

Warsaw, September 21, 2010

To:

Prosecutor

Jerzy Mierzewski

Appellate Public Prosecutor's Office in
Warsaw,

Department V of combating Organised
Crime and Corruption

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Advocate Mikołaj Pietrzak

representing victim

Abd al-Rahim Hussein Muhammed

Abdu Al-Nashiri

File no.: Ap V Ds 37/09

Procedural letter concerning representation in proceedings, notice regarding suspicion of perpetration of criminal offences and motion regarding accession to further proceedings as a victim 1

Petitum

I. Representation in Proceedings

Acting on behalf of my Mandator, on the grounds of article 87 § 1 of the Polish Criminal Procedure Code (hereinafter "CPC"), I hereby submit my power of attorney to act as his representative in the investigation being conducted by the Appellate Public Prosecutor's Office in Warsaw, Department V for Combating Organised Crime and Corruption concerning the offence of article 231 §1 of the Polish Criminal Code (hereinafter "CC") and regarding the suspicion of existence in Poland of at least one secret outpost to which citizens of other countries were brought illegally, in which they were detained illegally, tortured and abused, and subsequently illegally removed from Polish territory, with the participation of the Central Intelligence Agency, which is a United States of America Government Agency (hereinafter "the site"), in the situation in which Polish public officers were aware of such activity and at the very least did not raise any objections thereto. Publicly available documents, including the ones attached, indicate that my Mandator is one of the victims of this activity.

I also demand that the Prosecutor inform me about the dates of all the actions taken in connection with legal proceedings and allow me to participate in such actions.

II. Motion Regarding Accession to Further Proceedings as a Victim

A considerable amount of publicly available information indicates that, on a basis still unknown, there existed a detention site on the territory of the Republic of Poland, in which my Mandator was illegally detained and was subject to torture and degrading and inhuman treatment. In connection with the site's operation there is a high probability of commitment of the offence described in article 231 §1 of the CC directly by the people participating in the operation of the site, providing the infrastructure and means for operation of the site and people that gave consent for the operation of the site, in connection with article 2 of the CC by

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the people supervising the abovementioned and in connection with article 18 §1 of the CC by people commanding them, including persons acting as central authorities of the state, in the form of consent for the operation of a site on the territory of the Republic of Poland, where people were detained without legal basis or judicial control of an independent tribunal, were subjects to torture and inhuman and degrading treatment and subsequently deported to a jurisdiction where they are at risk of torture, inhuman treatment or punishment and where capital punishment may be proclaimed and executed.

It is justified to admit my Mandator into criminal proceedings, file no.: Ap V Ds. 37/09 as a victim as seen by article 49 §1 of the CPC, with all the rights connected to this status, as my Mandator is one of the people who suffered as a result of the existence of the site, which was a consequence of commitment of the crime of article 231 §1 of the CC. I also declare that my Mandator wishes to act in the character of an auxiliary prosecutor in the potential judicial proceedings.

III. Notice Regarding Suspicion of Perpetration of Criminal Offences

There is a high probability of commitment of other offences to the detriment of my Mandator and others in connection with the existence of an illegal detention site on the territory of the Republic of Poland, apart from the described above offence of article 231 §1 of the CC. In particular:

1. The offence described in article 123 §2 of the CC to the detriment of my Mandator directly by the people conducting hearings, in connection with article 18 §1 of the CC by their superiors or the people who commanded them, in connection with article 2 of the CC by the people at whose disposal my Mandator remained during the time spent in the site and in connection with article 18 §3 of the CC by the people who provided infrastructure and means for the site to operate and who issued consent for the organisation of the site, in the form of subjecting my Mandator to torture and causing him grievous bodily harm;
2. The offence described in article 156 § 1 point 2 of the CC to the detriment of my Mandator directly by the people conducting interrogations, in connection with article 18 § 1 of the CC by their superiors or the people who commanded them, in connection with article 2 of the CC by the people responsible for his health during the time spent in the site (especially the medical staff) and by the people at whose disposal my Mandator remained during that time and in connection with article 18 § 3 of the CC by the people who provided infrastructure and means for the site and who gave consent for the organisation of the site, *inter alia* in the form of bringing my Mandator to a life-threatening condition by starving, cooling of the body, prohibiting sleep and by bringing my Mandator to long-lasting psychiatric illness and significant, permanent incapability to work resulting from traumatic stress caused by the use of torture, degrading and inhuman treatment during the time spent by him on the territory of the Republic of Poland;
3. The offence penalised by/described in article 189 § 3 of the CC to the detriment of my Mandator directly by the people at whose disposal my Mandator was during the time spent in the site, in connection with article 18 § 1 of the CC by their superiors or the people who commanded them and in connection with article 18 § 3 of the CC by the people who provided infrastructure and means for the site and who gave consent for the organisation of the site, in the form of illegal imprisoning of my Mandator for more than 7 days in connection with subjecting him to torture and inhuman, degrading treatment;
4. The offence described in article 190 § 1 of the CC to the detriment of my Mandator directly by the people conducting interrogations, in connection with article 18 § 1 of the CC by their superiors or the people who commanded them, in connection with article 2 of the CC by the people at whose disposal my Mandator was during the time

- spent in the site and in connection with article 18 § 3 of the CC by the people who provided infrastructure and means for the site and who gave consent for the organisation of the site, in the form of threatening him with imprisonment, torture, sexual violence against members of his family and death with the use of a firearm and a dangerous instrument:
5. The offence described in article 191 § 1 of the CC to the detriment of my Mandator directly by the people conducting interrogations, in connection with article 18 § 1 of the CC by their superiors or the people who commanded them, in connection with article 2 of the CC by the people at whose disposal my Mandator remained during the time spent in the site and in connection with article 18 § 3 of the CC by the people who provided the infrastructure and means for the site and who gave consent for the organisation of the site, in the form of use of physical violence in the form of hitting with fists, kicking, walling and illegal threats of imprisonment, torture, sexual violence against members of his family and death in order to force him to give testimony incriminating himself and other people;
 6. The offence described in article 207 § 2 of the CC to the detriment of my Mandator directly by the people conducting interrogations, in connection with article 18 § 1 of the CC by their superiors or the people who commanded them, in connection with article 2 of the CC by the people at whose disposal my Mandator was during the time spent in the site and in connection with article 18 § 3 of the CC by the people who provided the infrastructure and means for the site and who gave consent for the organisation of the site, in the form of physical and psychological cruelty and abuse while my Mandator was imprisoned and unable to change his situation so that he was dependant on the people who provided him with drinking water and food and who decided about his situation;
 7. The offence described in article 240 § 1 of the CC directly by all the people who were aware of the existence and use of the site, in the form of refraining from informing the law enforcement authorities about the commitment of offences penalised in article 189 § 1, 2 or 3 in the territory of the site which was established in order to commit such crimes;
 8. The offence described in article 246 of the CC to the detriment of my Mandator directly by the people conducting interrogations, in connection with article 18 § 1 of the CC by their superiors or the people who commanded them, in connection with article 2 of the CC by the people at whose disposal my Mandator remained during the time spent in the site and in connection with article 18 § 3 of the CC by the people who provided the infrastructure and means for the site and who gave consent for the organisation of the site, in the form of use of physical violence in the form of hitting with fists, kicking, walling and illegal threats of imprisonment, torture, sexual violence against members of his family and death with the use of a firearm and a dangerous instrument, in order to force him to give testimony incriminating himself and other people, if the perpetrator is found to be a public officer in the meaning of article 115 § 13 of the CC;
 9. The offence described in article 247 § 2 of the CC to the detriment of my Mandator directly by the people conducting interrogations, in the form of use of physical violence in the form of hitting with fists, kicking, walling and psychological cruelty and abuse if it is found that the imprisonment of my Mandator was legal;
 10. The offence described in article 247 § 3 of the CC directly by the people at whose disposal my Mandator remained during the time spent in the site and by the people who provided the infrastructure and means for the site and who gave consent for the organisation of the site, as one of its functions was to use physical and psychological violence against persons imprisoned therein, if it is found that the abovementioned people were public officers;
 11. The offence described in article 263 § 2 of the CC directly by the foreigners who were the staff of the site and the crew and passengers of the airplanes that landed on the

- territory of the Republic of Poland in connection with the organisation of the site in the form of possession of firearms in violation of provisions of Polish law;
12. The offence described in article 264 § 2 of the CC directly by the people who illegally transported my Mandator to and from the territory of the Republic of Poland, in connection with article 18 § 1 of the CC by their superiors or the people who commanded them and in connection with article 18 § 3 of the CC by the people who facilitated the commitment of such offence by providing access to an airport or means of transport;
 13. The offence described in article 264 § 3 of the CC directly by the people who illegally transported my Mandator to and from the territory of the Republic of Poland, in connection with article 18 § 1 of the CC by their superiors or the people who commanded them and in connection with article 18 § 3 of the CC by the people who facilitated the commitment of such offence by providing access to an airport or means of transport;
 14. The offence described in article 258 § 1 or 2 of the CC directly by the people who were the members of the group organised in order to commit the above described offences, *inter alia* to the detriment of my Mandator.

It is justified and necessary to conduct the proceedings in order to explain the circumstances of all offences described above and to hold the perpetrators accountable. In view of the circumstances of the above-mentioned offences, it is necessary to extend the scope of the proceedings conducted under file number Ap V Ds. 37/09.

My Mandator should be acknowledged as a victim of the offences described in points 1, 2, 3, 4, 5, 6, 8, 9 and 10 above. Therefore, in the proceedings aimed at gathering evidence, my Mandator should have the status of a victim, pursuant to 49 § 1 of the CPC and he should possess all rights connected with this status.

Moreover, legal classification of the crimes, which were probably committed with regard to the activity of the CIA sites within the territory of the Republic of Poland *inter alia* to the detriment of my Mandator, was based on the domestic substantive law in force at the moment of submitting this letter. Upon establishing the exact circumstances of relevant events (including the time and place of the crimes), it might be necessary to apply the appropriate intertemporal (transitional) regulations and as a result apply a different legal classification of the crimes.

IV. Notification of Violation of International Law

In view of all actions undertaken in relation to my Mandator *inter alia* within the territory of Republic of Poland, there can be no doubt that there has been a violation of a basic principle of the the Convention For The Protection Of Human Rights And Fundamental Freedoms, concluded in Rome on the 4th of November, 1950 (European Convention), which is expressed in the Article 1 thereof, i.e. the duty of States - contracting parties to secure the human rights and freedoms indicated in following articles of the Convention, *in concreto*:

1. right to life, expressed in Article 2 s. 1 of the European Convention together with Protocols 6 and 13 of the European Convention– my Mandator was transferred from Polish territory to a jurisdiction where there were substantial grounds for believing that there was a real risk of his being sentenced to capital punishment and such sentence being executed;
2. prohibition of torture and inhuman or degrading treatment expressed in Article 3 of the European Convention - my Mandator was subjected to long term torture and cruel, inhuman, and degrading treatment in Poland and was transferred from Polish territory to a jurisdiction where there were substantial grounds for

believing that there was a real risk that he would be subject to treatment contrary to Article 3 of the European Convention;

3. right to liberty and security of person expressed in Article 5 of the European Convention – my Mandator was deprived of his liberty in Poland without the decision of a competent court and has been unlawfully detained until today, and was also transferred from Polish territory to a jurisdiction where there was a real risk of his being subjected to treatment in violation of Article 5;
4. right to respect for private and family life protected in Article 8 of the European Convention – my Mandator was detained outside the proper legal process, leading to a severe and unjustified interference with his Article 8 rights;
5. right to a fair and public trial within a reasonable time by an independent and impartial tribunal, expressed in Article 6 of the European Convention – my Mandator was deprived of his right to a fair trial in Poland and was transferred from Polish territory to a jurisdiction where there were substantial grounds to believe that there was a real risk of a flagrant denial of a fair trial;
6. right to truth pursuant to Articles 2, 3, 5, 6, 8, 10 and 13 of the European Convention and other international standards—my Mandator has been deprived of the right to truth as relating his treatment by Poland.

Moreover, if my Mandator were to be denied his right to intervene in these proceedings, it would constitute a violation of his right to an effective remedy under Article 13 of the European Convention.

Finally, it must be emphasized that the binding character for the Republic of Poland of the regulations of the European Convention results in a positive obligation of the public authorities *primo* to counteract violation of the regulations of the European Convention, *secundo* to promptly and precisely investigate any circumstances of the infringement. The obligation of the public authorities is particularly strong in the case at hand, given the flagrant infringement of such fundamental rights as freedom from torture.

V. Motion to Prosecute

In view of article 190 §2 of the CC, acting on behalf of my Mandator, I submit a motion to prosecute the perpetrators who committed the crime indicated in Article 190 §1 of Criminal Code to his detriment.

VI. Procedural Demands

On the grounds of art. 156 § 5 of the CPC, I request access to the investigation case files.

Furthermore, on the grounds of article 315 §2 CPC, I demand to be informed about dates of any actions undertaken on my request, so I (or another attorney at law representing my Mandator if the activities take place abroad) may take part therein.

