

U.S. Black Sites: “Open Europe”, Shut Case - Lithuania Denies CIA Prison Evidence

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At the end of September I spent a few days in the beautiful city of Vilnius, with colleagues from Amnesty International and other NGOs. We were talking to government officials about accountability in Europe for the CIA’s secret prison programme, which saw dozens of prisoners held illegally and tortured in “black sites” between 2002 and 2006. Lithuania currently holds the presidency of the Council of the European Union. Among its [principal priorities](#): active dialogue, cooperation with Member States, the promotion of democratic values, and the active protection of rights. Behind the elegant facades of the ministries, the government was hunkered down: they’d seen nothing, heard nothing, and would say next to nothing. And yet what they did say was quietly revealing.

The public narrative concerning Lithuania’s role in the CIA’s “black site” programme is stunningly detailed. Investigative journalists identified the prison site, in a converted riding school on the outskirts of Vilnius, in 2009. Witnesses watched the construction of the unusual building on the edge of the woods and recollected the shipping containers which arrived and disappeared over night, the American site manager and guards, the strange absence of obvious activity which followed the site’s completion in 2004. Property deeds tied the site to a shell company in Washington DC and Panama. Aircraft, operating under contract to the US government for the purpose of performing renditions and other transfers between prison sites, landed in Lithuania in secret in the years that followed. Witness spoke of the tight security, the lack of customs or border checks which accompanied these aircraft; flight records demonstrated that they had entered and left the country on falsified routes. But it was not until 2011-2012 that new data obtained by Reprieve and the European Parliament’s Committee on Justice, Civil Liberties and Home Affairs were able to show just how these flights [connected with a covert network](#), moving between Romania, Morocco, Lithuania and Afghanistan.

Thanks in part to these data, one prisoner – Abu Zubaydah, infamously waterboarded 83 times in one month, no longer suspected of membership in al-Qaeda, and still held after eleven years by the US without charge or trial – took [his case](#) to the European Court of Human Rights in September 2011. A few weeks ago, lawyers at Redress and the Human Rights Monitoring Institute in Vilnius lodged a complaint with the Lithuanian Prosecutor General, [asking him to investigate evidence](#) that another prisoner, Mustafa al-Hawsawi, had also been held secretly in Lithuania between 2004 and 2006.

On the face of it, the government’s position is simple. The Prosecutor General examined the issue between January 2010 and January 2011, concluded that there was “no evidence” that any prisoners had been held, closed the investigation and hoped that the problem would go away. It has not, and this apparently simple position has been unravelling ever since. It

unravelling further last week, to the extent that what we were confronted with was not so much a finely woven veil but rather a jumbled collection of loose ends tending to reveal what they had been supposed to cover.

As the US Constitution Project's [Task Force on Detainee Treatment](#) reported earlier this year, the Prosecutor's office seemed unable to decide between two positions: one that they had no evidence that prisoners were held, and the other that they had evidence that no prisoners were held. These are very different things, since the former simply admits a lack of material, whereas the latter implies a positive proof of absence. Pressed by the Constitution Project's delegates, the Prosecutor's office backpedalled from the latter position and settled on the former; a few months later, in discussion with representatives of the European Parliament, they U-turned back to the latter. Asked again last week, the spokesperson seemed simply confused: there was, she said, no contradiction between these two statements.

As it was, contradiction was in the air everywhere. Nobody had seen any evidence, and everybody was sure that nothing had happened. In the Prosecutor's office we were enshrouded in the gloom of the day's failing light. The official whom I met there was authorized, so she said, to receive all information we could give to her and pass it on to the Prosecutor; she also said that no information we provided in that way would be usable, since it would not have been gathered according to the rules of criminal procedure. The Prosecutor had considered and dismissed all data about any prisoners already, and concluded that there were none, but was nonetheless now "reviewing" the data in the new complaint. What about the hour and fifteen minutes that officials had spent inspecting the prison site - an inspection which produced no interior photographs, no plans, and no forensic analysis? Was this normal procedure for a criminal inquiry? "Only a prosecutor may decide what is sufficient. In this investigation, sufficient actions were taken."

In the Ministry of Foreign Affairs, we were informed that the government's response to the case of Abu Zubaydah came under the auspices of the Ministry of Justice; in the Ministry of Justice they were adamant that they had no hand in it. Both ministries managed to agree, however, that public documents relating to the European Court's proceedings should not be considered public: there was a third category, somewhere between public and non-public, which these documents inhabited. Nobody quite knew where. In the Ministry of Justice, we heard that neither Parliament nor any government department had any influence on the Prosecutor's decision to open an investigation. Nonetheless, the Prosecutor, "as a reasonable man", might infer from parliamentary interest that an investigation should be opened, despite this complete lack of influence. And in a comment about the prison site, which might serve as an epitaph for the government's position more generally, the Vice Minister summed up: "I haven't been there myself but it's nothing to look at." Move along please! There's nothing to see here.

In conversation with the Human Rights Division of the Ministry of Foreign Affairs, we struggled to find any element of the issue which might conceivably come under the remit of human rights or foreign affairs. Any knowledge of the [aviation data requests](#) submitted by their counterparts in the Finnish Ministry of Foreign Affairs? No. Some interaction with Mutual Legal Assistance requests between Lithuania and the USA? Certainly not - the content of any requests came from the DOJ. (The DOJ denied this.) Any notion of whether the topic had been discussed at President Grybauskaitė's meeting with Barack Obama in August - a visit which "highlighted close cooperation on issues including defense and

security”, [according to the White House](#)? No. Any engagement with the UN or the European Parliament on the matter? No recollection of any of that.

At the Prosecutor’s office on 26 September, we were told that a decision about al-Hawsawi’s complaint should be reached “soon”. Perhaps it already had been – the letter refusing to investigate was dated and sent on 27 September. The refusal equated analysis of data with “assumptions”. Anticipating this, we had asked what sort of material might reach the threshold for the Prosecutor to consider it valid. We were told that it was “impossible to say what information the prosecutor requires.” It was a looking-glass world, where analysis was assumption, lack of knowledge equalled positive evidence, and never having been there meant that there was nothing to see.

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Crofton Black studied English and Classics at Oxford University and completed a PhD in the history of philosophy in 2004.

Since then he has worked as a freelance translator and researcher. In 2009 he was awarded a Humboldt Fellowship at the Freie Universität Berlin, working on the influence of Arabic and Hebrew philosophy on hermeneutic theory in early modern Europe.

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