

Lithuania's Foreign and Security Policies during the War on Terrorism

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ABSTRACT

Lithuania was one of the small European countries that participated in the War on Terror's secret detention programme designed by the Central Intelligence Agency (CIA) after the terrorist attacks of 11 September 2001. The focus of this paper is to understand the impact the War on Terrorism has had on Lithuanian foreign and security policies and to see what small countries in the Western Balkan region can learn from this. The paper considers a case study investigated in the period before, during and after the programme was underway. We employ a qualitative content analysis approach that focuses on the practical effectiveness of Lithuanian legal acts and the judgment of the European Court of Human Rights. The Lithuanian authorities allowed CIA to operate on its territory that triggered an unprecedented political scandal and several ineffective and delayed investigations by the Prosecutor General. The government representatives who once denied and then confirmed the existence of secret prisons have seriously damaged Lithuania's reputation with respect to the protection of human rights.

KEYWORDS: Lithuania, extraordinary rendition, secret prisons, war on terror

POVZETEK

Litva je bila ena izmed majhnih evropskih držav, ki je sodelovala v programu izrednih izročitev in tajnih pridržanj, ki ga je oblikovala Centralna obveščevalna agencija (CIA) po terorističnih napadih 11. septembra 2001. V članku so natančneje razloženi razlogi za sodelovanje Litve v tem programu. Cilj je razumeti, kakšen vpliv je imela vojna proti terorizmu na litovsko zunanjo in varnostno politiko, in pridobiti nekaj naukov za majhne države v regiji Zahodnega Balkana. Članek temelji na študiji primera in preučuje tri različna časovna obdobja: pred, med in po izvedbi programa. Uporabili smo kvalitativni pristop analize vsebine, ki se osredotoča na učinkovitost litovskih pravnih aktov v praksi in nedavno sodbo Evropskega sodišča za človekove pravice. Domnevno so litovske oblasti dovolile CIA delovanje tajnih zaporov in izrednih izročitev na njihovem ozemlju. Sledilo je več neučinkovitih in preloženih preiskav litovskih pravosodnih organov. Kljub temu, pa so vladni predstavniki s prvotnim zanikanjem in kasnejšim priznavanjem obstoja tajnih zaporov uničili litovski ugled na področju učinkovitega varovanja človekovih pravic.

KLJUČNE BESEDE: Litva, izredna izročitev, tajni zapori, vojna proti terorizmu

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INTRODUCTION

Small states constitute a large part of the international community. More than half of all United Nations member states have fewer than 10 million inhabitants. The experience of small states' foreign and security policies can assist the research community and decision-makers in drawing lessons and possibly taking steps based on them. We are interested in the foreign and security policies pursued in Lithuania, a small Baltic country in Eastern Europe after the attacks of 11 September. While small states conduct foreign and security policies in a way that enables them to preserve their sovereignty, any strategic allies they may have can also have a strong influence on their policies. We argue that by allowing the CIA to establish and operate secret detention facilities in its territory (i.e., airspace, airports, secret detention locations, waiving of the usual border controls), Lithuania has seriously limited its own sovereignty and enabled the violation of human rights on its territory and beyond (extraordinary renditions). Lithuania did this due to a combination of motives like improving the security of the USA, efficiently participating in the War on Terrorism, having a better USA-Lithuania relationship and greater chances of joining NATO.

Every small state faces its own internal and external challenges that then shape its foreign and security policies, yet some similarities exist between those with the same strategic allies. Integration into NATO and the European Union has been a strategy shared by most small European states which achieved independence in the 1990s. The Western Balkans and the Baltic states have taken a similar approach, holding a preference for multilateralism and seeing Euro-Atlantic integration as a priority. By analysing the case of Lithuania, the article aims to understand the impact the War on Terrorism has had on the country's foreign and security policies and which lessons can be extracted.

The attacks of 11 September sparked enormous changes in the foreign and security policies of the USA, in most European countries, and beyond. The US government launched the "War on Terrorism" campaign against the radical terrorist network Al Qaeda. Many authors have analysed the US government's response and anti-terrorism policy after 9/11 (Clarke, 2004; Johnson, 2008; Fletcher, Stover, 2009; Murray, 2011; Hayden, 2017, 2018)running the Situation Room - a

scene described here for the first time - and then watched in dismay at what followed. After ignoring existing plans to attack al Qaeda when he first took office, George Bush made disastrous decisions when he finally did pay attention. Coming from a man known as one of the hard-liners against terrorists, *Against All Enemies* is both a powerful history of our two-decades-long confrontation with terrorism and a searing indictment of the current administration. \”-Jacket. *Evacuate the White House – Stumbling into the Islamic world – Unfinished mission, unintended consequences – Terror returns (1993-1996)*. However, the question of how this global counter-terrorism strategy has been reflected in the foreign and security policies of small states is less covered, especially with regard to Lithuania. This country is a very valuable partner of the USA and has cooperated in the War on Terrorism in cases of extraordinary rendition and on the existence of secret prisons, also known as black sites (Lefebvre, 2012; Carey, 2013; Park, Paulionyte, 2016).