VII. Motion for Evidence

In order to help establish and clarify precisely all circumstances of the case, having in mind the aims of criminal proceedings and the need to determine the material truth, I request the following evidence to be admitted:

1. testimony of my Mandator (currently detained in Guantanamo Bay Naval Base on Cuba) as a victim, if necessary by means of legal assistance in accordance with the Treaty between the Republic of Poland and the United States of America on Mutual Legal Assistance in Criminal Matters concluded on 10th July 1996, in accordance with the regulation of Article 3 section 2 of the Agreement on Mutual Legal Assistance between the European Union and the United States of America, concluded in Washington on 25th June 2003 (hereinafter referred to as "Mutual Legal Assistance Agreement") regarding the unlawful detention and subjection to torture and inhuman, degrading treatment as well as the circumstances connected with his transportation between other places of detention and circumstances allowing the identification of the place where he was detained in the Republic of Poland;
2. testimony, if necessary, by means of legal assistance on the grounds of the Mutual Legal Assistance Agreement of **George Tenet** General Director of the CIA between 11th July 1997 and 11th July 2004 regarding the capture of my Mandator, place or places of his detention, methods of his interrogation used by CIA officers and other persons who had access to him, as well as other persons cooperating with CIA officers within the territory of the Republic of Poland and persons possessing knowledge about their activities;
3. testimony, if necessary by means of legal assistance on the grounds of the Mutual Legal Assistance Agreement of **John McLaughlin**, the acting General Director of the CIA between 11th July 2004 and 24th September 2004 regarding the capture of my Mandator, place or places of his detention, conditions in which my Mandator was detained, methods of his interrogation used by CIA officers and other persons, who had access to him, as well as other persons cooperating with CIA officers within the territory of the Republic of Poland and persons possessing knowledge about their activities;
4. testimony, if necessary by means of legal assistance on the grounds of the Mutual Legal Assistance Agreement of **Porter Goss**, the General Director of the CIA between 24th September 2004 and 30th May 2006 regarding the capture of my Mandator, place or places of his detention, conditions in which my Mandator was detained, methods of his interrogation used by CIA officers and other persons who had access to him, as well as other persons cooperating with CIA officers within the territory of the Republic of Poland and persons possessing knowledge about their activities;
5. testimony, if necessary by means of legal assistance on the grounds of the Mutual Legal Assistance Agreement of **Michael Hayden**, the General Director of the CIA between 30th May 2006 and 12th February 2009 regarding the capture of my Mandator, place or places of his detention, conditions in which my Mandator was detained, methods of his interrogation used by CIA officers and other persons who had access to him, as well as other persons cooperating with CIA officers within the territory of the Republic of Poland and persons possessing knowledge about their activities;
6. testimony, if necessary by means of legal assistance on the grounds of the Mutual Legal Assistance Agreement of [REDACTED] performed an active role in the interrogations of my Mandator, regarding the torture and inhuman, degrading treatment of detainees (including my Mandator) during interrogations by CIA officers and other persons, regarding existence of sites within the territory of Republic of Poland, to which citizens of other countries were illegally conveyed, in which they were detained and

from which they were deported, with the participation of CIA officers, and regarding additional circumstances of these activities as well as the knowledge of Polish public officers about such activities;

7. testimony, if necessary by means of legal assistance on the grounds of the Mutual Legal Assistance Agreement of [REDACTED] the pilot and commander of the airplane marked N85VM, probably during the period of illegal transportation of my Mandator between different sites, regarding the existence, frequency, routes and conditions of such transportation, and regarding the existence of any regulations governing such activity and regarding the stay within the territory of the Republic of Poland in relation to the described activities and activity of third parties (including Polish public officers) connected to such activity;
8. testimony, if necessary by means of legal assistance on the grounds of the Mutual Legal Assistance Agreement of:
 - a. [REDACTED]
 - b. [REDACTED]
 - c. [REDACTED]

who were on duty as pilots on board of the airplane marked N85VM probably during the period of illegal transportation of my Mandator between different sites, regarding the existence, frequency, routes and conditions of such transportation and the procedures of such transportation, and regarding the stay within the territory of the Republic of Poland in relation to the described activities and activity of third parties (including Polish public officers) connected such activity;

9. testimony, if necessary by means of legal assistance on the grounds of the Mutual Legal Assistance Agreement of [REDACTED] the pilot and commander of the airplane marked N63MU, probably during the period of illegal transportation of my Mandator between different sites, regarding the existence, frequency, routes and conditions of such transportation and the procedures of such transportation, and regarding the stay within the territory of the Republic of Poland in relation to the described activities and activity of third parties (including Polish public officers) connected with such activity;
10. testimony, if necessary by means of legal assistance on the grounds of the Mutual Legal Assistance Agreement of:
 - a. [REDACTED]
 - b. [REDACTED]
 - c. [REDACTED]
 - d. [REDACTED]

who were on duty as the pilots on board of the airplane marked N63MU or were members of the technical staff of said airplane, probably during the period of illegal transportation of my Mandator between different sites, regarding the existence, frequency, routes and conditions of such transportation and the procedures of such transportation, and on account of the stay within the territory of the Republic of Poland in relation to the described activities and activity of third parties (including Polish public officers) connected with such activity;

11. testimony, if necessary by way of legal assistance on the grounds of article 585 of the CPC of [REDACTED]

[REDACTED] regarding transportation of my Mandator just after his arrest, participation of the airplane marked N85VM in the activity of the CIA secret sites as well as regarding the procedures connected with the transportation of detainees between the sites situated in different countries;

12. testimony, if necessary by means of legal assistance on the grounds of the Mutual Legal Assistance Agreement of [REDACTED] residing probably in [REDACTED] who – according to publicly available sources - was to have managed the CIA site in Thailand, regarding the functioning of sites run by the CIA outside the USA borders, in which detainees were illegally detained and subjected to torture and inhuman, degrading treatment, regarding the period and condition of the stay of my Mandator in such sites, and regarding the location of the CIA site to which he was deported after leaving the site in Thailand;
13. testimony, if necessary by means of legal assistance on the grounds of the Mutual Legal Assistance Agreement of **Geoff Loane and other authors of the International Committee of the Red Cross Report on the treatment of fourteen high value detainees in CIA custody report** (hereinafter referred to as ICRC report) dated 14th February 2007, in particular those who had access to my Mandator regarding the deprivation of liberty of my Mandator without a decision based on law, the conditions of his detention and transportation by air between different places in different countries and subjection of my Mandator to torture, inhuman and degrading treatment;
14. testimony, if necessary by means of legal assistance, of **Dick Marty and other authors of the report for the Council of Europe of June 12th, 2006**, regarding the existence of CIA sites in which detainees were illegally detained and submitted to torture and inhuman, degrading treatment, in the Council of Europe member-states' territories, including the territory of the Republic of Poland;
15. testimony, if necessary by means of legal assistance on the grounds of the Mutual Legal Assistance Agreement of [REDACTED] who was in charge of the CIA site in the Republic of Poland, regarding the existence of CIA operated sites outside the US borders, in which detainees were illegally detained and submitted to torture and inhuman, degrading treatment, the period and conditions in which my Mandator was detained within such sites, especially in the territory of the Republic of Poland, the way in which my Mandator entered and left said territory, the way in which my Mandator was treated during the time he remained in the custody of the witness, as well as regarding whether Polish public officials or other persons were informed about the existence of the site and the details of its operations;
16. testimony, if necessary by means of legal assistance on the grounds of the Mutual Legal Assistance Agreement of [REDACTED] who were part of the medical personnel supervising the medical condition of the detainees within the site, regarding the period during which my Mandator was detained within the site and the conditions of his detention, the way in which my Mandator entered and left the territory of the Republic of Poland, how he was treated during the period the witnesses were responsible for his medical condition and monitored his pain levels, as well as regarding whether Polish public officials or other persons were informed about the existence of the site and the details of its operations;
17. testimony, if necessary by means of legal assistance on the grounds of the Mutual Legal Assistance Agreement of [REDACTED] **“Albert”**, [REDACTED] who threatened my Mandator with death during an

interrogation he conducted, reinforcing the threat by presenting a firearm and operating a power drill in close proximity to my Mandator's head, regarding where and when these events took place, how they fit into the overall plan of torturing and terrorizing my Mandator, as well as regarding any other related circumstances, that the witness may have knowledge of;

18. testimony, if necessary by means of legal assistance on the grounds of the Mutual Legal Assistance Agreement, of **James Mitchell, PhD**, who can be found at the address [REDACTED] regarding the existence of CIA operated sites outside the US borders, his presence and role as a psychologist during the interrogations of detainees and submitting them to torture and inhuman, degrading treatment, as well as regarding his having designed the methodological background of the torture program;
19. testimony, if necessary by means of legal assistance on the grounds of the Mutual Legal Assistance Agreement, of **Bruce Jessen, PhD**, who can be found at the address [REDACTED], regarding the existence of CIA operated sites outside the US borders, his presence and role as a psychologist during the interrogations of the detainees and submitting them to torture and inhuman, degrading treatment, as well as regarding his having designed the methodological background of the torture program;
20. testimony, if necessary by means of legal assistance on the grounds of the Mutual Legal Assistance Agreement, of **Christopher R. Hill**, Ambassador of the United States of America in the Republic of Poland between 2000 and 2004, citizen of the USA, and until recently, former Ambassador of the United States of America in Iraq, regarding the existence of a CIA site within this period in the territory of the Republic of Poland, detention of detainees suspected of terrorism therein, including my Mandator, submitting them to torture and inhuman, degrading treatment as well as regarding the knowledge of Polish public officers about this site and its activity, and their consent for the site's activity;
21. testimony, if necessary by means of legal assistance on the grounds of the Mutual Legal Assistance Agreement, of **Victor H. Ashe** Ambassador of the United States of America in the Republic of Poland between 2004 and 2009, citizen of the USA, regarding the existence of a CIA site within this period in the territory of the Republic of Poland, detention of detainees suspected of terrorism therein, including my Mandator, submitting them to torture and inhuman, degrading treatment as well as regarding the knowledge of Polish public officers about this site and its activity, and their consent for the site's activity;
22. testimony of **General Henryk Tacik**, Executive Commander of the Armed Forces during the period between December 15th, 2004 and April 20th, 2007, regarding whether he or his subordinates issued a permit for a foreign military aircraft to cross the Polish border and traverse Polish air space, in relation to US military aircraft landing at Szymany international airport or other relevant airports during his term as Executive Commander of the Armed Forces;
23. an official request by the Prosecutor to the current Executive Commander of the Armed Forces (Executive Command of the Armed Forces, ul, Radiowa 2, 00-908 Warszawa) for information regarding whether the Executive Commander of the Armed Forces, his predecessors or their subordinates issued a permit for a foreign military aircraft to cross the Polish border and traverse Polish air space, in relation to US military aircraft landing at Szymany international airport or other relevant airports;

24. testimony of **Leszek Miller**, prime minister between October 19th, 2001 and April 2nd, 2004, regarding whether he knew that a CIA site in which detainees were illegally held and submitted to torture and inhuman, degrading treatment, existed on the territory of the Republic of Poland, the circumstances associated with such activity, and regarding who might have been in possession of such knowledge during his term as prime minister and whether that person had withheld it from appropriate state officials;
25. testimony of **Marek Belka**, prime minister during the period between April 2nd, 2004 and October 31st, 2005, regarding whether he knew that a CIA site in which detainees were illegally held and submitted to torture and inhuman, degrading treatment, existed on the territory of the Republic of Poland, the circumstances associated with such activity, as well as regarding who might have been in possession of such knowledge during his term as prime minister and whether that person had withheld it from appropriate state officials;
26. testimony of **Kazimierz Marcinkiewicz**, prime minister between October 31st, 2005 and July 14th, 2006, regarding whether he knew that a CIA site in which detainees were illegally held and submitted to torture and inhuman, degrading treatment, existed on the territory of the Republic of Poland, the circumstances associated with such activity, as well as regarding who might have been in possession of such knowledge during his term as prime minister and whether that person withheld it from appropriate state officials;
27. testimony of **Jarosław Kaczyński**, prime minister between July 14th, 2006 and November 16th, 2007, regarding whether he knew that a CIA site in which detainees were illegally held and submitted to torture and inhuman, degrading treatment, existed on the territory of the Republic of Poland, the circumstances associated with such activity, as well as regarding who might have been in possession of such knowledge during his term as prime minister and whether that person withheld it from appropriate state officials;
28. testimony of **Aleksander Kwaśniewski**, president of the Republic of Poland between December 23rd, 1995 and December 23rd, 2005, regarding whether he knew that a CIA site, in which detainees were illegally held and submitted to torture and inhuman, degrading treatment, existed on the territory of the Republic of Poland, the circumstances associated with such activity, as well as regarding who might have been in possession of such knowledge during his term as President and whether that person withheld it from appropriate state officials;
29. testimony of **Zbigniew Siemiatkowski**, head of the Polish Intelligence Agency between 2002 and 2004, regarding whether he knew that a CIA site, in which detainees were illegally held and submitted to torture and inhuman, degrading treatment, existed on the territory of the Republic of Poland, the circumstances associated with such activity;
30. copy of Transcript of Combatant Status Review Tribunal Hearing of March 14th, 2007 attached to this motion, regarding my Mandator's statements concerning torture and inhuman, degrading treatment, which he was subjected to during detention by the persons acting on orders of USA government, as well as in order to confirm the necessity of his examination in the present proceedings by Polish authorities;
31. evidence of court medical experts, including psychiatric experts and psychological experts, regarding the physical and psychological state of health of my Mandator, and

the connection between such state of health and the use of torture and inhuman, degrading treatment and long-lasting detention in conditions violating basic standards of human rights;

