be assessed taking into account the proceedings as a whole.

2. The Court's assessment

(a) Applicable general principles deriving from the Court's case-law

222. In the Court's case-law, the term "flagrant denial of justice" is synonymous with a trial which is manifestly contrary to the provisions of Article 6 or the principles embodied therein (see, among other examples, *Sejdovic v. Italy* [GC], no. 56581/00, § 84, ECHR 2006-II, and *Othman (Abu Qatada),* cited above, § 258).

223. In *Othman (Abu Qatada*), citing many examples from its case-law, the Court referred to certain forms of unfairness that could amount to a

flagrant denial of justice. These include conviction *in absentia* with no subsequent possibility to obtain a fresh determination of the merits of the charge; a trial which is summary in nature and conducted with a total disregard for the rights of the defence; detention without any access to an independent and impartial tribunal to have the legality of the detention reviewed, and deliberate and systematic denial of access to a lawyer, especially for an individual detained in a foreign country (ibid., § 259). In other cases, the Court has also attached importance to the fact that if a civilian has to appear before a court composed, even only in part, of members of the armed forces taking orders from the executive, the guarantees of impartiality and independence are open to serious doubt (see *Incal v. Turkey*, 9 June 1998, §§ 68 et seq., *Reports* 1998-IV, and *Öcalan v. Turkey* [GC], no. 46221/99, § 112, ECHR 2005-IV).

224. However, "flagrant denial of justice" is a stringent test of unfairness. A flagrant denial of justice goes beyond mere irregularities or lack of safeguards in the trial procedures such as might result in a breach of Article 6 if occurring within the Contracting State itself. What is required is a breach of the principles of fair trial guaranteed by Article 6 which is so fundamental as to amount to a nullification, or destruction of the very essence, of the right guaranteed by that Article (see *Othman (Abu Qatada),* cited above, § 260, and *Al-Hawsawi*, cited above, § 246).

225. The Court has taken a clear, constant and unequivocal position on the admission of torture evidence. No legal system based upon the rule of law can countenance the admission of evidence which has been obtained by such a barbaric practice as torture. The trial process is a cornerstone of the rule of law. Torture evidence irreparably damages that process; it substitutes force for the rule of law and taints the reputation of any court that admits it. Torture evidence is excluded in order to protect the integrity of the trial process and, ultimately, the rule of law itself. The prohibition of the use of torture is fundamental (*Othman (Abu Qatada),* cited above, §§ 264-65, and *Al-Hawsawi*, cited above, § 247).

226. Statements obtained in violation of Article 3 are intrinsically unreliable. Indeed, experience has all too often shown that the victim of torture will say anything – true or not – as the shortest method of freeing himself from the torment of torture (see *Söylemez v. Turkey*, no. 46661/99, § 122, 21 September 2006, and *Othman (Abu Qatada)*, cited above, § 264). The admission of torture evidence is manifestly contrary, not just to the provisions of Article 6, but to the most basic international standards of a fair trial. It would make the whole trial not only immoral and illegal, but also entirely unreliable in its outcome. It would, therefore, be a flagrant denial of justice if such evidence were admitted in a criminal trial (see *Othman (Abu Qatada)*, cited above, § 267; see also *Al Nashiri v. Poland*, cited above, § 564; *Husayn (Abu Zubaydah) v. Poland,* cited above, § 554; and *Al-Hawsawi*, cited above, § 247).

(b) Application of the above principles to the present case

227. In *Al Nashiri v. Poland* (cited above, §§ 566-569) and *Al Nashiri v. Romania* (cited above, §§ 719-22) the Court examined a similar complaint and found a violation of Article 6 § 1 of the Convention on the following grounds.

228. At the time of Mr Al Nashiri's transfers from Poland and Romania, the procedure before military commissions was governed by the Military Order of 13 November 2001 and the Military Commission Order no. 1 of 21 March 2002 (see also paragraph 30 above). The commissions were set up specifically to try "certain non-citizens in the war against terrorism", outside the US federal judicial system. They were composed exclusively of commissioned officers of the United States armed forces. The appeal procedure was conducted by a review panel likewise composed of military officers. The commission rules did not exclude any evidence, including that obtained under torture, if it "would have probative value to a reasonable person". On 29 June 2006 the US Supreme Court ruled in *Hamdan v. Rumsfeld* that the military commission "lacked power to proceed" and that the scheme had violated both the Uniform Code of Military Justice and the four Geneva Conventions signed in 1949 (see also paragraph 31 above).

229. The Court considered that at the time of Mr Al Nashiri's transfers from Poland and Romania there was a real risk that his trial before the military commission would amount to a flagrant denial of justice having regard to the following elements:

(i) the military commission did not offer guarantees of impartiality or independence of the executive as required of a "tribunal" under the Court's case-law;

(ii) it did not have legitimacy under US and international law resulting in, as the Supreme Court found, its lacking the "power to proceed" and, consequently, it was not "established by law" for the purposes of Article 6 § 1; and

(iii) there was a sufficiently high probability of admission of evidence obtained under torture in trials against terrorist suspects.