The Cobain Report states that 14 European countries allowed the CIA to secretly transport prisoners in its airspace and to use its airports. These countries provided information to the CIA and allowed them to interrogate people (Cobain, 2013). Despite being one of many European countries to participate in the CIA's extraordinary rendition programme, Lithuania has become one of the few countries that have certain details of its cooperation publicly disclosed and against which terrorist suspects have filed complaints with the European Court of Human Rights. This makes Lithuania a very useful case study for researching the impacts of the War on Terrorism.

The article presents a brief conceptualisation of small states and their foreign and security policies. The second part describes Lithuania's reaction following the attacks of 11 September. The domestic political context and Lithuania's foreign and security policy adjustments due to its participation in the global counter-terrorism strategy are then considered. Third, we discuss the operation of secret prisons and authorisation given to CIA flights within the framework of Lithuania's cooperation in the strategy. Fourth, the article explains the ways the secret prisons were revealed and the investigations performed by local and foreign institutions. Fifth, we present the cases against Lithuania before the European Court of Human Rights. The final section discusses the extent to which the USA's counter-terrorism strategy has influenced Lithuania's foreign and security policies.

SMALL STATES AND THEIR FOREIGN AND SECURITY POLICIES

The term small states entered the International Relations (IR) dictionary in the 1960s when numerous IR researchers started calling for the greater recognition of smallness as a way of better accepting these countries' place and role in world politics. The Commonwealth Secretariat commenced an influential study in 1985 which categorised small states as those with populations of less than 1 million people – although this was later revised to 1.5 million to take account of global population growth. Countries' smallness was often linked to their isolation and remoteness that make them extremely susceptible to a range of exogenous shocks. Nonetheless, many small states have seen relatively high levels of economic growth and development over the last three decades. Small states are clearly not without power. Still, they are traditionally seen as so lacking in the conventional dimensions of power that they are deemed inconsequential in international relations; hence, the peculiar labels of the great powers, middle powers, and small states (Cooper, Shaw, 2013).

Although the topic of small states is not new in the IR discourse, there is still no common definition of it. Robert Keohane (1969) stated that “the smallness of a state should be defined in accordance to its ability to influence affairs in the international system”. Šabič, Bojinović Fenko and Roter say that, when analysing small states, the extent of small states' influence on particular sectors should be taken into account, and the international system should be viewed as a whole. Moreover, each state should be observed as a political system operating in different types of environments all at once, while the areas of cooperation in which the state wants to have an influence are limited by its capacity. The capacity of a certain state is not always determined by its physical size because other determinants are also relevant, such as the availability of human resources. In addition, the state is not the only actor influencing a given area of cooperation abroad since other actors can contribute not only directly but also indirectly to the image of the country (Šabič, Bojinović Fenko, Roter, 2016).

However, the former British diplomat Barston (1971) called that small states are unable to exist as independent states, and thus are unable to engage in international diplomacy, ceremonial states. He also wondered whether these ceremonial states pursue foreign policy and diplomacy in any meaningful sense. He noted the foreign relations

of ceremonial states are more administrative in nature. According to him, when they engage in international diplomacy, they do so through their large neighbours' embassies (ibid.). Similarly, East (1973) stated that small states' foreign and security policy behaviour lacks the resources needed to pursue foreign policy in a meaningful sense and are thus mostly dependent on multilateral diplomacy. This is a relatively economically efficient method compared to other, richer states and the outcome of a shortage of the experience, resources and institutional mechanisms possessed by large states, which allows them to engage in effective dialogue with other states (ibid.). The belief that the opportunities of small countries to become important actors in international relations are relatively limited is deeply integrated into the realist theory of international relations. This arises from the limited external capacities a small country must deal with in its foreign and security policies and diplomacy. Notwithstanding this, precisely because it is a small country – it can make the most of the advantages given to it in a world of big players.

According to Knudsen (1996), the point of studying the security of small states is the significant inequality of their power relative to their larger neighbouring states and big powers. This power disparity raises the question of how a small state is pressured to adopt common solutions and how such a state is able to survive. As concerns the latter, two theoretical approaches exist. The first argues that small-state survival is a matter of what a small state can do on its own to assure its security, while the second approach argues that the fate/survival of a small state is determined by an external (great) power. Accordingly, a small state can survive so long as it serves some function in the schemes of the great powers. The theory on security complexes (see Buzan, Wæver, 2003) also recognises the possibility of extensive penetration (or “overlay”) by global powers in the regional security complex.

This paper deals with a small European country that participated in the programme on secret prisons and extraordinary rendition. It focuses on Lithuania, a member state of the Council of Europe which many reports indicate has hosted two CIA black sites (see Amnesty International, 2009; The Rendition Project, 2014; Cole, Ross, 2009a). The involvement of the Lithuanian government in these operations is just one aspect of the support given to the CIA's secret prisons and extraordinary rendition. Other aspects include the absence of intervention by Lithuania's national institutions with respect to (in)

justice. In the following sections of the paper, we analyse Lithuania's policy response after the attacks of 11 September.

LITHUANIAN'S RESPONSE AFTER THE 9/11 ATTACKS

To understand what has happened in Lithuania since the terrorist attacks in the USA and what finally led to the existence of secret prisons on Lithuanian soil, we will consider the following aspects. First, the domestic political context of Lithuania, then the establishment of a new anti-terrorism institution and, finally, NATO accession as a strategic goal of Lithuania.