32. letter of the Border Director of Central Border Guard Office dated 23rd July 2010 and Configuration of Landings and Take-Offs of Boeing I Gulfstream at the Szymany Airport Within the Years 2002-2005 (prepared by the Helsinki Foundation for Human Rights), copies of which are attached to this motion, regarding the landings and take-offs of the airplanes allegedly performing flights on CIA orders in the Republic of Poland as well as the number of passengers in each of them;
33. testimony of the flight controllers and airport staff of the Szymany airport between 2002 and 2005, customs officers and border guards, who controlled the landings and take-offs of the airplanes at this airport, regarding the landings and take-offs of Boeing I Gulfstream aircraft in this airport and their circumstances, as well as regarding landings and take-offs of other civil and military aircraft, the arrival, stay and departure of which was similar;
34. testimony of the author of the document entitled 'Configuration of Landings and Take-Offs of Boeing I Gulfstream at the Szymany Airport Within the Years 2002-2005' regarding the authenticity and official character of this document and the purpose for which it was created as well regarding the persons who did or could have read this document;
35. the special report attached to this motion prepared by the CIA Inspector General on Counterterrorism Detention and Interrogation Activities between September 2001 and October 2003 dated 7th May 2004, file no. CIA 2003-7123-IG, regarding the use in respect of persons (including my Mandator) detained in secret CIA sites, of torture and inhuman, degrading treatment including activities constituting a threat to the life of detainees, and regarding details of the secret sites program and its organization;
36. the International Committee of the Red Cross Report dated 14th February 2007 attached to this motion, regarding treatment of fourteen high value detainees at the CIA's disposal, file no. ICRC WAS 07/76, regarding the use in respect of persons (including my Mandator) detained in secret CIA sites, of torture and inhuman, degrading treatment including activities constituting a threat to the life of detainees;
37. the Report of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe regarding the Alleged Secret Detentions and Unlawful Inter-State Transfers of Detainees Involving Council of Europe Member States, dated 12th June 2006 attached to this motion, written by Dick Marty, regarding the existence of a secret detention site within the territory of the Republic of Poland, use in respect of detainees (including my Mandator) of torture and inhuman, degrading treatment and illegal transportation of detainees from and into the territory of the Republic of Poland;
38. the OMS Guidelines on Medical and Psychological Support to Detainee Rendition, Interrogation, and Detention dated 17th May 2004, attached to this motion, regarding the use in respect of persons (including my Mandator) detained in secret CIA sites of torture and inhuman, degrading treatment including activities constituting a threat to the life of detainees, participation of persons bound by principles of medical or nursing ethics, and regarding the details of the organization of the secret sites;
39. the complaint filed with the Texas State Board of Examiners of Psychologists dated 16th June 2010, attached to this motion, regarding the suspicion of participation of

James Mitchell and Bruce Jessen in torture and inhuman, degrading treatment *inter alia* within the territory of the Republic of Poland;

40. the report prepared by the Committee on National Security and Defense of the Parliament of Lithuania, attached to this motion, regarding alleged transportation and detention of CIA detainees within the Republic of Lithuania, as well as regarding the identification of some airplanes transporting CIA detainees, which had also landed within the territory of the Republic of Poland;
41. the Amnesty International report dated 5th April 2006, attached to this motion, regarding the secret flights ordered by the Government of the USA, regarding the existence of a CIA secret site within the territory of Republic of Poland, and the conditions in which the citizens of foreign countries (including my Mandator) were detained, as well as regarding the procedures and circumstances connected with the transportation of such detainees between the sites situated in different countries;
42. excerpt of the special report of the United Nations rapporteurs for torture and human rights matters while countering terrorism - Prof. Manfred Nowak and Martin Scheinin, attached to this motion (the complete text of which can be found at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.doc>) regarding the detention of my Mandator in the CIA secret site within the territory of the Republic of Poland, transportation by air of my Mandator between CIA sites in different countries which caused illegal transportation over Polish borders, participation of the airplane marked N63MU in this activity, and use by the CIA and other connected entities, of methods intended to conceal the real routes and destinations of these flights, including the falsification of flight documentation;
43. the press articles, attached to this motion, regarding the common availability of information regarding CIA secret sites beyond the USA borders, including the territory of the Republic of Poland, and use in respect of detainees in these sites of torture and inhuman, degrading treatment and participation in these activities of specific persons, as well regarding the existence of secret flights of civil and military airplanes between these sites, including Szymany in the Podlaski District.

Moreover, I submit a motion to:

- a) request the competent authority of the USA, under the Mutual Legal Assistance Agreement, to provide an uncensored version of the transcript certified for authenticity, described in point 30 above;
- b) determine, by request under Article 12 of the Mutual Legal Assistance Agreement to the appropriate authority of the USA or by other means, of the current addresses and if necessary the identity and place of residence of persons [REDACTED] in order to summon them;
- c) request the International Committee of the Red Cross with its seat in Geneva, 19 avenue de la Paix, CH 1202 Geneva to reveal the identity and addresses of the persons specified in point 13 in order to summon them to be examined as witnesses;
- d) request the Council of Europe with its seat in Avenue de l'Europe, F-67075 Strasbourg Cedex to reveal the identity and addresses of persons specified in point 14 in order to summon them to be examined as witnesses;
- e) determine the current addresses of persons [REDACTED] in order to summon them to be examined as witnesses;

- f) request the Department of Legal and Treaty Issues of the Ministry of Foreign Affairs to indicate if CIA officers or other foreigners cooperating with them or otherwise participating in the activities of the site or in the transportation of the detainees had the same status as members of diplomatic and consular service on the grounds of international law, and whether possessing a firearm and ammunition was necessary to protect the diplomatic and consular posts, representation offices of foreign organisations, members of official foreign delegations, or for other purposes resulting from international treaties or reciprocity;
- g) request the Department of Consular Affairs of the Ministry of Foreign Affairs to indicate if CIA officers and other foreigners cooperating with them or otherwise participating in the activities of the site or transportation of the detainees had been given certificates issued by a Polish Consul allowing them to import and export firearms and ammunition and for what period of time such certificate was issued, as well as to hand over copies of such certificates.

VIII. Power of Attorney

I hereby attach the power of attorney entitling me to act in criminal proceedings as a representative of my Mandator granted to me by attorney at law Nancy Hollander, the defense attorney of Abd al-Rahim Hussein Muhammed Abdu Al-Nashiri in the criminal proceedings in USA jurisdiction, in accordance with Article 83 §1 of the CPC in connection with Article 88 §1 of the CPC. Furthermore I explain that my Mandator is currently deprived of his liberty and remains detained in Guantanamo Bay Naval Base on Cuba. Therefore, in accordance with Article 83 §1 of the CPC in connection with Article 88 §1 of the CPC in such situation a power of attorney for representation in criminal proceedings can be granted by another person.

Substantiation

I. Summary of Facts

According to publicly available documents, including those indicated herein, my Mandator, a national of Saudi Arabia, was arrested in October 2002 within the territory of United Arab Emirates, probably by local special services. He was almost immediately handed over to the officers of the Central Intelligence Agency (CIA) of the United States of America. It is probable that he was captured at their order. He had been at their disposal up to September 2006 when he was transported to the Guantanamo Bay Naval Base on Cuba, where he has been until today, despite the fact that neither criminal proceedings against him were effectively initiated nor was he granted any rights as a prisoner of war, resulting from international law.

As is apparent from publicly available sources of information and other documents and information, between October 2002 and September 2006 he was detained in at least three secret sites in different countries, on the grounds of secret CIA instructions which were never made available to him. In this period he was systemically subjected to a program of torture and cruel, inhuman, and degrading treatment. Physical and psychological violence was applied in respect to him in order to force him to provide testimony incriminating himself and others. Not only, was he not given a chance to verify the legality of the

deprivation of his liberty before a court, but he was also unable to inform anyone that he was arrested.

II. Existence of a CIA Site in Poland and Detention of my Mandator Therein

At the time of preparation of this letter, neither the government of the USA nor the authorities of the Republic of Poland confirm the existence of a secret site within the territory of the Republic of Poland. Nevertheless, there is a considerable amount of evidence which indicates that the site in fact existed. Some of this evidence is presented below.

Many press releases, including those attached to this letter, and the Report of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe regarding the Alleged Secret Detentions and Unlawful Inter-State Transfers of Detainees Involving Council of Europe Member States, dated 12th June 2006 by Dick Marty (attachment no. 13) and Amnesty International report dated 5th April 2006 (attachment no. 17) regarding the secret flights performed on order of the USA government, both indicate that one such secret site was organised within the territory of the Republic of Poland, where detainees were unlawfully held, subject to torture and inhuman, degrading treatment.

The detainees held in CIA sites beyond the USA borders were transported into these sites by airplanes, often by civil airplanes on CIA orders or belonging to companies dependant on the CIA. There can be no doubt that between 2002 and 2005 the aircraft marked N63MU, N379P and N313P landed and took off in Szymany airport, Podlaskie District.

Evidence:

- *Copy of letter of Border Director of Central Border Guard Office dated 23rd July 2010 (attachment no. 4)*

The airplanes with these numbers were identified as the airplanes which probably rendered services to the CIA by transporting the detainees between the secret sites. From my Mandator's point of view, the airplane marked no. N63MU is highly important. It is in this airplane that my Mandator was probably transported. This airplane belongs to [REDACTED] which renders services for the USA government. This airplane probably travelled the following routes:

<u>Location of Take-off</u>	<u>Destination</u>	<u>Date of the flight</u>
○ Elmira, New York (KELM)	Washington, DC (KIAD)	3 rd Dec 2002
○ Washington, DC (KIAD)	Anchorage, Alaska (PANC)	3 rd Dec 2002
○ Anchorage, Alaska (PANC)	Osaka, Japonia (RJBB)	3 rd Dec 2002
○ Osaka, Japonia (RJBB)	Bangkok, Tajlandia (VTBD)	4 th Dec 2002
○ Bangkok, Tajlandia (VTBD)	Dubai, UAE (OMDB)	5 th Dec 2002
○ Dubai, UAE (OMDB)	Szymany, Polska (EPSY)	5 th Dec 2002
○ Szymany, Polska (EPSY)	London Luton, UK (EGGW)	5 th Dec 2002
○ London Luton, UK (EGGW)	Dulles, Washington DC (KIAD)	6 th Dec 2002

o Washington, DC (KIAD)

Elmira, New York (KELM)

6th Dec 2002

Bold lettering above indicates the places where the secret sites in which the CIA probably held detainees were probably located.

Evidence:

- *press release "Key omission in memo to destroy CIA terror tapes" (attachment no. 8)*

As indicated in publically available documents, the airplane marked no. N63MU left eight passengers at the Szymany airport on Dec. 5, 2002, who were not subject to full passport and customs control. This seemed to be the rule for all the aircraft concerned.

Evidence:

- *press release "Specification of CIA flights to Poland" (attachment no. 9)*
- *Copy of letter of Border Director of Central Border Guard Office dated 23rd July 2010 (attachment no. 4)*

At the same time it is reported that my Mandator before the flight on 5th December 2002, was in the CIA site in Thailand. This is supported by the specification of flights of the aircraft marked N85VM, belonging to ██████████ which performed flights on the USA administration's order, in particular for the CIA. This airplane was identified as the airplane which served for transportation of detainees in the report of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe regarding the Alleged Secret Detentions and Unlawful Inter-State Transfers of Detainees Involving Council of Europe Member States, dated 12th June 2006 by Dick Marty and in the report prepared by the Committee on National Security and Defense of the Parliament of Lithuania. This airplane performed the flight from Dubai airport in the United Arab Emirates (OMDB) to Bangkok in Thailand (VTBD) on 8th November 2002, i.e. just after the arrest of my Mandator in Dubai and after he was handed over to the CIA by local services.

Evidence:

- *the report of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe regarding the Alleged Secret Detentions and Unlawful Inter-State Transfers of Detainees Involving Council of Europe Member States, dated 12th June 2006 by Dick Marty (attachment no. 13)*
- *report prepared by the Committee on National Security and Defense of the Parliament of Lithuania (attachment no. 19)*

Alternative conclusions, resulting from publicly available data concerning air traffic, were drawn by the journalists Matt Apuzzo and Adam Goldman in the attached article "To keep program secret, CIA whisks 9/11 figures from Gitmo before court ruling". Leaving aside the details of the transportation route of the detainees, including my Mandator, public sources agree that one of the CIA secret sites was situated within the territory of the Republic of Poland. Moreover, these authors indicate the detention of my Mandator (by name) in the secret site within the territory of the Republic of Poland, by flash® presentation available at <http://hosted.ap.org/specials/interactives/wdc/binalshibh/> as an attachment to the press release of Associated Press dated 17th August 2010.