230. The Court also attached importance to the fact that, at the material time, in the light of publicly available information, it was evident that any terrorist suspect would be tried before a military commission. Furthermore, the procedure before the commission raised serious worldwide concerns among human rights organisations and the media (see *Al Nashiri v. Romania*, cited above, § 720).

231. Having regard to the fact that the applicant was transferred out of Lithuania on 25 March 2006 when the same rules governing the procedure before the military commission applied (see paragraphs 30 et seq. above), the same considerations are valid in the present case (see, *mutatis mutandis*, *Al-Hawsawi*, cited above, § 250).

232. As in *Al Nashiri v. Poland* (cited above, § 568) and *Al Nashiri v. Romania* (cited above, § 721) the Court would also refer to the Resolution of 26 June 2003 of the Parliamentary Assembly of the Council of Europe, expressing "disapproval that those held in detention may be subject to trial by a military commission, thus receiving a different standard of justice than United States nationals, which amount[ed] to a serious violation of the right to receive a fair trial". Lithuania, as any other member State of the Council of Europe, must have necessarily been aware of the underlying circumstances that gave rise to the grave concerns stated in the resolution. Also, given the strong, publicly expressed concerns regarding the procedure before the military commission in 2001-2003, it must have been a matter of common knowledge that trials before the commissions did not offer the most basic guarantees required by Article 6 § 1 of the Convention (see also *Al-Hawsawi*, cited above, § 250).

233. The Court further notes that, while it is not precluded from having regard to information which comes to light following the removal (see *Al-Saadoon and Mufdhi*, cited above, § 149) – given that it may be of value in confirming or refuting the appreciation that has been made by the Contracting party or the well-foundedness or otherwise of an applicant's fears (see *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 107, Series A no. 215) – the information submitted by the Government in the present case is not sufficient to alter the above concerns, as it is of no value in confirming or refuting the appreciation made by the respondent State at the relevant time, nor does it dispel the well-foundedness of the applicant's fears at the time. Moreover, the Court cannot ignore that the applicant's trial has not yet come to an end (contrast *Al-Saadoon and Mufdhi*, cited above, § 150).

234. In view of the foregoing, the Court finds that Lithuania's cooperation and assistance in the applicant's transfer from its territory, despite a real and foreseeable risk that he could face a flagrant denial of justice in the US proceedings (see paragraphs 182-183 above), engaged its responsibility under Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Al Nashiri v. Poland*, § 568, *Al Nashiri v. Romania*, § 721, and *Al-Hawsawi*, § 250 *in fine*, all cited above).

235. There has accordingly been a violation of Article 6 § 1 of the Convention.

V. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 1 OF PROTOCOL NO. 6 TO THE CONVENTION

236. The applicant complained under Articles 2 and 3 of the Convention read together with Article 1 of Protocol No. 6 to the Convention, that Lithuania knowingly enabled his transfer from its territory to other CIA-run detention facilities, despite that there were substantial grounds for believing

that there was a real and serious risk that he would be subjected to the death penalty.

Article 2 of the Convention, in so far as relevant, reads:

> "1. Everyone's right to life shall be protected by law. ..."

Article 3 of the Convention states:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 1 of Protocol No. 6 to the Convention states:

> "The death penalty shall be abolished. No one shall be condemned to such penalty or executed."

A. Admissibility

237. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

238. The applicant reiterated his complaint set out at paragraph 236 above.

239. The Government made no observations in this respect.

2. The Court's assessment

240. Article 2 of the Convention prohibits any transfer of an individual to another State where substantial grounds have been shown for believing that he or she would face a real risk of being subjected to the death penalty there (see, *mutatis mutandis*, *Soering*, § 111; *Kaboulov*, § 99; *Al Saadoon and Mufdhi*, § 123; and *Al Nashiri v. Poland*, § 576, all cited above, and paragraphs 182-183 above).

241. The Court has also previously found, in the context of persons standing trial on capital charges, that an applicant's well-founded fear of being executed by the authorities during such time must have given rise to a significant degree of mental suffering which constitutes inhuman treatment within the meaning of Article 3 of the Convention (see, for example, *Al Saadoon and Mufdhi*, cited above, §§ 123 and 144).

242. Judicial execution involves the deliberate and premeditated destruction of a human being by the State authorities. Whatever the method of execution, the extinction of life involves some physical pain. In addition, the foreknowledge of death at the hands of the State must inevitably give rise to intense psychological suffering. The fact that the imposition and use of the

death penalty negates fundamental human rights has been recognised by the member States of the Council of Europe. In the Preamble to Protocol No. 13 the Contracting States describe themselves as "convinced that everyone's right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings" (see *Al-Saadoon and Mufdhi*, cited above, § 115; *Al Nashiri v. Poland*, cited above, § 577, and *Al-Hawsawi*, cited above, § 257).