From a geopolitical perspective, Lithuania borders Russia, which has long pursued an imperialist foreign policy. Consequently, a consensus exists in Lithuania that its neighbour to the East is a security threat to Lithuania (see the National Threat Assessment, 2020) and another consensus that the same is a terrorist threat. The fight against terrorism is inevitable as international terrorists reject the Western way of life and thereby leave terrorists without political support in Lithuania (Karlsson, 2012). Following the terrorist attacks of 11 September 2001, Lithuania has made many changes to protect its citizens from possible future terrorist attacks. It has protected foreign embassies, critical infrastructure and government institutions. The police and army have been the main law enforcement agencies for protecting against these potential terrorist targets (*ibid.*). According to *The Baltic Times*, all of liberal Western civilisation was being attacked after the attacks of 11 September 2001 (*The Baltic Times*, 2001). The author notes that Lithuania has taken the 9/11 tragedy very seriously since one-third of all Lithuanians (large diaspora) live in the USA. Consequently, the *Baltic Times* notes that Lithuania is the biggest supporter of the USA in Europe. Moreover, Jonas Cronkitis a veteran of the US military in Vietnam and then commander-in-chief of the Lithuanian Army, like the then President Valdas Adamkus, spent most of his life in the USA (*ibid.*). In an interview by Bradley Bryan with US Ambassador to Lithuania John Tefft, the Ambassador made it clear that US investment in Lithuania is an important part of the relationship between the two countries. The Ambassador stated that a new factory was being built in Klaipeda, with at least USD 45 million having been invested in Lithuania in the most modern specialised steel production with 120 Lithuanian employees (Bradley, 2001). As regards the political situation, the Lithuanian government on average changed once a year

after the country's independence from the Soviet Union in 1990 until 2001. However, this lingering political instability changed when the government of Algirdas Brazauskas came to power. He was a member of the Social Democratic Party and from January 2001 to June 2006 the Prime Minister of Lithuania (The Government of the Republic of Lithuania, 2016).

Policies taken to strengthen Lithuania's security in the 2001–2004 period were outlined in the Implementation Report of the Government of Algirdas Brazauskas to the Parliament (2005). First, in 2004, a draft law amending and supplementing the National Security Framework of Lithuania was prepared and a new law was adopted. While strengthening national security in all areas of public administration, the Lithuanian Government continued its long-term national security improvement programmes, which strengthened the country's defence capabilities and crisis management system (Activity Report, 2005). The report identifies several dimensions of Lithuania's contribution to the international community's fight against terrorism. Lithuania has actively contributed to the international fight against terrorism by implementing the following foreign and security policies:

- Adopting the Law on Economic and Other International Sanctions of 2004, which enabled Lithuania to comply with its international obligations in the area of freezing funds;
- Substantially completing the programme against terrorism adopted by the Lithuanian Government. The programme against terrorism was also updated. In addition, the Lithuanian Anti-Terrorism Operations Department optimised its functional structure;
- The relationships of Lithuanian organised criminal groups with foreign criminal structures supporting international terrorism were investigated and a system for preventing terrorist financing by financial and credit institutions operating in Lithuania was developed;
- Following Lithuania's accession to the European Union (EU) in 2004, the country participated in implementing the EU's counter-terrorism policy and began to participate in activities of the counter-terrorism mechanisms provided for by the EU institutional framework. The EU Council negotiated the documents defining the EU's counter-terrorism strategy and common guidelines. Based on these documents, Lithuania needed to improve its legislation to meet the EU's requirements (*ibid.*).

Many institutional changes were introduced in Lithuania from 11 September 2001 until the end of 2001. After the 9/11 events, UN member states had to submit a report on the implementation of their counter-terrorism policies to the UN's Counter-Terrorism Committee by the end of December 2001 (Karlsson, 2009) while the distinction between the creation phase and the operation phase is logical, the appearance of extra-institutional guidance suggests that established institutions within other domains (e.g. military security. For this reason, the first major turning point in the creation of counter-terrorism institutions came at the end of 2001. The idea of establishing a special counter-terrorism institution in Lithuania was first expressed by the US Secretary of State who wrote a letter to the Lithuanian Minister of Foreign Affairs. Powell called on Lithuania to include individual steps to combat terrorism in a programme of action and pointed out the steps Lithuania had taken to contribute to the US War on Terrorism. In his letter, he reaffirmed the USA's commitment to eastward NATO enlargement. The US Secretary of State also stated that there was huge US support for the Baltic states' efforts to join the Alliance, namely he referred to the Charter signed by the USA and the Baltic States in 1998 (BNS, 2001). In the weeks that followed, the Lithuanian State Security Council laid the foundations for a new counter-terrorism institution. The Security Council aimed to coordinate and meet the challenges arising in the field of state defence (Article 140 of the Constitution of the Republic of Lithuania, 2010). The implementation of the measures adopted by this body lasted from 3 months to 2 years. In its first decision, it established an anti-terrorism body for dealing with the detection, prevention, protection, management of the consequences of, and response to terrorism. This new institution was to be supported by an improved anti-terrorism legal framework. Secondly, it assigned roles to eight ministries to address terrorism from various aspects (Karlsson, 2012).