Evidence:

- *press release "To keep program secret, CIA whisks 9/11 figures from Gitmo before court ruling" by Matt Apuzzo and Adam Goldman, Associated Press, dated 6th August 2010 (attachment no. 10)*

- *flash® presentation available at*
<http://hosted.ap.org/specials/interactives/wdc/binalshibh/>

This data also supports the statements regarding the detention of my Mandator and (as mentioned below) the fact that he was subject to torture and inhuman, degrading treatment. It is therefore justified to conduct proceedings in order to eventually eliminate the doubts regarding the existence and functioning of a CIA site within the territory of the Republic of Poland and to provide to my Mandator the status of a victim in this proceeding.

III. Use of Torture and Inhuman and Degrading Treatment in the CIA Sites

There is no doubt that CIA agents and people assisting them during interrogations were exercising so called “enhanced interrogation techniques” (EIT), including the following:

- a. attention grasp
- b. walling
- c. facial hold
- d. facial slap
- e. cramped confinement
- f. wall standing
- g. stress positions
- h. sleep deprivation
- i. the waterboard

Evidence of use of these techniques was provided by the CIA itself, for example in the memorandum of August 1, 2002 prepared by the US Department of Justice at the request of the CIA, in which all said techniques and their admissibility in light of US and international law was discussed. Moreover CIA agents were accounted for the proper use of these enhanced interrogation techniques in the CIA Inspector General’s report dated May 7th, 2004.

Evidence:

- *Interrogation of al Qaeda operative dated August 1, 2002 prepared by the US Department of Justice (attachment no. 2)*
- *CIA Inspector General Special Review: Counterterrorism Detention and Interrogation Activities September 2001 – October 2003, dated 7th May 2004 file no. 2003-7123-IG (attachment no. 15)*

The authors of the Report of the International Committee of the Red Cross also confirm the exercise by the CIA of said techniques in a manner constituting torture and inhuman treatment. My Mandator is mentioned by name in the ICRC’s report as a person who was tortured (e.g. pages 10, 11, 17 of said report).

Evidence:

- *International Committee of the Red Cross Report dated 14th February 2007, on the treatment of fourteen high value detainees at CIA custody, file no. ICRC WAS 07/76 (attachment no. 16)*

While testifying on March 14th, 2007 before the tribunal deciding on his combatant status, my Mandator confirmed that he was tortured.

Evidence:

- *Copy of Transcript of Combatant Status Review Tribunal Hearing on March 14th, 2007 (attachment no. 20)*

Additionally, the above mentioned interrogation methods and their use have been revealed in many press publications, part of which has been attached to this motion (*attachments no. 6, 7, 8, 9, 10, 11, 12*).

From the point of view of these proceedings it is advisable to take a closer look at some of these "techniques".

- Walling

This technique consists of hitting the interrogated person against the wall in such a way that mainly the interrogated person's shoulders and arms hit the wall. The interrogator takes advantage of his physical power, whereas the interrogated person is often handcuffed or tied. The interrogated person's head is wrapped with a hood or towel in such a way that his impact against the wall does not cause his neck to break. It is evident that this technique is inherently connected with a direct exercise of power against the interrogated person. Moreover, the possibility of serious health consequences for the interrogated person, including his death, were obviously taken into account already at the stage of design of this technique.

Notwithstanding the efficiency of possible precautions, this risk cannot be entirely eliminated. This means that each exercise of this technique causes a threat of serious health consequences (including death) for the interrogated person.

- Facial slap

Facial slap consists of strongly hitting the interrogated person's face with an open hand. A correct slap should be directed to the point lying between the interrogated person's chin and ear and the interrogator's fingers should not be joined. This technique is tantamount to hitting the interrogated person - it aims at causing pain and humiliation.

- Cramped confinement

In exercising this technique the interrogated person is placed in a specially designed "case", prepared in accordance with one of two kinds. In the bigger type of case the interrogated person is not able to stand or lie, however can sit. In the smaller type of case there is only enough place to crouch. In both cases changing the position taken by the interrogated person prior to closing the case is made extremely difficult, due to a lack of space. There is no access of light to the case, air circulation is limited. Placing the interrogated person in the case could last even 18 consecutive hours, according to CIA instructions. It should be noted that the cases were not been equipped with sanitary facilities. This technique connects physical and mental suffering. The pain of muscles and joints caused by remaining in the same position for a long time is connected with the fear of suffocation and claustrophobia.

- Wall standing and stress positions

Both techniques consist of placing the interrogated person in an unnatural position and forcing him to remain in such position for a relatively long time. The positions forced upon the interrogated persons include *inter alia* standing on toes with hands fixed to the ceiling in such a way that lowering the body to the position enabling full contact of feet with the floor would cause dislocation-threatening extension of the shoulder. The interrogated persons were often naked during application of this technique. There was no time limit of any single use of these techniques for one time. According to some persons interrogated by the CIA this could have lasted continuously for several days. During this time they were not allowed to use the toilet which would force them to urinate and defecate without changing

position. While exercising this technique they were not washed and the floor was not cleaned. The physical pain caused by an uncomfortable position is connected in this technique with the humiliation caused by the nudity and the necessity to realize physiological needs in a way violating human dignity.

In the case of my Mandator, the interrogators “creatively” developed the wall standing and stress positions technique, making him additionally twist his body or binding his limbs in a way that not only amplified the physical pain, but also threatened serious health problems.

Evidence:

- *CIA Inspector General Special Review: Counterterrorism Detention and Interrogation Activities September 2001 – October 2003, dated 7th May 2004 file no. 2003-7123-IG (attachment no. 15), paragraph 97*

- Sleep deprivation

This technique consists in depriving the interrogated person of sleep for a couple a days in a row. To achieve this the interrogated person is flushed with cold water, loud music is played in the place he is held, strong light is used, the wall standing and stress positions technique are used, the person is made to stay naked in places where the air temperature is below 18 degrees Celsius. The CIA instructions mention sleep deprivation lasting for even 11 days in a row. This technique causes a serious threat to the mental health of the interrogated person and may lead to the growth of long lasting disorders. Additionally it increases the risk of serious bodily injuries or even death while exercising other techniques, like “the wall standing and stress positions” technique or “water boarding”, as the interrogated person may be unable to remain conscious while they are applied.

- The waterboard

The waterboard is a technique that is intended to make the interrogated person believe that he is being drowned. It consists in attaching the interrogated person to a movable tabletop. The eyes, nose and mouth of the interrogated person are covered with opaque but easily soaking cloth. With the use of the movable tabletop the interrogated person is lowered head down and large amounts of water are flushed over the cloth from a higher level. This causes the interrogated person to experience an instinctive impression of drowning. As a result of exercising this technique the oxygenation level in the interrogated person's blood may decrease considerably, which in turn may lead to serious health problems. Additionally, this causes considerable mental anguish associated with the feeling of impending threat of death.

When evaluating the above-described techniques, apart from their obvious illegality, it should be taken into account that they were exercised jointly or alternatively in short intervals. This mutually enhanced their effectiveness, which in turn highly intensified the pain caused to the interrogated person.

- Improvised techniques

Apart from using the techniques described above, the CIA Inspector General's report (e.g. in paragraphs 90, 94 and 96) mentions that CIA officers and other persons conducting the interrogations committed acts of similar character and purpose, not encompassed by the catalogue of officially approved techniques. These acts include psychological compulsion and humiliating treatment consisting in death threats and sexual violence towards the detainees and their families, causing discomfort by subjecting the interrogated person to influence of suffocating cigarette smoke, washing them with harsh, sharp hair brushes, as well as pure

physical violence, such as punching, kicking, standing by the interrogator on the interrogated person's handcuffs.

Evidence:

- *CIA Inspector General Special Review: Counterterrorism Detention and Interrogation Activities September 2001 – October 2003, dated 7th May 2004 file no. 2003-7123-IG (attachment no. 15)*

- Pistol and drill incident

The CIA Inspector General's report indicates in paragraphs 94 and 95 that in the case of my Mandator the death threats took a form that was considered inadmissible even by those who encouraged the use of the above-mentioned physical and mental torture. According to the report at the edge of 2002-2003, [REDACTED] tried to intimidate my Mandator with death threats by directing a pistol to his head when he was sitting shackled to his seat. He later repeated the same threat in other circumstances, using an electric drill. He switched on the electric drill in immediate proximity to my Mandator's head when he was standing naked, handcuffed, with bag on his head preventing him from seeing.

Evidence:

- *CIA Inspector General Special Review: Counterterrorism Detention and Interrogation Activities September 2001 – October 2003, dated 7th May 2004 file no. 2003-7123-IG (attachment no. 15)*

IV. Jurisdiction and Competence

Both Polish citizens and foreigners, including CIA officers, could commit the offences mentioned above in the *petitum*. This does not inhibit the criminal proceedings because according to article 5 of the CC, Polish criminal statute shall be applied to a perpetrator who commits an offence on the territory of the Republic of Poland and according to article 6 § 2 of the CC, an offence is committed in the place where a perpetrator acted or failed to act (if he had a duty to do so). Moreover, offences committed to the detriment of my Mandator were not incidental, but were a part of a complex plan, which was realised over a long time in more than one country. Therefore, even if attributing specific actions to specific suspects on the territory of the Republic of Poland proves to be impossible, it would be justified to take into account also actions that happened outside the territory of the Republic of Poland. Such actions constitute essential aspects of the above described offences committed in a continuous fashion, and should be prosecuted in Poland.

Another argument in favour of the Polish Prosecutor's Office jurisdiction, in spite of the possible nationality of the perpetrators, is article 113 of the CC in connection with the European Convention, the International Covenant on Civil and Political Rights opened for signature in New York on 16 December 1966 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Adopted by United Nations General Assembly on 10 December 1984. The planned and methodical use of torture and inhuman, degrading treatment against my Mandator was discussed in part III of the substantiation of this letter.

Finally, according to article 40 of the Constitution of the Republic of Poland, nobody shall be subject to torture or cruel, inhuman or degrading treatment or punishment. The legislator does not distinguish between Polish citizens and foreigners neither as perpetrators nor as victims of such treatment. This ban is absolute and formal. Article 8 s. 2 of the Polish Constitution declares that its provisions shall be applied directly unless otherwise stated in

the Constitution. In the case of the ban stated in article 40 of the Polish Constitution, there is no provision excluding the direct application of this article.

All the above arguments support the motion to include the above issues in the ongoing investigation concerning the offense under article 231 §1 of the CC and regarding the suspicion of existence in Poland of at least one secret site to which citizens of other countries were brought illegally, in which they were detained illegally and subsequently illegally removed from Polish territory to other countries.

V. Substantiation of Claims Regarding Offences Under the CC

ad 1)

The offence described in article 123 § 2 of the CC is committed *inter alia* when somebody causes grievous bodily harm to a prisoner of war or a person who lays down his arms or is unarmed and surrenders or when somebody subjects such a person to torture, cruel or inhuman treatment. In order for this behavior to constitute an offence under art. 123 § 2 of the CC, both of these actions must be committed in violation of rules of international law.

First of all, the condition regarding violation of international law should be considered. Extensive argumentation regarding this issue is included in part VI of the substantiation of this letter. Without any doubt the people who detained my Mandator violated the rules of international law. The European Convention guarantees basic rights and freedoms to everybody, regardless of their status, role in proceedings, nationality or external circumstances, for example, the state of war.

Moreover, the Convention on Treatment of Prisoners of War signed in Geneva on 12 August 1949 [Dz. U. z 1956 r., nr 38, poz. 175, attachment] (hereinafter: 'the III Geneva Convention') in article 3 absolutely prohibits cruel treatment, torture and torment even in the case of a conflict that is not international.

In consequence, actions taken against my Mandator violate rules of international law both for the time of peace and war.

The necessary characteristic of a victim of the discussed crime is that such person has the status of a prisoner of war or a person who lays down his arms or is unarmed and surrenders.

Proceedings before the military Tribunal regarding the combatant status of my Mandator as an enemy combatant have been completed. This status has been granted to him. Thus it is necessary to assume that from the beginning of his detention there was at least a doubt regarding his belonging to the category of people who have the status of a prisoner of war or other person covered by special protection of international law of war, as understood pursuant to article 4 of the III Geneva Convention, in case of capture by the enemy. According to article 5 of the III Geneva Convention, in case of such doubts such a person is covered by the protection provided for prisoners of war until their legal status is determined by a competent court. In result, my Mandator should have been recognized, also *ad interim*, as a prisoner of war in the meaning of the III Geneva Convention. The CC does not provide any definition of a prisoner of war. The adoption of the definition used in international law is all the more appropriate, given that the provisions of articles 123 § 1 and 2 of the CC effectuate obligations resulting from four conventions on protection of victims of war, prepared in Geneva on 12 August 1949¹.

¹ A. Marek "Kodeks Karny. Komentarz", LEX 2007, wyd. IV.

In consequence, my Mandator is a member of the category of people, who may be the victims of the offences described under articles 123 § 2 of the CC.

Without any doubt my Mandator was subject to torture and inhuman, degrading treatment. According to article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. Treatment is degrading when it causes a feeling of fear and humiliation leading to debasement. In result this can cause physical and psychological breakdown. Every torture is an inhuman and degrading treatment and every inhuman treatment is also degrading.