243. As in *Al Nashiri v. Poland* (cited above, § 578) and *Al Nashiri v. Romania* (cited above, § 728), the Court finds that at the time of the applicant's transfer from Lithuania there was a substantial and foreseeable risk that he could be subjected to the death penalty following his trial before the military commission. Considering the fact that the capital charges against the applicant were approved on 28 September 2011 (see paragraph 87 above) and that since then he has been awaiting trial facing the prospect of the death penalty, that risk has not diminished.

244. Having regard to its conclusions concerning the respondent State's responsibility for exposing the applicant to the risk of a flagrant denial of justice in breach of Article 6 § 1 of the Convention (see paragraph 234 above), the Court considers that Lithuania's actions and omissions likewise engaged its responsibility under Articles 2 and 3 of the Convention taken together with Article 1 of Protocol No. 6 (compare also *Al-Hawsawi*, cited above, § 258) in respect of his transfer despite there being substantial grounds for believing that there was a real and serious risk that he would be subjected to the death penalty.

245. There has accordingly been a violation of Articles 2 and 3 of the Convention taken together with Article 1 of Protocol No. 6 to the Convention.

VI. APPLICATION OF ARTICLE 46 OF THE CONVENTION

246. Article 46 of the Convention states, in so far as relevant:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution...."

247. The Court observes that the present case, as previous similar cases (see *Al Nashiri v. Poland*, §§ 583-589, and *Al Nashiri v. Romania*, §§ 738-743, both cited above) concerns the removal of an applicant from the territory of the respondent State by means of extraordinary rendition. The general principles deriving from the Court's case-law under Article 46 as to when, in such a situation, the Court may be led to indicate to the State concerned the adoption of individual measures, including the taking of "all possible steps" to obtain the appropriate diplomatic assurances from the destination State, have been summarised in, for example, *Al Nashiri*

v. Poland (cited above, §§ 586-88, with further references to the Court's case-law, in particular to *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 209, ECHR 2012; *Assanidze v. Georgia* [GC], no. 71503/01, §§ 198 and 202, ECHR 2004-II; *Savriddin Dzhurayev v. Russia*, no. 71386/10, §§ 138, 252-54 and 256, ECHR 2013 (extracts); and *Al-Saadoon and Mufdhi*, cited above, § 170).

248. The Court has already found that the Lithuanian authorities, in the context of their complicity in the operation of the CIA HVD Programme on Lithuania's territory, exposed the applicant to the risk of the death penalty being imposed on him. Even though the proceedings against him before the military commission are still pending and the outcome of the trial remains uncertain, that risk still continues. For the Court, compliance with their obligations under Articles 2 and 3 of the Convention taken together with Article 1 of Protocol No. 6 to the Convention requires the Lithuanian Government to endeavour to remove that risk as soon as possible, by seeking assurances from the US authorities that he will not be subjected to the death penalty (see also *Al Nashiri v. Poland*, § 589, and *Al Nashiri v. Romania*, § 739, both cited above).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

249. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

250. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage. He submitted that multiple violations of the Convention in his case had caused significant harm to his mental and physical health.

251. The Government did not object to the claim if the Court were to find those violations.

252. Bearing in mind that several of the applicant's complaints have been declared inadmissible, the Court awards the applicant EUR 30,000 in respect of non-pecuniary damage, plus any tax that may be chargeable, in respect of the violations found (compare and contrast *El-Masri*, cited above, § 270; *Al Nashiri v. Poland*, cited above, § 595; and *Al-Hawsawi*, cited above, § 284).

B. Costs and expenses

253. The applicant also made an unquantified claim for the costs and expenses incurred, attaching an invoice (EUR 2,500) in relation to the domestic proceedings and two fee notes (EUR 14,716 and EUR 15,592, respectively, both with tax included) in relation to costs incurred before the Court.

254. The Government considered that the fees claimed were excessive, also bearing in mind that the groundwork for the case had been laid out in previous cases. Moreover, costs had to be apportioned according to the violations found. Lastly, they submitted that should the Court award costs and expenses, it would be useful to award them to the applicant's legal representative before the Strasbourg Court.

255. According to the Court's case-law (see *L.B. v. Hungary* [GC], no. 36345/16, § 149, 9 March 2023), an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, as well as the violations found, the Court considers it reasonable to award the sum of EUR 10,000 for the costs and expenses in the proceedings before the Court, to be paid directly to the applicant's legal representative, plus any tax that may be chargeable to the applicant on that amount.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning Articles 6 and 8, and Articles 2 and 3 of the Convention read together with Article 1 of Protocol No. 6 to the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* that there has been a violation of Articles 2 and 3 of the Convention read together with Article 1 of Protocol No. 6 to the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 7 July 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti Registrar	Arnfinn Bårdsen President