NATO accession had been a strategic goal of Lithuania ever since its independence. In an interview by Bradley Bryan with the US ambassador in Lithuania, John Tefft, the ambassador explained Lithuania's strong position for becoming a NATO member. In his opinion, NATO expected Lithuania's active participation in the War on Terrorism. He stated that Lithuania's determination was visible with its troops in Bosnia and Herzegovina and Kosovo and was convinced that Lithuania would participate in some way in the counter-terrorism strategy, even though it was then unclear what that support would

amount to. He stated that Lithuania was prepared to do everything possible to become a NATO member, as demonstrated by its active participation in NATO missions (Bradley, 2001). Less than 1 month after the 9/11 attacks, the NATO Secretary-General (SecGen Speech 4 Oct. 2001) announced that the North Atlantic Council had decided to invoke Article 5² (for the first time in NATO's history). On the request of the USA, the NATO member states agreed to adopt eight measures (Vaitkevičius, 2009). Lithuania, as a future NATO member state, had to comply with these measures. The fifth measure of this agreement allowed CIA-operated Air Force to land in or fly over foreign territory. Indeed, the NATO Allies agreed to grant, following the necessary air transport arrangements and national procedures, blanket over flight clearances to the USA and other Allies Air Force for military flights in connection with counter-terrorism operations, both individually and collectively, to participate in the War on Terrorism campaign. The NATO Parliamentary Assembly also endorsed these measures in its declaration on Combating Terrorism of 9 October 2001 and therefore NATO allowed these operations to a certain extent (Activity Report, 2005). On 22 November 2002, during an official visit to Lithuania, George W. Bush expressed his support for Lithuania's membership of NATO. The Baltic States, including Lithuania, are very pro-American and one should not overlook the political pressure of the Bush Administration. In Payne's opinion, Washington's support is the most important reason for NATO enlargement in the Baltic region (Voice of America, 2002). The former White House counterterrorism czar, Richard Clarke, stated that the new NATO members were grateful for the support provided by the USA to them to join the organisation. They were so grateful that they did everything the USA asked them to do, like offering cooperation on security and intelligence (Cole, Ross, 2009).

Lithuania actively contributed to the international fight against terrorism and ensured its NATO membership by implementing the following measures:

- Provided active diplomatic support to key countries in the anti-terror coalition, i.e. the USA, the United Kingdom, and their allies, and participated actively in international anti-terrorist operations;
- In 2004, 40 Lithuanian soldiers participated in the US-led coun-

2 Article 5 is the "collective defence" provision which obliges NATO members to protect each other, and means that an attack on one ally is considered to be an attack on all member states of the Washington Treaty (see NATO, 1949).

ter-terrorism operation ISAF peacekeeping mission in Afghanistan. Lithuania contributed politically and in other ways to the activities of the international coalition in Iraq. Four medics and eight logistics specialists voluntarily participated in a US-led operation in the Gulf region. Since June 2003, Lithuanian troops in the Danish contingent have participated in the post-war operations in Iraq, in the UK-led sector (54 troops). A further 48 troops were sent to the Polish contingent in the Polish-led sector. In September 2004, Lithuanians extended the participation of its troops in international anti-terrorist operations until the end of 2005 (Activity Report, 2005).

On 29 March 2004, Lithuania was one of seven new NATO member states to join the Alliance.

What may be deduced from this part of the article is that Lithuania is a huge supporter of the USA, then harbouring a strong desire to become a NATO member. This explains Lithuania's approach to tackling terrorism, its support for the USA and the creation of new institutions to tackle terrorism.

THE SECRET PRISONS IN OPERATION

Most of the evidence concerning the time when the secret prisons were operating can be found in an unclassified summary of the US Senate (US Senate, 2014). This report ("The 2014 Senate Report") contained new information about the extraordinary rendition and secret detainee operations of the CIA and its partners, as well as details about certain detainees. One of them is Abu Zubaydah, who mentioned two possible dates for his detention in Lithuania – 17 February 2005 and 18 February 2005 – and a rescue CIA aircraft that could fly to Lithuania. It is known that he was detained in Lithuania until 5 September 2006, when he was transferred to the Guantanamo Bay Detention Camp, High-Security Camp 7. As lawyers who have been there have described, Abu Zubaydah was held in extreme detention conditions (ibid.). Another way to learn about what was happening in Lithuania at the time is through statements given by experts at the European Court of Human Rights (hereinafter "the Court"). The evidence presented to the Court includes reports from various institutions and organisations, public data on air travel and the testimony of several experts. These included Mr. Black (investigator at the Bureau of Investigative

Journalism) and Mr. J. G. S. (a lawyer and investigator under the Council of Europe mandate, who was also an advisor to Dick Marty³). These facts were also acknowledged and approved during the Seimas investigation by the Lithuanian Parliamentary Committee on National Security and Defence (“CNSD”) and confirmed during the preliminary investigation of the 2010–2011 trial (Amnesty International, 2011). In these investigations, were involved the Ministry of Justice, the Ministry of Interior, the Ministry of State Security (hereinafter “the SSD”), and the Ministry of Civil Aviation Administration (ibid.).

As part of the NATO agreement on cooperation in the fight against terrorism, Lithuanian officials authorised CIA flights in Lithuanian air and ground space. According to considerable evidence presented to the Court, on 17 or 18 February 2005 the CIA transferred prisoners to and from Lithuania in aircraft N724CL and aircraft N787WH. On 25 March 2006, however, the prisoners were transferred from Lithuania on a transfer plane (N733M) and one prison was closed (Cerna, 2018). The government still continues to deny that there has ever been any CIA detention in Lithuania. The facts presented by the Court are as follows:

(a) In the 2002–2005 period, CIA-connected aircraft passed through and repeatedly entered Lithuanian airspace. According to the CNSD, this happened at least 29 times.