The use of interrogation techniques described in part III of this letter against my Mandator without any doubt constitutes torture.

Evidence:

- *testimony of my Mandator*
- *testimony of indicated witnesses*
- *press releases (attachments no. 6, 7, 8, 9, 10, 11, 12)*
- *CIA Inspector General Special Review: Counterterrorism Detention and Interrogation Activities September 2001 – October 2003, dated 7th May 2004 file no. 2003-7123-IG (attachment no. 15)*
- *International Committee of the Red Cross Report on the treatment of fourteen high value detainees at CIA custody, file no. ICRC WAS 07/76 (attachment no. 16)*
- *Copy of Transcript of Combatant Status Review Tribunal Hearing on March 14th, 2007 (attachment no. 20)*

ad 2)

An offence penalized in article 156 § 1 point 2 of the CC consists *inter alia* in causing grievous bodily harm in the form of serious incurable or long-lasting disease, permanent mental illness, total or significant and lasting inability to work.

My Mandator in result of detention and torture suffers from serious physical and psychological ailments. According to a heavily redacted transcript of his March 14, 2007 Combatant Status Review Tribunal hearing (attachment no. 20), my Mandator stated that before he was arrested, he was able to run about ten kilometers, but that he could no longer walk for more than ten minutes. He also said that his nerves were "swollen in his body." My Mandator also said that he had been tortured from the time he was arrested five years ago. He said, "it happened during interviews. One time they tortured me one way and another time they tortured me in a different way." My Mandator also stated in his hearing that he was "drowned" in water. As a result of this torture and abuse, my Mandator has experienced a dramatic decrease in physical condition, suffers from chronic anxiety. Even in the case of immediate release he will need long-lasting, intensive therapy and many years of psychological help in order to return to normal life.

Due to the conditions in which my Mandator is detained and obstructions in contacting him caused by the government of the USA, at whose disposal he remains, I do not possess up-to-date opinions of physicians regarding the physical and psychological condition

of my Mandator. In part VII of the *petitum* of this letter, there is a motion to conduct the appropriate examinations and expertise.

Evidence:

- *testimony of my Mandator;*
- *expertise of medical and psychological expert witnesses;*
- *Copy of Transcript of Combatant Status Review Tribunal Hearing on March 14th, 2007 (attachment no. 20).*

ad 3)

The offence penalized under article 189 § 3 of the CC consists in depriving a person of liberty in a way which involves his exceptional torment.

It is beyond any doubt that my Mandator was deprived of liberty for a time much longer than 7 days, resulting in more severe liability under article 189 § 2 of the CC. The subject of protection of article 189 § 1 and 2 of the CC is personal liberty in the meaning of freedom of movement and ability to change one's place. Every case of deprivation of liberty is an action relevant for criminal law as it violates a fundamental right and requires justification to be legal. For deprivation of liberty to be legal it has to have a legal basis and must last only for the time necessary to explain the case or necessary to meet the aims prescribed by law for the deprivation of liberty.² In the case of my Mandator he was deprived of liberty for many years, without access to a court or any supervisory institutions or at least disclosure of the grounds of detention. Therefore, there is no doubt that this was an illegal deprivation of liberty and in result – a criminal offence. In particular this has relevance for my Mandator's stay on the territory of Poland.

During his deprivation of liberty my Mandator was subject to torture and inhuman, degrading treatment, which was described extensively in the above points and in part III of the substantiation of this letter. These actions, particularly because of their long duration and regularity, met the definition of exceptional torment as a condition of liability under article 189 § 3 of the CC.

ad 4)

The offence penalized under article 190 § 1 of the CC consists in threatening to commit a crime to the detriment of the threatened person or his next of kin, if such a threat results in a justified fear that it will be fulfilled.

As results from publicly available information, including the materials attached to this letter, during the time of detention of my Mandator, CIA officers and other people who interrogated him threatened him with death and imprisonment and torture of members of his family ("next of kin" as understood under article 115 § 11 of the CC). He was also threatened with sexual violence against him and the abovementioned people.

Murder is an offence penalized in article 148 of the CC, deprivation of liberty – in article 189 of the CC and rape – in article 197 of the CC. In consequence the condition that threat must concern a criminal offence was fulfilled.

² A. Barczak-Oplustil, G. Bogdan, Z. Cwiągalski, M. Dąbrowska-Kardas, P. Kardas, J. Majewski, J. Raglewski, M. Rodzynkiewicz, M. Szewczyk, W. Wróbel, A. Zoll, Kodeks karny. Część szczególna. Tom II. Komentarz do art. 117-277 k.k., Zakamycze, 2006, wyd. II.

As to the condition regarding justified fear, two issues should be emphasized. *Primo*, my Mandator was before and during the time of making the abovementioned threats brought to utmost exhaustion resulting from malnutrition and lack of sleep and tortured. In the official documents of the CIA it was directly admitted that this was intended to weaken his will, making him susceptible to suggestions. A person who was subject to torture and inhuman treatment has no grounds to predict that his tormentors will not realize their threats. Moreover, a threat regarding sexual violence against members of his family was especially frightful to my Mandator, a practicing and conservative Muslim.

Secundo, the people who threatened my Mandator made all efforts to make the threats believable. It should be noted that probably most of them, if not all, were trained officers of the secret services, possessing knowledge about psychology and interrogation techniques. The attached documents indicate that while threatening my Mandator with death they went as far as to use a firearm and electric drill which were intended to make the threat direct and increase the feeling of fear.

Evidence:

- *testimony of my Mandator;*
- *CIA Inspector General Special Review: Counterterrorism Detention and Interrogation Activities September 2001 – October 2003, dated 7th May 2004 file no. 2003-7123-IG (attachment no. 15)*
- *International Committee of the Red Cross Report dated 14th February 2007, on the treatment of fourteen high value detainees at CIA custody, file no. ICRC WAS 07/76 (attachment no. 16)*

ad 5)

The offence penalized under article 191 § 1 of the CC consists in using violence or threat in order to force a person to an action, nonfeasance, or to endure a situation or behavior.

The circumstances which indicate that violence and threat (according to Article 115 § 12 of the CC) with regard to my Mandator, have already been thoroughly discussed above and in part III of the substantiation. This evidence leads to the conclusion that both violence and threats took place.

It is important to state the directional intention of the perpetrators of the offence described in Article 191 § 1 of the CC, in this case the directional intention to force a person to behave in a specific way. Based on available CIA documentation and the publicly available sources of information about the CIA secret sites, the main purpose for using torture and threats was to force my Mandator to reveal the circumstances of the activities of an organization of Islamic terrorists. He was presumed to have kept secret knowledge about this terrorist organization. Apart from legitimacy of such speculations, this motivation, which was logical and made apparent by declared purposes of CIA activity and the questions posed to my Mandator, meets the requirements of acting in order to force a person to a definite behavior.

Therefore, classification of such behavior pursuant to Article 191 § 1 of the CC is appropriate.

ad 6)

The offence described in Article 207 § 2 of the CC consists in physical and psychological harassment of a person who is permanently or temporarily dependant on the perpetrator.

The circumstances of use of physical and psychological torture with regard to my Mandator have been thoroughly discussed above and in part III of the substantiation. The tortures which he was subjected to constituted both physical and psychological harassment, especially in view of its long-lasting and systematic character.

Moreover, having been deprived of his liberty without any chance to contact anyone else other than guards and investigators, my Mandator was dependant on the persons who detained him. They decided if and when he would be fed, allowed to sleep or use the toilet. Only these persons decided about the psychological and physical suffering which he was subjected to.

Therefore the features of the crime described in Article 207 § 2 of the CC with regard to my Mandator have been fulfilled.

ad 7)

The provision of Article 240 § 1 of the CC states that who has the credible information about the illegal preparation or attempt to commit any of the crimes described in Articles 118, 127, 128, 130, 134, 140, 148, 163, 166, 189 or 252 of the CC, does not inform immediately the competent authority, is subject to criminal liability and punishment.

As indicated in publicly available information, including the documents attached to this letter, the activity of the site in which my Mandator was detained, was necessarily connected with the commitment of the crime described in Article 189 of the CC, i.e. a crime regarding which anyone (who possesses knowledge of the crime) must notify the authorities, under pain of criminal liability. The basic aim of this site was to detain prisoners who were suspected of terrorism who were deprived of liberty illegally by the intelligence services of a foreign country. Even if no Polish public officer or other person knew about the torture of the detainees by the CIA, the mere setting up of the site and secret transportation of detainees to such site in circumvention or direct violation of criminal procedure, indicated that a crime was being committed.

Moreover, failure on the part of any Polish public officer to notify the Prosecutor or Police about the functioning of the site would be in violation of the obligation provided in art. 304 § 2 of the CPC, which may add to the criminal liability of any such public officer under Article 231 of the CC, which is the subject of these proceedings.

ad 8)

The offence described in Article 246 of the CC can be committed by a public officer or other person who acts on a public officer's order in order to obtain specific testimony, depositions, information or statement by using violence, threats or other physical or psychological harassment.

The circumstances of use of physical and psychological torture with regard to my Mandator have been thoroughly discussed above and in part III of the substantiation. The torture which he was subjected to certainly constituted violence and physical and psychological harassment, especially in view of its long-lasting and systematic character. Use of illegal threats with regard to my Mandator has been thoroughly discussed above.

An officer of an authority or body responsible for public safety and a soldier in active duty are both public officers in accordance with the definition specified in Article 115 § 13 of the CC. Therefore, if the criminal actions were committed by the officers of Polish Intelligence Agency (Agencja Wywiadu) or the Internal Security Agency (Agencja

Bezpieczeństwa Wewnętrznego) or by soldiers in active military service, even by cooperating with or helping other persons, including foreigners, the classification of their behavior under Article 246 of the CC is appropriate, and would absorb the offence described in Article 191 of the CC.

ad 9) et 10)

According to Article 247 of the CC a person who physically and psychologically abuses any person legally deprived of liberty is criminally liable and subject to punishment. If the perpetrator acts with particular cruelty shall, they are subject to a more severe punishment.

The circumstances of use of physical and psychological torture with regard to my Mandator have been thoroughly discussed above and in part III of the substantiation. that the torture which he was subjected to did certainly constitute violence and physical and psychological harassment, especially because of its long-lasting and systematic character. The nature of these tortures indicate that the actions taken against my Mandator were of a particularly cruel nature, which justifies the more severe regime of criminal liability under § 2 of abovementioned Article.

It is highly doubtful whether my Mandator and other detainees in the site may be considered to have been legally deprived of their liberty. Hypothetically, if such deprivation of liberty were acknowledged as lawful, it would be appropriate to consider the actions of persons who tortured my Mandator as a crime described in Article 247 of the CC.

The offence in Article 247 of the CC is a universal crime, which may be committed not only by Polish public officers (as specified in § 3 of the abovementioned Article) but also other persons, including foreigners.

ad 11)

The crime specified in Article 263 §2 of the CC is a formal crime which consists in the possession of firearms or ammunition without a required permit.

According to Article 40 of Arms and Ammunition Act of 21st May 1999, foreigners who are not members of diplomatic staff or consular officers or persons with equal status on the grounds of international treaties, may possess firearm and ammunition if these are required for protection of the diplomatic mission and consular offices of foreign countries, staff of official international delegations or on the basis of reciprocity. Import and export of firearms and ammunition by foreigners, described in Article 40 must be preceded by issuing a certificate from the Polish consul. Such a certificate serves as a permit for a 30-day-period, from the day of import of the firearms and ammunition.

It is highly probable that the staff of the site where my Mandator was detained, and also the staff of the airplane which he was transported in, possessed firearms. These people were entirely or mostly foreigners and in all likelihood were not members of diplomatic staff or consular offices.

Having that in mind, it is justified to check whether these people had appropriate permits for possession of firearms or ammunition within the territory of the Republic of Poland or whether they were entitled to possess firearms on the grounds of international treaties or on the basis of reciprocity. The motions regarding evidence in these matters are specified in point VII of the *petitum*.

If the abovementioned circumstances indicating legality of possession of firearms by the foreigners within the territory of the Republic of Poland did not occur, their actions should be classified as criminal offences specified under Article 263 §2 of the CC.

ad 12)

The crime specified in Article 264 §2 of the CC consists in the crossing of the border of the Republic of Poland contrary to the regulations, by use of threat of violence, acting with violence, by deceit or in cooperation with other people.

The regulation concerning crossing of the borders of the Republic of Poland may be found in chapter III of the National Border Protection Act of 12th October 1990. According to Article 14 and 15 of said Act, crossing the border is permitted with documents allowing one to cross the border. Persons who cross the border are obliged to undergo border control by the border guard.

Publicly available materials indicate that multiple flights of the USA military and of CIA associated companies were performed to and from Szymany airport, Podlaskie District. Neither passengers nor the staff was subject to passport and customs control, which is in violation of the abovementioned regulations.

Moreover, it is probable that part of the flights to and from Szymany airport connected with CIA activity within the territory of the Republic of Poland, were performed by the airplanes belonging to military forces of the USA or another country. According to Article 18a of National Border Protection Act, crossing the border and a flight performed by a foreign military aircraft within the airspace of the Republic of Poland may take place only upon permission issued by the Executive Commander of the Armed Forces, at the request of a competent authority. Should individual permission not be issued for each flight performed by a military airplane, this would be separate basis for the illegality of the border crossing, not only by the staff but also by the passengers of such flights. The motions regarding these matters are specified in the *petitum*.

It seems obvious that crossing the border in the abovementioned way took place in cooperation with other people in Poland and abroad. It would be impossible to organise the logistic resources necessary for servicing the airplane and the circumstances allowing the crew and passengers to avoid complete customs and passport control. Moreover, the way in which the persons involved avoided presenting the real destination of the flights and the fact that false versions of the flight were created in order to be put it into the official documents, all indicate use of deceit by the perpetrators.

At this point it is worth noting that the passengers of these flights, who were deprived of liberty (and therefore had no chance to control their situation) could not have committed the crime because they bore no fault at all, which was caused by absolute inability of behaving (*vis absoluta*).

Evidence:

- *Configuration of Landings and Take-Offs of Boeing I Gulfstream at the Szymany Airport Within the Years 2002-2005, (attachment no. 3)*
- *Copy of letter of Border Director of Central Border Guard Office dated 23rd July 2010 (attachment no. 4)*
- *Landing and Take-offs of CIA Airplanes in Poland (attachment no. 5)*
- *Specification of CIA flights to Poland by Włodzimierz Nechamkis, Nowy Dzień, dated 10th December 2005 (attachment no. 9)*

ad 13)

The crime specified in Article 264 §3 of the CC is the organizing for other people of crossing the border of the Republic of Poland against binding regulations.

The regulations governing crossing the border of the Republic of Poland may be found in chapter III of the National Border Protection Act of 12th October 1990. According to Article 14 and 15 crossing the border is permitted with documents allowing one to cross the border. Persons who cross the border are obliged to undergo control by the border guard.

Publicly available documents indicate that in the case of the passengers transported by civil and military airplanes performing flights for the CIA to Szymany airport, Podlaskie District, these requirements may not have been fulfilled. Moreover, analysis of these materials indicates that this may have been intended and planned beforehand by the persons who organised the flights.

Moreover, according to Article 18a of the National Border Protection Act crossing the national border and the flight by a foreign military aircraft within the airspace of the Republic of Poland may take place only with the permission of the Executive Commander of the Armed Forces, at the request of the appropriate party. Should the flights connected with the site activity be found to have been performed by the airplanes with military aircraft status, the lack of appropriate permission for any of the airplanes (given that there were many flights over a period of several years to the same airport) should also lead to the conclusion that this was a state of affairs intentionally organised in order to enable such an violations.

Evidence:

- *Configuration of Landings and Take-Offs of Boeing I Gulfstream at the Szymany Airport Within the Years 2002-2005, (attachment no. 3)*
- *Copy of letter of Border Director of Central Border Guard Office dated 23rd July 2010 (attachment no. 4)*
- *Landing and Take-offs of CIA Airplanes in Poland (attachment no. 5)*
- *Specification of CIA flights to Poland by Włodzimierz Nechamkis, Nowy Dzień, dated 10th December 2005 (attachment no. 9)*

ad 14)

According to Article 258 of the CC, anyone who takes part in an organised group in order to commit crimes or fiscal crimes, is subject to punishment, and if the group is armed, the perpetrator is subject to a more severe punishment.

First of all, in order to apply this rule, one must consider the term “group”. It is obvious that in the case of the crimes committed against my Mandator, the perpetrator is not a single individual. Such a logistical enterprise is not possible without numerous staff. My Mandator knows that he was interrogated by more than one person. The people who staffed the secret site within the territory of the Republic of Poland, where my Mandator was detained and subjected to torture certainly constitute such a group. However, it is impossible to exclude that this group belonged to an international wider net, in which both Polish citizens (including public officers) and foreigners participated. Much evidence indicates that my Mandator was detained and subject to torture in several places of isolation within the territory of different countries. Moreover many factors indicate that the sites were managed by the CIA.

The basic question to be answered is: did the group aim to commit crimes or fiscal crimes. The probable circumstances of numerous crimes committed by this group, including crimes to the detriment of Mandator, were sufficiently described above. This does not however determine the character of this group. It is however highly probable that if there

were not an intention of committing a crime (at least the criminal offence described in Article 189 of the CC), the site managed by the group would never have been set up. This site was organised in order to detain my Mandator and other people, and staff was engaged in order to perform this task. Therefore, without the direct intention of committing a crime, no group would have been formed. In these circumstances it is obvious that the group mentioned above was a “group aiming to commit crimes” as per art. 258 of the CC.

Participation in such a criminal group is punishable only if its structure is organised. Even the existence of low but noticeable organizational and hierarchical relations is sufficient to determine the punishable character of such a criminal group³. There can be no doubt that the staff of the secret site, where my Mandator was detained and tortured, showed strong hierarchical structure. A CIA officer commanded this group, who was responsible for any aspects of its functioning. He was also very probably competent to give binding orders to members of its staff. Other members were divided into different functions – interrogators, medical staff, guards etc. Each of them exercised their *a priori* appointed scope of duties and when their common activities were intended to ensure the effective functioning of the entire group and site. This seems to be sufficient to state that this group of people detaining my Mandator was organised as per Article 258 of CC.

Furthermore, it is highly probable that most of these people were CIA officers, possessing official ranks, placing them in official hierarchy and implementing orders from the USA.

The last thing which should be considered is the armed character of the criminal group. In the opinion of the Supreme Court in its verdict issued 6th May 2003 (file no. V KK 193/02, LEX nr 78390) the description “armed character” of an organised group also refers to the nature of its activity. This means that “such group in its criminal activity uses firearms or intends to use firearms in the future and gathers and possesses firearms for this purpose. The features of this crime are also fulfilled when the group has already committed a crime without firearms, even though they possessed them for criminal purposes. Use of these firearms was not necessary in the given case”⁴.

In order to determine that the group of people belonging to the secret site staff was an armed group, it must be established whether its members (and if so, how many) possessed firearms which were or could be used during the existence of the site or other connected activity. There is evidence that at least one weapon was in the possession of the person who threatened to kill my Mandator during the interrogation. If the investigation proves that most if not all members of site staff were CIA officers, it would be highly probable that they possessed service firearms which were officially allocated to them, and which they could have used if necessary. In such situation, their behavior should be classified under § 2 of the described Article of the CC. Moreover, this would support the statements that these persons committed the crimes specified in Article 263 §2 of the CC, described in point ad 13) above.

VI. Violation of International Law

Actions taken against my Mandator and other people detained in the illegal site violated the provisions of a number of international treaties which the Republic of Poland was and is still obliged to obey, in particular the European Convention. The binding force of the provisions of the European Convention on the territory of the Republic of Poland results from both the letter of the Convention, which constitutes in article 1 that the High

³ Due to the Appeal Court In Katowice of 16th July 2009 ; file no.: II AKa 150/09

⁴ A. Barczak-Oplustil, G. Bogdan, Z. Cwiąkalski, M. Dąbrowska-Kardas, P. Kardas, J. Majewski, J. Raglewski, M. Rodzynkiewicz, M. Szewczyk, W. Wróbel, A. Zoll, Kodeks karny. Część szczególna. Tom II. Komentarz do art. 117-277 k.k., Zakamycze, 2006, wyd. II.

Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of the Convention, and provisions of the Constitution of the Republic of Poland. According to article 9 of the Polish Constitution, the Republic of Poland abides by binding international law, and article 87 section 1 of the Polish Constitution states that ratified international treaties are one of the sources of generally binding law in the Republic of Poland.

The European Convention was ratified by the President of the Republic of Poland on 19 January 1993. In consequence it is an act of generally binding law in the Republic of Poland. Authorities and public officers are obliged to apply its provisions and people for whom it guarantees rights and freedoms may demand these rights and freedoms be respected and protected by the state when necessary.

Article 1 of the European Convention not only obliges the states – parties to the Convention to obey the rights and freedoms included therein, but also obliges them to take positive actions in order to guarantee such rights and freedoms, prevent their violations and remove the results of the violations. The expression that the rights and freedoms shall be guaranteed to everyone within the jurisdiction of the states – parties to the Convention indicates that the Convention protects not only the rights of their citizens but also the rights of foreigners.

In the case of my Mandator there was a violation of the basic rights and freedoms of the individual, in particular: 1) the right to life expressed in article 2, together with Protocols 6 and 13 of the European Convention, 2) the freedom from torture and inhuman or degrading treatment or punishment expressed in article 3 of the European Convention, 3) the right to liberty and security of person expressed in article 5 of the European Convention, 4) the right to respect for private and family life protected by article 8 of the European Convention, 5) the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal expressed in article 6 of the European Convention, and (6) the right to the truth implied within articles 2, 3, 5, 6, 8, 10 and 13 of the European Convention.

ad 1)

Actions taken against my Mandator constitute a violation of the right to life guaranteed by article 2 together with Protocols 6 and 13 of the European Convention because my Mandator was transferred from Polish territory to a jurisdiction where there were substantial grounds for believing that there was a real risk of his being sentenced to capital punishment and such sentence would be executed. The European Court of Human Rights (hereinafter: 'ECHR') confirms such interpretation of article 2 of the European Convention in its judgment in the case *Barbar Ahmad and others v. Great Britain* of 6 July 2010 (applications no 24027/07, 11949/08 and 36742/08). Deportation to a country in which a person may be sentenced to capital punishment and such penalty may be executed may also constitute a violation of Protocol 6 of the European Convention, ratified by Poland on 18 October 2000, which prohibits capital punishment. It is important to realize that in the case of my Mandator, taking into account the suspicions against him and earlier statements of USA government officials and other statements conveyed by the media, the sentencing to capital punishment is highly probable.

ad 2)

My Mandator was subjected to torture and cruel, inhuman and degrading treatment in Poland and was transferred from Polish territory to a jurisdiction where there were substantial grounds for believing that there was a real risk of his being subjected to ill-treatment in contravention of article 3 of the European Convention. According to the jurisprudence of the ECHR, the definition of torture expressed in article 1 of the United

Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 should be applied in the interpretation of article 3 of the European Convention. According to this definition, the term torture refers to any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. The ECHR in its judgments broadens the duty of states – parties to the Convention to protect everybody in their jurisdiction from torture, inhuman or degrading treatment so as to encompass situations of such treatment by private individuals, not associated with the public authorities (A. v. United Kingdom of 23 September 1998, RJD 1998-VI, § 22 regarding the state's liability for the beating of a child by his stepfather). Torture is the most serious form of violation of article 3 of the European Convention. The ECHR in its judgments states that torture is the specific form of intentional inhuman treatment resulting in very serious and severe suffering (Ireland v. United Kingdom of 18 January 1978, A. 25, § 163). The next, less severe form of violation of article 3 of the European Convention is inhuman treatment. Treatment is considered to be degrading when it causes a feeling of fear and humiliation leading to debasement which, in result, can cause physical and psychological breakdown. Every torture constitutes inhuman and degrading treatment and every inhuman treatment is also *ex definitione* degrading.

The use of torture and degrading treatment against my Mandator has been extensively described in the point III of the substantiation of this letter. It is beyond any doubt that the abovementioned enhanced interrogation techniques such as walling, stress positions or death-threats, especially when applied over a long time and in connection with other hardships constitute torture in the meaning of the mentioned definition and *ergo* article 3 of the European Convention. This is particularly evident in the case of the use of a firearm and power drill to enhance the death threats used against my Mandator.

Protection on the basis of article 3 of the European Convention is absolute, regardless of the circumstances and the Convention prohibits torture and inhuman or degrading treatment or punishment even in the most difficult situations such as combating terrorism or organised crime.

ad 3)

My Mandator was deprived of his liberty in Poland without the decision of a competent court, and was also transferred from Polish territory to a jurisdiction where there was a real risk of his being subjected to treatment in violation of article 5 of the European Convention, according to which the deprivation of liberty must be lawful and applied in accordance with the procedure provided by the law. The situation of my Mandator cannot be said to meet these requirements. He was deprived of liberty without any decision of a competent authority and in result he has been and still is detained illegally. In addition, while in Poland he was given no possibility of challenging his detention before a judicial authority as required in Article 5(4) of the European Convention. Moreover, the illegal deprivation of liberty of my Mandator has now lasted for many years and its total time is still impossible to predict.

ad 4)

My Mandator was deprived of his right to respect for private and family life under article 8 of the European Convention without justification. His detention in Poland and transfer to custody at Guantanamo Bay took place outside the process of the law and was

therefore both unlawful and arbitrary. He has been deprived of contact with his family and with the social and other networks of his life for over eight years. His treatment in Poland and at Guantanamo Bay also amounts to an interference with his physical and psychological integrity, and his personal autonomy, another aspect of article 8 of the European Convention. Any purported legitimate aim is not sufficient to justify the drastic interference with his rights.

ad 5)

My Mandator was deprived of his right to a fair trial in Poland and was transferred from Polish territory to a jurisdiction where there were substantial grounds to believe there was a real risk of a flagrant denial of a fair trial. Indeed, despite the fact that my Mandator has been deprived of liberty as of October 2002, he has not been provided with access to any institution of justice. The violation of the right to a fair trial expressed in article 6 of the European Convention is therefore obvious. The deprivation of liberty of my Mandator took place without any decision of a competent statutory authority, thus he could not appeal against such decision and defend his rights.