(b) Between 17 February 2005 and 25 March 2006, four CIA-related planes landed in Lithuania:

- N724CL and N787WH landed at Vilnius International Airport on 17 February 2005 and 6 October 2005, respectively;
- Aircraft N787WH and aircraft N733MA landed at Palanga International Airport on 18 February 2005 and 25 March 2006, respectively.

(c) On three occasions, Lithuanian SSD officers, with knowledge of the SSD leaders, received the CIA Air Force and “accompanied what they had brought with them”:

- on 18 February 2005, N787WH, which landed at Palanga airport with five US passengers on board, without the aircraft having undergone a thorough customs inspection; according to the CNSD

3 Dick Marty was a Swiss member of the Parliamentary Assembly of the Council of Europe who in 2005 was leading an investigation into alleged unlawful CIA prisons in Europe.

- findings, “no cargo was being unloaded from or on the aircraft”;
- On 6 October 2005, N787WH landed at Vilnius Airport Palanga airport where an officer of the Lithuanian State Border Guard Service (hereinafter “SBGS”) was prevented from inspecting the aircraft and no customs clearance was carried out;
 - 25 March 2006, N733MA, which landed at Palanga airport, although the SBGS documents do not contain any record of the landing and inspection of the aircraft, and *no customs inspection was carried out*.

(d) In connection with the landing of N787WH at Vilnius on 6 October 2005, and N733MA at Palanga on 25 March 2006, the SDD issued secret letters to the SBGS, but the letter regarding the landing was delivered *ex post facto* and the SDD had never issued such letters before that event.

(e) High-ranking SSD officials *granted US officers’ unrestricted access to the Air Force at least twice*, including on 6 October 2005 (Cerna 2018, pp. 899-900).

According to the Lithuanian parliamentary investigation, the Lithuanian Intelligence Services set up and the CIA maintained two secret detention centres in Lithuania, called Project No. 1 and Project No. 2. The head of the Parliamentary Committee on National Security and Defence, Arvydas Anusauskas, stated that the investigation had shown that the facilities existed and that planes had landed in Lithuania. But *the Committee has found no further evidence of whether terrorist suspects and al-Qaeda members had been interrogated at either location* (Raw Story, 2009). According to Anusauskas, the first location was established in 2002. It was very small and intended to house a terrorist suspect “in response to our partners and the conditions that were imposed” (*ibid.*). The second site was set up in 2004 after Lithuania had formally become a NATO member. Some Lithuanian officials told ABC News that a leading CIA company, Elite LLC, had purchased property in Lithuania and set up a black site or Project No. 2⁴, as described in the 2014 Senate Report. Within a few months, the CIA Company managed to construct a building within a building. This site was to house eight terrorist suspects (Cole, Ross, 2009). One expert who testified before the judges of the European

⁴ The location of this place was a riding school in Antaviliai, 20 km from Vilnius. This converted building was a secret prison until March 2006 (Cole, Ross, 2009).

Court of Human Rights gave some details about these two facilities. According to him, these objects definitely existed. They were set up in Lithuania as a detention centre. He called this the undeniable truth as the year 2014 Senate Report clearly states the date of operation of the code name "Violet" facility. Those dates coincide with evidence of CIA flights landing and taking off in Lithuania and with the dates of the operation of the Antaviliai facility (Project No. 2). This facility operated from February 2005 to March 2006. According to 2014 Senate Report, Project No. 1 did exist but was never put into operation, which is consistent with information revealed in the 2009 Parliamentary Commission investigation (Cerna, 2018). Regarding Project No. 2, representatives of the Lithuanian government took the view that the building in Antaviliai near Vilnius was not a prison but merely a centre for supporting the secret service (Beniušis, 2019).

AFTER THE PUBLIC LEARNED ABOUT THE EXISTENCE OF THE SECRET PRISONS

This part of the paper focuses on the consequences of the public announcement of the existence of secret prisons in Lithuania. The international media initially reported on the CIA's system of secret prisons. The first allegations came from an article dated 2 November 2005 by Dana Priest – a journalist from the Washington Post – and based on evidence provided by Human Rights Watch (HRW). The HRW report mentioned two European countries, Poland and Romania, as having been involved in the USA's extraordinary rendition programme (Priest, 2005). Project No. 1 was closed in November 2005 soon after the public mention of this programme by Dana Priest (Cole and Ross, 2009). As noted earlier, Project No. 1 was never put into practice. A few years later, in August 2009, ABC News mentioned Lithuania as the provider of a detention facility outside Vilnius where 'high-value detainees' (HVDs) were secretly held until the end of 2005, citing unnamed CIA sources (Cole, 2009).