Moreover, my Mandator has been transferred to a country in which it is highly probable that criminal proceedings will be carried out and a sentence delivered on the basis of evidence procured by use of torture, thus in violation of article 3 of the European Convention. Transfer to a country in which there are substantial grounds to believe that there is a real risk of a flagrant denial of a fair trial constitutes a violation of article 6 of the Convention. A jury composed of American citizens, to whom he has been introduced by the mass media as a terrorist, will decide upon his guilt. This may cause their prejudice and may affect the decision they make. Moreover, there is also a probability that my Mandator will be judged not by a court but by a Military Commission, where all of the jurors will be military officers which may constitute a violation of article 6 of the European Convention. Given the high probability that he will be sentenced to capital punishment or at least hard, life imprisonment in total isolation without possibility of earlier release, it is safe to presume that the punishment to which my Mandator will be sentenced will not be in accordance the standards of the European Convention.

Ad 6)

My Mandator has a right to the truth concerning what happened to him in Poland, as does society as a whole. Human rights law demands that justice be seen to be done and that both the individual victim of a human rights violation and the concerned public have the right to know whether the rule of law has been respected, arising out of articles 2, 3, 5, 6, 8, 10 and 13 of the Convention as well as other human rights standards.

It is important to highlight that the prevention of the described violations was the legal obligation of the authorities and public officers of the Republic of Poland resulting from the provisions of the European Convention. In the case of existing violations, it is the obligation of the Republic of Poland to establish the reasons for such violations and hold accountable the persons responsible in order to provide my Mandator with an effective remedy pursuant to article 13 of the Convention.

VII. Substantiation of the Motions Regarding Evidence

ad 1)

Examination of my Mandator is advisable in order to achieve the goals of criminal proceedings. As a victim he has the broadest knowledge about the treatment to which he was subjected. Therefore he can give an extensive testimony regarding torture and inhuman,

degrading treatment which he suffered as well as the circumstances in which he was detained and conditions in which he was and still is imprisoned. He can also provide some information which may lead to the identity of the people directly responsible for conducting the torture sessions and other employees of the sites in which he was detained. Moreover, he has knowledge regarding the way in which he was transported between the different sites of detention.

Concluding, the examination of my Mandator as a victim in the present proceedings is highly advisable in order to achieve the goals of the investigation.

Since my Mandator is at present at the disposal of the government of the USA in the detainment centre in the Guantanamo Bay Naval Base on Cuba, it may be necessary to address the competent authorities of the USA with a demand to conduct procedural actions (e.g. examination) with the participation of my Mandator on the grounds of article 8 of the Mutual Legal Assistance Agreement, or by way of legal assistance on the grounds of article 585 of the CPC.

ad 2)

George Tenet, as the General Director of the CIA at the time when my Mandator was probably detained and handed over to this agency, i.e. from 11th July 1997 to 11th July 2004, must have been aware of how he was treated and had to know the details of the 'secret prisons' program through which my Mandator was detained. This knowledge was required on the position of the witness and necessary to perform his function. My Mandator was considered to constitute a significant danger to the security of the USA, thus it is justified to assume that his case was known in detail by the director of the CIA. It is probable that George Tenet personally issued the order to capture my Mandator or authorized another person to issue such decision.

In consequence, there is a high probability that the indicated person has knowledge regarding circumstances relevant to the investigation.

Since George Tenet is probably currently on the territory of the USA, it may be necessary to address the competent authorities of the USA with a demand to conduct procedural actions (e.g. examination of the witness) on the grounds of article 8 of the Mutual Legal Assistance Agreement, or by way of legal assistance on the grounds of article 585 of the CPC.

ad 3)

John McLaughlin, as the acting General Director of the CIA from 11th July 2004 to 22nd September 2004, i.e. at the time when my Mandator was probably at the disposal of this agency, must have been aware of how he was treated and the details of the 'secret prisons' program through which he was detained. This knowledge was required on the position of the witness and necessary to perform such function. My Mandator was considered to constitute a significant danger to the security of the USA, thus it is justified to assume that his case was known in detail by the acting director of the CIA.

In consequence, there is a high probability that the indicated person has knowledge regarding circumstances relevant to the investigation.

Since John McLaughlin is probably currently on the territory of the USA, it may be necessary to address the competent authorities of the USA with a demand to conduct procedural actions (e.g. examination of the witness) on the grounds of article 8 of the Mutual

Legal Assistance Agreement, or by way of legal assistance on the grounds of article 585 of the CPC.

ad 4)

Porter Goss, as the General Director of the CIA from 24th September 2004 to 5th May 2006, i.e. at the time when my Mandator was probably at the disposal of this agency, must have been aware of how he was treated and the details of the 'secret prisons' program through which he was detained. This knowledge was required on the position of the witness and necessary to perform such function. My Mandator was considered to constitute a significant danger to the security of the USA, thus it is justified to assume that his case was known in detail by the director of the CIA.

In consequence, there is a high probability that the indicated person has knowledge regarding circumstances relevant to the investigation.

Since Porter Goss is probably currently on the territory of the USA, it may be necessary to address the competent authorities of the USA with a demand to conduct procedural actions (e.g. examination of the witness) on the grounds of article 8 of the Mutual Legal Assistance Agreement, or by way of legal assistance on the grounds of article 585 of the CPC.

ad 5)

Michael Hayden, as the General Director of the CIA from 30th May 2006 to 12th February 2009, i.e. at the time when my Mandator was probably at the disposal of this agency and was transferred to the prison in the Guantanamo Bay Naval Base on Cuba, must have been aware of how he was treated and the details of the 'secret prisons' program through which he was detained. This knowledge was required on the position of the witness and necessary to perform such function. My Mandator was considered to constitute a significant danger to the security of the USA, thus it is justified to assume that his case was known in detail by the director of the CIA.

In consequence, there is a high probability that the indicated person has knowledge regarding circumstances relevant to the investigation.

Since Michael Hayden is probably currently on the territory of the USA, it may be necessary to address the competent authorities of the USA with a demand to conduct procedural actions (e.g. examination of the witness) on the grounds of article 8 of the Mutual Legal Assistance Agreement, or by way of legal assistance on the grounds of article 585 of the CPC.

ad 6)

[REDACTED] probably interrogated my Mandator in person. In result he has broad knowledge about the conditions in which my Mandator was detained and the way in which he was treated, in particular in connection with the use of 'enhanced interrogation techniques' described in detail in part III of the substantiation of this letter. Available materials indicate that [REDACTED]

[REDACTED] There is also a high probability that he has information regarding the existence of

the secret CIA site on the territory of the Republic of Poland, as the evidence indicates that he interrogated persons suspected of terrorism in the course of the CIA 'secret prisons' program.

In consequence, there is a high probability that the indicated person has knowledge regarding circumstances relevant to the investigation.

Since [REDACTED], it may be necessary to address the competent authorities of the USA with a demand to conduct procedural actions (e.g. examination of the witness) on the grounds of article 8 of the Mutual Legal Assistance Agreement, or by way of legal assistance on the grounds of article 585 of the CPC.

ad 7) et 8)

[REDACTED] served as a commander-pilot of the airplane marked N85VM. [REDACTED] served on board of the same airplane as pilots and crew members.

The airplane marked N85VM was identified *inter alia* in senator Dick Marty's report of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe regarding the Alleged Secret Detentions and Unlawful Inter-State Transfers of Detainees Involving Council of Europe Member States (attachment no. 13) and the Amnesty International report dated 5th April 2006, regarding the secret flights ordered by the Government of the USA (attachment no. 17) as a unit used by the CIA to transport secretly prisoners suspected of terrorism. This airplane is suspected to have been used to transport my Mandator from Dubai in the United Arab Emirates (where he was detained) to Bangkok in Thailand (where one of the numerous CIA secret sites was located). Therefore, the abovementioned people probably possess knowledge about the routes and procedures connected with the transport of secret detainees of the CIA, including my Mandator. Such knowledge may be invaluable for the ongoing criminal proceedings. It may constitute evidence as to the existence of the secret CIA site on the territory of the Republic of Poland and may serve to determine the characteristic features of flights serving this site which in turn may enable the Prosecutor to determine a complete list of the flights, dates and places of landings and names of people who must have taken part in such actions or at least must have been aware thereof.

In consequence, there is a high probability that the indicated persons have knowledge regarding circumstances relevant to the investigation.

Since the indicated persons are probably currently on the territory of the USA, it may be necessary to address the competent authorities of the USA with a demand to conduct procedural actions (e.g. examination of the witnesses) on the grounds of article 8 of the Mutual Legal Assistance Agreement, or by way of legal assistance on the grounds of article 585 of the CPC.

ad 9) et 10)

[REDACTED] served as the commander-pilot of the airplane marked N63MU. [REDACTED] were either crew members of the above mentioned airplane or the people who were responsible for the technical service of the plane.

The abovementioned airplane is suspected to have been used to transport my Mandator from Bangkok in Thailand (where one of the numerous CIA secret sites was probably located) to a secret site located in the Republic of Poland. This is supported by the attached flight documentation (attachment no. 21). Therefore, the abovementioned people

probably possess knowledge about the routes and procedures connected with the transport of secret detainees of the CIA, including my Mandator. Such knowledge may be invaluable for the ongoing criminal proceedings. It may constitute evidence as to the existence of the secret CIA site on the territory of the Republic of Poland and may serve to determine the characteristic features of flights serving this site which in turn may enable the Prosecutor to determine a complete list of the flights, dates and places of landings and names of people who must have taken part in such actions or at least must have been aware thereof.

In consequence, there is a high probability that the indicated persons have knowledge regarding circumstances relevant to the investigation.

Since the indicated persons are probably currently on the territory of the USA, it may be necessary to address the competent authorities of the USA with a demand to conduct procedural actions (e.g. examination of the witnesses) on the grounds of article 8 of the Mutual Legal Assistance Agreement, or by way of legal assistance on the grounds of article 585 of the CPC.

ad 11)

[REDACTED] has broad knowledge about the organization of air transport in the region of the Arabian Peninsula and [REDACTED] probably knew about the time and method of transporting my Mandator from Dubai by airplane, including the markings of the airplane in which he was transported. Therefore he may provide valuable information regarding the method of activity of the people who imprisoned my Mandator as well as provide evidence for the flight of the plane or planes used by them to the territory of the Republic of Poland.

Therefore it is justified to examine the abovementioned person as a witness. [REDACTED]

ad 12)

According to publicly available information which may be found *inter alia* in the press article entitled "Key omission in memo to destroy CIA terror tapes" (attachment no. 8), Michael Keith Winograd, a CIA officer, was to have been the commander of the secret CIA site in Thailand, code named 'Cat's eye', in which detainees, including my Mandator, were held and tortured. Due to his position Michael Keith Winograd must have known about the existence of the web of sites and the way in which the detainees were treated. Undoubtedly, he also knows when and in what circumstances my Mandator was brought to and then transferred from the site in Thailand and where he was transported to when he was taken out of Thailand.

In consequence, there is a high probability that the indicated person has knowledge regarding circumstances relevant to the investigation.

Since Michael Keith Winograd is probably currently on the territory of the USA, it may be necessary to address the competent authorities of the USA with a demand to conduct procedural actions (e.g. examination of the witness) on the grounds of article 8 of the Mutual Legal Assistance Agreement, or by way of legal assistance on the grounds of article 585 of the CPC.

ad 13)

It is unquestionable that Geoff Loane and other authors of the International Committee of the Red Cross Report dated 14th February 2007, on the treatment of fourteen high value detainees at CIA custody, file no. ICRC WAS 07/76 had direct access to my Mandator and 13 other detainees held in the prison at the Guantanamo Bay Naval Base on Cuba. Moreover, these witnesses collected from the detainees information regarding the way they in which they were treated and the conditions in which they were detained for the entire period during which they were held by the CIA.

In consequence, there is a high probability that the indicated persons have knowledge regarding circumstances relevant to the investigation.

ad 14)

In the report for the Council of Europe dated 12th June 2006, senator Dick Marty and other authors present the conclusion that the secret CIA sites used for detaining and torturing people illegally captured existed *inter alia* on the territory of the Republic of Poland. It is advisable to examine the authors of abovementioned report in order to establish the reasoning and sources of information on the basis of which they reached such a conclusion. This would allow such evidence to be admitted to the criminal proceedings conducted by the Polish prosecutor, which in turn would permit their evaluation in light of Polish law.

ad 15)

Assuming the existence of the secret CIA site on the territory of the Republic of Poland (which is supported by the evidence referred to herein), it should be assumed that its organisational structure was similar to the structure of analogous sites in other countries. Therefore it is logical to presume that there was a person responsible for the entire organization and functioning of the site on the same principles as those which applied to Michael Keith Winograd who was responsible for the organisation and functioning of the site in Thailand.

It seems obvious that [redacted] information regarding the time when my Mandator was in the site, how he was treated and regarding the day-to-day operation of the site, including the names of the people from the Polish side who were aware of its existence and use.

In consequence, there is a high probability that the indicated person has knowledge regarding circumstances relevant to the investigation.