Besides, a former CIA official stated that the prison in Lithuania (Project No. 2) was one of eight facilities the CIA used after 9/11 for the detention and investigation of senior Al-Qaeda operatives. Apart from Lithuania, there were one or more prisons in Thailand, Afghanistan, Morocco, Romania and Poland. On 6 September 2006, President Bush announced the HVD programme would be discontinued and the arrested detainees were transferred into US military custody at the US Naval Base at Guantanamo Bay (Cerna, 2018). After Obama became

US President in January 2009, he officially banned all secret prisons around the world being used in the War on Terror strategy (Cole and Ross, 2009). A few months later, on 20 August in 2009 Cole wrote that, according to directly involved CIA officials, there was a secret prison for HVDs in Lithuania. A former official intelligence officer involved in the programme revealed that countries of the former Soviet bloc had established and allowed such secret prisons on their territories because they wanted a better relationship with the USA. When asked whether these states had received any consideration from the USA after the prisons had been established, the official replied that the USA did not have to return the favour to them in any particular way. These states were pleased that the USA had recognised their sacrifice and support. However, the Lithuanian Embassy in Washington denied the existence of such a prison in Lithuania (Cole, 2009).

In December 2009, the Lithuanian President finally admitted Lithuania's participation in the CIA's secret prison programme by declaring that there had indeed been a secret "black site" on its territory during the War on Terrorism. In addition, officials of the Lithuanian State Security Service had assisted in the construction of a secret prison for suspected terrorists, according to a report by the Lithuanian Parliamentary Committee on National Security and Defence (Amnesty International, 2009). The Committee concluded that representatives of the Lithuanian Ministry of State Security failed to report to the President or Prime Minister of Lithuania violations of the law in CIA-related aircraft that had landed in Lithuania without the usual border controls (*ibid.*). Yet, the ex-President of Lithuania, Valdas Adamkus, who was in power for much of this period, told the Baltic News Service that he rejected the findings that these black sites had existed. Adamkus declared: "I am sure that this never happened and nobody has proven me wrong" (Al Jazeera, 2009). The above statements and debate show that high-ranking Lithuanian government representatives once denied and then confirmed the existence of secret prisons. This inconsistency has seriously affected or even ruined the reputation of the political elite and the political establishment as a whole.

The Council of Europe, the Lithuanian Parliamentary Commissions and the Lithuanian Prosecutor General made investigations into the existence of these prisons. The Parliamentary Assembly of the Council of Europe, more precisely the Legal Affairs and Human Rights Committee,

appointed the Swiss Senator Dick Marty as a special rapporteur on secret detentions in Europe. Referring to his confidential sources, he released information to the public in August 2009 claiming that Lithuania had detained HVDs in a secret prison on its territory the very next day after the ABC News report had been published (Marty, 2009). Several measures were taken after Marty's declaration. According to an Amnesty International Report (2011), Lithuania set up a special parliamentary commission to conduct an independent investigation. In September 2009, the Lithuanian CNSD spokesman, on his initiative, submitted an independent parliamentary investigation into the alleged existence of these secret prisons (Amnesty International, 2011). In October 2009, a joint statement by the parliamentary Committee on National Security and Defence and the Committee on Foreign Affairs claimed the investigation would be terminated due to having insufficient information to launch a full parliamentary inquiry. The two Committees also based this conclusion on written responses from Lithuanian state institutions that vehemently denied that such a prison could have existed (Amnesty International, 2009).

After the investigation was completed, the Civil Aviation Administration, the ministries of Justice and Home Affairs and the State Security Department officials *took no responsibility*. However, the lack of passenger data prevented the Prosecutor General's Office from filing a criminal complaint under Lithuanian law; *the limitation period for filing a criminal complaint for an "abuse of authority" under Lithuanian law is 5 years from the date of committing the offence* (The Rendition Project, 2014). Project No. 1 ended in 2003 and the statute of limitations expired in 2008. There were no data indicating that persons had been imprisoned in Project No. 2, meaning that no criminal charges could be brought for "abuse of authority" or the unlawful treatment of persons or unlawful restrictions of liberty. In addition, the State Security had 1 year to initiate disciplinary proceedings against three officials who, in any case, were no longer working at the department. *Lithuanian law does not stipulate that the details of the 'international cooperation' between Lithuanian intelligence services and foreign intelligence services must be 'clarified' at every political level*; such an exchange of information can take place based on the 'need to know' principle. Since SSD officials did not inform senior state officials about Projects No. 1 and No. 2 and this type of communication was not provided for in the law, no criminal activities had taken place. In addition, no disciplinary measures could be taken against the three mentioned SSD

officials as they were no longer working at the SSD and disciplinary offences were in any case time-barred after 1 year (ibid.).

In June 2010, the European Committee for the Prevention of Torture (CPT) – which includes the ‘extrajudicial preventive machinery’ under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment – issued a press release stating that a CPT delegation had visited both sites during a visit to Lithuania from 14 to 18 June (Lowenthal, 2016)structure, procedures, and functions affect policy decisions. In this Seventh Edition, Lowenthal examines cyber space and the issues it presents to the intelligence community such as defining cyber as a new collection discipline; the implications of the Senate Intelligence Committee’s staff report on enhanced interrogation techniques; the rise of the Islamic State; and the issues surrounding the nuclear agreement with Iran. New sections have been added offering a brief summary of the major laws governing U.S. intelligence today such as domestic intelligence collection, whistleblowers vs. leakers, and the growing field of financial intelligence. – Amazon.com. What Is \”Intelligence\”? – The Development of U.S. Intelligence – The U.S. Intelligence Community – The Intelligence Process – Collection and the Collection Disciplines – Analysis – Counterintelligence – Covert action – The role of the policy maker – Oversight and accountability – The intelligence agenda, nation-states – The intelligence agenda, transnational issues – Ethical and moral issues in intelligence – Intelligence reform – Foreign intelligence services.”;”author”:[{“dropping-particle”：“”,“family”：“Lowenthal”,“given”：“Mark M.”,“non-dropping-particle”：“”,“parse-names”：false,“suffix”：“”}],“id”：“ITEM-1”,“issued”：{{“date-parts”：[[“2016”]]},“note”：“The war on terrorism also resulted in an expansion of some CIA authorities, including its ability to capture suspected terrorists overseas and then render (deliver. The CPT delegation’s visit to Lithuania and the 2011 CPT report dealt with the issue of the alleged CIA secret prisons. The 2011 CPT report, which referred to Project No. 2, described the facility as “much larger than” Project No. 1 and consisting of “two interconnected buildings divided into four different sectors”. In one of the buildings, “the layout of the premises resembled a large metal container surrounded by an external structure”. The CPT did not provide a more detailed description of the facilities, but concluded that, although the premises contained nothing during a visit by the Delegation but were “highly suggestive of a detention context”,

both Project No. 1 and Project No. 2 could be adapted for detention purposes “with relatively little effort” (Cerna 2018, pp. 901-902).

Lithuania has been part of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment since 1999. Of central importance to the CPT were the leadership of the Lithuanian Prosecutor General and the status of criminal investigations at the secret locations. The Prosecutor General was criticised for failing to launch a criminal investigation when the media revelations first came to light in the summer of 2009, particularly in view of the scope and seriousness of the public information available on the serious human rights violations allegedly taking place in secret CIA prisons. The CPT also concluded that the scope of the preliminary investigation – which only focused on “abuse of authority” – was too narrow and that “it was clear that it would have been more appropriate if the scope of the preliminary investigation had explicitly covered the possible unlawful detention of persons (and their possible ill-treatment) on Lithuanian territory from the outset”. Finally, the CPT criticised the Prosecutor General for his/her *failure to provide the delegation with information on the investigation*, including the witnesses interviewed, documents received, records of on-site inspections, information requested from foreign authorities and whether such information had been received, and justifying the failure to disclose such information by invoking state secrets. The CPT recommended that restrictions on access to information based on state secrecy be kept to an absolute minimum and concluded that it was an “open question” whether the investigation had been thorough, as required by *Lithuania's international obligations* (Amnesty International, 2011).

In January 2011, the Lithuanian Prosecutor General's Office closed the investigation, justifying this step on highly dubious grounds without recommending any criminal prosecution, invoking the doctrine of ‘*state secrets*’ to avoid accountability. Due to concerns in various circles about an official cover-up by the government, the investigation remains closed and no one has been held accountable for facilitating the construction of the secret sites or for the human rights violations that may have occurred inside them. The Attorney-General refused to investigate the allegations made to him by representatives of Abu Zubaydah.

A European Parliament delegation visited Lithuania and, at least since

the beginning of 2012, the European Parliament's Committee on Civil Liberties, Justice and Home Affairs ("LIBE Committee") has been conducting an investigation into allegations of Lithuania's complicity in the CIA's extraordinary renditions. In September 2012, the European Parliament requested Lithuania to reopen the investigation based on new evidence suggesting that the CIA transported a terrorism suspect from Morocco to Lithuania in February 2005 (European Parliament, 2012). Lithuania was opposed to this, while the Lithuanian authorities tried to shed light on Lithuania's participation in the CIA programme through parliamentary and judicial inquiries. The investigations that took place in Lithuania between 2009 and 2011 could not prove that the prisoners were being held secretly in Lithuania. Lotte Leicht, EU advocacy director at HRW, pointed out that the NGO Redress (London) and Vilnius Human Rights Monitoring Institute had filed a complaint on behalf of al-Hawsawi in September 2013 against the Lithuanian Prosecutor General. Later, in September 2013, his office refused to open an investigation into their allegations, and a lower Lithuanian Court upheld the decision in December 2013. On appeal against the Lower Court's decision, the Vilnius Regional Court ruled in January 2014 that al-Hawsawi had the right to an effective investigation, overturned the Prosecutor General's original decision, and ordered the Prosecutor General to open a new investigation.

On 21 February 2014, Lithuania opened the CIA Rendition Investigation based on the Lithuanian Prosecutor General's decision to open an investigation into the alleged transfer of Mustafa al-Hawsawi to Lithuania. This decision was taken after the 28 January Vilnius Regional Court decision that al-Hawsawi was entitled to an investigation into his allegations (Amnesty International, 2014). On 9 December 2014, the US Senate Committee declassified a document in which, instead of the names of the countries that had cooperated with the CIA's activities and prisons, various colour codes were used with different colours for different locations. Experts from the European Court of Human Rights, Mr. Black and Mr. JGS, found that the "Violet" prison was a secret prison in Lithuania where al-Hawsawi had been imprisoned. Following publication of this report, the investigation of the Lithuanian Prosecutor General was reopened on 22 January 2015. *The Prosecutor General's Office proceedings are still on-going* (Cerna, 2018).

COMPLAINTS BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

According to the 2014 Senate Report (Report of the Senate Select Committee on the Intelligence Committee's Study on the CIA's Detention and Interrogation Program, 2014), Abu Zubaydah was detained until 5 September 2006 when he was transferred to the Guantanamo Bay Detention Camp (Abu Zubaydah vs. Lithuania, 2018). On 8 October 2018, the Court ruled that there had been a violation of Article 3 of the European Convention on Human Rights (hereinafter "the Convention") in its substantive aspect due to Lithuania's participation in the CIA's HVD Programme by allowing US authorities to subject Abu Zubaydah to inhuman treatment on Lithuanian territory. It also allowed the US authorities to transfer him from Lithuanian territory to Guantanamo Bay, despite a real risk that he would be subjected to treatment contrary to Article 3. The court held there had been a violation of Article 5 of the Convention due to the applicant's undisclosed detention in the respondent State and the fact that Lithuania had enabled the US authorities to transfer the applicant from its territory, despite a genuine risk that he would be subjected to further undisclosed custody. It also found a violation of Article 8 of the Convention and a violation of Article 13 of the Convention for the lack of effective remedies with respect to the applicant's complaints under Article 3 of the Convention. Consequently, Lithuania had to pay EUR 130,000 to Abu Zubaydah for damages and costs (*ibid.*). Mustafa al-Hawsawi, a Saudi terror suspect held at Guantanamo, filed a lawsuit against Lithuania in February 2019, alleging that he had also been tortured at a secret CIA prison in the country (Agence France-Presse, 2019).

In the cases presented above, the Court recognised that, given the information then available to the public, States should have been aware at that time that the CIA's officers had detained such persons and exposed them to a real risk of a breach of several Convention provisions. Thus, States should at least obtain assurances that an individual will not be exposed to flagrant violations of the Convention or be treated contrary to its provisions, thereby eliminating the serious risk of violations. Accordingly, both the States which allowed the establishment and operation of secret detention facilities on their territory, as well as those States which in any other way, actively or passively, participated in the CIA's extraordinary programme had violated several articles of the Convention. Any other decision of

the Court which, for the cases considered, did not find a violation of the procedural and substantive aspects of Article 3 5, 8 and 13 of the Convention, would be inconsistent with both the already established standards and previous European Court of Human Rights case law. The described judgments can have a significant impact on current and potentially other cases of complainants who are victims of the CIA's secret rendition programme with the assistance of European countries. These judgments give the signatory States to the Convention a clear message that any participation in a secret detention and extraordinary rendition programme is incompatible with the Convention.

CONCLUSION

All of the gathered facts and statements considered herein have enabled us to confirm our argument that by allowing the establishment and operations of the CIA's secret detention facilities, Lithuania seriously limited its own sovereignty on its territory (airspace, airports, secret detention facilities, waiving of the usual border controls), allowed and cooperated in the violation of human rights on its territory and beyond (extraordinary renditions), and hindered effective and thorough investigations. It is also evident that Lithuania did this because it wanted to help the USA improve its security, efficiently participate in the War on Terrorism, have a better USA-Lithuania relationship, and increase its own chances of joining NATO. All of this was achieved at the cost of its own sovereignty and its own largely direct involvement in violations of human rights.

Lithuania is a huge supporter of the United States. This explains Lithuania's approach to tackling terrorism and its support for America and the creation of new institutions to fight terrorism, including its then strong desire to become a NATO member. This country was one of the host countries of the black sites used by the CIA for enhanced interrogation. Lithuania, as a forthcoming NATO member, had to make great efforts to establish a routine of intelligence sharing with NATO countries and with its partners. Lithuania, although 1 part of the 14 European countries that agreed to co-operate with the CIA's Extraordinary Detention Programme, has become one of the few countries *to disclose details* of its co-operation. It is also one of the rare countries to conduct parliamentary inquiries as well as criminal pre-trial investigations, albeit with considerable flaws. All of this has

brought Lithuania's co-operation with the CIA closer to the public's attention.

The omissions in the investigation as well as the excuses made by public officials that mean the Lithuanian and world public have been deprived of the truth and background to the whole story affected Lithuania's reputation and humiliated the Lithuanian government of the time. During the 2009 Parliamentary Commission investigation, 55 interviews were conducted with senior officials and key figures who in some way had been informed of the secret prisons and co-operation with the CIA. However, most of the information obtained from those interviews was incomplete. The interviewees either had no information or provided incomplete information. The biggest change made in Lithuania as a result of this 'Lithuanian Security Service scandal' is an amendment to the Lithuanian Security Service Act and a change to the democratic control and surveillance mechanisms used by the secret services in Lithuania in 2009, as Kvaraciejus (2010) showed.

Some describe the Lithuanians as the "new Atlanticists" due to their open support for the USA and their NATO advocacy. The main lessons that small Western Balkan states can take from this case is that there is a thin line between giving your partner unequivocal support and losing your international reputation and sovereignty. Concretely, these events have completely shaken the reputation of the people involved and the political establishment in Lithuania. Many politicians, the leader of the Lithuanian Security Service and several other members of the Lithuanian Security Service resigned in the weeks following publication of the ABC News article that revealed Lithuania's secret prison programme. Still, not one of them was convicted in the initial criminal proceedings because their actions were already past the statute of limitations. Nevertheless, the political and moral responsibility and harm in Lithuanian society is certainly a result of these accusations.

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