Since the indicated person is probably currently on the territory of the USA, it may be necessary to address the competent authorities of the USA with a demand to conduct procedural actions (e.g. examination of the witness) on the grounds of article 8 of the Mutual Legal Assistance Agreement, or by way of legal assistance on the grounds of article 585 of the CPC.

ad 16)

According to documents attached to this letter, especially the OMS Guidelines on Medical and Psychological Support to Detainee Rendition, Interrogation, and Detention, dated 17th 2004 (attachment no. 14) and press articles, detention of my Mandator and other people in secret CIA sites and especially the tortures they were subjected to, were strictly

supervised by medical staff. For the purposes of this investigation, in particular to estimate the risk of death of my Mandator caused by torture and inhuman and degrading treatment, it is advisable to examine the members of the medical staff, at least with reference to the site located on the territory of the Republic of Poland. Moreover the medical staff know about the period of detention of my Mandator in this site, permanent detriment to his health which resulted from the detention, and probably about the persons from Poland, who knew about the existence and purpose of the site.

In consequence, there is a high probability that the indicated persons have knowledge regarding circumstances relevant to the investigation.

Since the indicated persons are probably currently on the territory of the USA, it may be necessary to address the competent authorities of the USA with a demand to conduct procedural actions (e.g. examination of the witnesses) on the grounds of article 8 of the Mutual Legal Assistance Agreement, or by way of legal assistance on the grounds of article 585 of the CPC.

ad 17)

According to testimony of my Mandator before the Combatant Status Review Tribunal (attachment no. 20), the International Committee of the Red Cross Report dated 14th February 2007 on the treatment of fourteen high value detainees at CIA custody (attachment no. 16), CIA Inspector General Special Review: Counterterrorism Detention and Interrogation Activities September 2001 – October 2003 (attachment no. 15) and other materials attached to this letter, at some stage of the detention of my Mandator, he was threatened with death with use of a firearm and an electric drill. Moreover, the CIA Inspector General report indicates that such threats were made by [REDACTED] in press materials as “Albert”. As that officer has knowledge regarding the described event and probably the conditions in which my Mandator was kept, the use of torture and inhuman, degrading treatment against him, it is advisable that he be examined.

Since the indicated person is probably currently on the territory of the USA, it may be necessary to address the competent authorities of the USA with a demand to conduct procedural actions (e.g. examination of the witness) on the grounds of article 8 of the Mutual Legal Assistance Agreement, or by way of legal assistance on the grounds of article 585 of the CPC.

ad 18) et 19)

The Complaint filed with the Association of Psychologists of the State of Texas dated 16 June 2010 (attachment no. 18) and OMS Guidelines on Medical and Psychological Support to Detainee Rendition, Interrogation, and Detention (attachment no. 14) indicate that psychologists James Mitchell and Bruce Jessen were members of the staff responsible for the use of torture against my Mandator and others detained in the secret CIA sites, including the one on the territory of the Republic of Poland. Their job was to monitor the psychological condition of the detainees both during the torture sessions and with regard to consequences of long-lasting isolation and inhuman, degrading treatment. Therefore they probably possess broad knowledge about these aspects of treatment of my Mandator and other detainees. Moreover, they may have knowledge about the secret CIA sites programs and standardized procedures regarding use of torture and inhuman, degrading treatment against detainees in such sites. As they were present in person during torture sessions they may also know when my Mandator was in the secret CIA site in Poland.

Since the indicated persons are probably currently on the territory of the USA, it may be necessary to address the competent authorities of the USA with a demand to conduct

procedural actions (e.g. examination of the witnesses) on the grounds of article 8 of the Mutual Legal Assistance Agreement, or by way of legal assistance on the grounds of article 585 of the CPC.

ad 20) et 21)

Christopher Hill and Victor Ashe were in turn ambassadors of the United States of America in the Republic of Poland respectively in periods: from 2000 to 2004 and from 2004 to 2009. The two periods encompass the time between October 2002 and September 2006, i.e. the time during which my Mandator was deprived of liberty but his location was unknown to him. Examination of the abovementioned people would serve to establish whether during that time there was a secret CIA site in Poland in which he might have been detained. It is logical to assume that the ambassador should know about the activities of special services of the country he represents on the territory of the country in which he is accredited.

As neither Christopher Hill nor Victor Ashe are currently ambassadors accredited in Poland there are no formal obstacles for them to be examined as witnesses. Since the indicated persons are probably currently not in Poland, it may be necessary to address the competent authorities of the USA with a demand to conduct procedural actions (e.g. examination of the witnesses) on the grounds of article 8 of the Mutual Legal Assistance Agreement, or by way of legal assistance on the grounds of article 585 of the CPC.

ad 22)

General Henryk Tacik, as the Executive Commander of the Armed Forces between 15th December 2004 to 20th April 2007, on the grounds of article 18a of National Border Protection Act, was competent to issue permission for the crossing of the Polish border and flight of a foreign military airplane in Polish air space. Therefore he should have knowledge regarding whether such permission was or was not granted for airplanes which, according to available evidence, landed at the airport in Szymany in the Podlaskie district, performing tasks for the CIA, insofar as such planes had military airplane status. This circumstance is essential for establishing whether they crossed the border of Poland illegally and whether competent state authorities were aware of such flights and their purpose. In view of the above, the examination of this witness is justified.

ad 23)

The present Executive Commander of the Armed Forces has knowledge or at least the possibility to obtain knowledge about whether permission to cross the Polish border and fly into Polish air space was or was not granted for airplanes which according to available evidence landed at the airport in Szymany in the Podlaskie district, performing tasks for the CIA, insofar as such planes had military airplane status. Even if such flights took place before the present Executive Commander of the Armed Forces was appointed, he has access to appropriate archives. This circumstance is essential for establishing whether foreign military aircraft crossed the border of Poland illegally and whether competent state authorities were aware of such flights and their purpose. In view of the above, this motion regarding evidence should be accepted.

ad 24), 25), 26) et 27)

Leszek Miller, Marek Belka, Kazimierz Marcinkiewicz and Jarosław Kaczyński were the Prime Ministers of the Republic of Poland in the period in which my Mandator was already detained but probably had not yet been placed in the prison in the Guantanamo Naval Base on Cuba, i.e. between October 2002 and September 2006. During this period he was probably detained in 'secret prisons' conducted by the CIA, probably also on the territory

of the Republic of Poland. The abovementioned people should have knowledge regarding the existence of the secret CIA site on the territory of the Republic of Poland at that time and the details of its organization and use. This assumption comes from the constitutional competence of the Council of Ministers to provide interior and exterior security of the state and to manage relations with other states as well as from the fact that the head of the Intelligence Agency of Poland (*Agencja Wywiadu*) and the head of the Internal Security Agency (*Agencja Bezpieczeństwa Wewnętrznego*) are directly subordinate to the Prime Minister. If the indicated people state that they did not know about the CIA site on the territory of Poland they should be able to indicate people who had such information and illegally concealed it.

In consequence, the examination of abovementioned people is justified.

ad 28)

Aleksander Kwaśniewski was the President of the Republic of Poland in the period in which my Mandator was deprived of liberty but not yet detained in the Guantanamo Bay Naval Base on Cuba, i.e. between October 2002 and September 2006. Within this period my Mandator was probably detained in secret CIA sites, probably also within the territory of the Republic of Poland. Publicly available sources of information, including the press release "Did President Kwaśniewski Agree to Secret CIA Prisons in Poland?" (attachment no. 11) and conclusions drawn from the constitutional scope of the President's competencies as the authority who stands on guard of the Constitution's, including competences associated with the National Security Office (*Biuro Bezpieczeństwa Narodowego*) indicate that Aleksander Kwaśniewski should have had knowledge about the CIA site within the territory of the Republic of Poland in this period, including knowledge about the activities and purpose of such site. If not, he should be able to indicate people who had such information and therefore illegally concealed it from him. In consequence, the examination of abovementioned person is justified.

ad 29)

Zbigniew Siemiątkowski was the head of the Polish Intelligence Agency (*Agencja Wywiadu*) between 2002 and 2004. It is reasonable to presume that he possessed information about the activity of foreign intelligence services on the territory of Poland. This is confirmed by his statement to journalists in 2005 that the CIA had access to two internal zones at the Stare Kiejkuty training school (attachment no. 23). In consequence, the examination of abovementioned person is justified.

ad 30)

My Mandator was brought before the Combatant Status Review Tribunal which determines combatant status, and its task was to establish if my Mandator was a combatant on the side of an enemy of the United States of America. During the hearing my Mandator stated that he was subjected to torture and inhuman, degrading treatment in order to force him to make statements to his own and others' detriment, and that his health had deteriorated as a result of these activities. The deposition made by my Mandator is essential for establishing the circumstances which are to be determined in this proceedings.

Since it is forbidden to replace the testimony of a witness or deposition of a suspect or accused person with documents, notes, official notes, it is necessary to apply to the competent authorities of the United States of America to obtain access to the entire version of the transcript of the Combatant Status Review Tribunal hearing dated 14 March 2007, concerning my Mandator, on the grounds of art. 9 of the Mutual Legal Assistance Agreement.

Moreover, the deposition of my Mandator even in inappropriate and redacted form supports the motion made above to have my Mandator examined by the Polish prosecutor.

The mere fact that my Mandator was brought before the Combatant Status Review Tribunal is significant in determining his status as a prisoner of war, in order to establish whether he is protected under international law. With regard to this aspect, access to the entire unredacted transcript is not necessary.

In view of the above, this motion regarding evidence should be accepted.

ad 31)

As indicated in the attached publicly available documents, my Mandator was subject to long-lasting torture and inhuman, degrading treatment. He was systematically and deliberately subjected to physical and psychological harassment. It is necessary to admit as evidence the opinions of court experts, including psychiatric experts, psychological experts, to establish whether the abovementioned activities caused permanent physical and psychological detriment of my Mandator's health, as per Article 156 § 1 point 2 of the CC.

As my Mandator is currently deprived of liberty by the government of the USA it proves necessary to apply to the competent authorities in the USA in order to conduct procedural actions with his participation on the grounds of Article 8 of Mutual Legal Assistance Agreement or – if necessary - on the grounds of Article 585 of CPC by means of legal assistance.

ad 32)

The attached documents indicate that aircraft probably performing flights on CIA orders landed at the Szymany airport, Podlaskie District. Some of these may have been military aircraft. Moreover, these airplanes transported passengers, bring them into or taking them from the territory of the Republic of Poland, probably without the necessary passport and customs control.

The letter of the Border Director of Central Border Guard Office dated 23rd July 2010 (attachment no. 4) is an official document issued upon request of the Helsinki Foundation for Human Rights in accordance with the Access to Public Information Act of 6th September 2001, confirming the abovementioned circumstances.

The document entitled “Configuration of Landings and Take-Offs of Boeing I Gulfstream at the Szymany Airport Within the Years 2002-2005” (attachment no. 3) was issued by an alleged public officer of Olsztyn city. A motion to confirm this circumstance is included in part VII, point 30 of the *petitum* of this letter. The document consists of ordered data, as per its title.

The chart entitled “Landings and Take-Offs of CIA Airplanes in Poland” (attachment no. 5) was prepared by the Helsinki Foundation for Human Rights and is an ordered configuration of data concerning CIA flights, possessed by the foundation.

The abovementioned documents consist of data necessary to establish the schedule of transportation of the detainees to and from Poland and the CIA sites. Such information appears significant in terms of the goals of these proceedings. In view of the above, this motion regarding evidence should be accepted.

ad 33)

The available evidence indicates that aircraft performing flights for the CIA, including those transporting detainees to and from the secret site within the territory of the Republic of Poland, were landing at the Szymany airport, Podlaskie District, at least between 2002 and 2005. There is reason to suspect that these flights were treated by the airport staff, passport and customs services in a different way than other airplanes. It is therefore necessary to conduct the examination of flight controllers and airport staff, customs service officers and border guards in order to confirm or obtain an additional knowledge regarding the abovementioned circumstances. This may contribute to revealing the circumstances of the activity of the CIA secret site within the territory of the Republic of Poland, as well of other sites in other countries. Moreover, examination of these persons may help to find the evidence for Polish public officers' activities aiming to support and conceal the unlawful CIA activities.

In view of the above, the examination of abovementioned persons after establishing their identity is justified.

ad 34)

The author of the document entitled "Configuration of Landings and Take-Offs of Boeing I Gulfstream at the Szymany Airport Within the Years 2002-2005" (attachment no. 3) remains unknown. The features of this document suggest its official character. It is therefore necessary to determine if the attached document is official, which may influence its credibility in these proceedings.

ad 35)

The CIA Inspector General is a USA authority which is competent to review the activity of the CIA. Its scope of competence consists of *inter alia* publishing from time to time of reports of CIA activities, regarding in particular irregularities or violations of law. Even though a part of this report is secret, the attached document includes extensive information strictly related to the subject of this investigation, about *inter alia*:

- existence of CIA secret sites beyond USA borders;
- long-lasting, unlawful deprivation of liberty of detainees, including my Mandator, in these sites;
- use with regard to the detainees, including my Mandator, of torture and inhuman degrading treatment;
- instances when my Mandator was threatened with death by use of a firearm and electric drill;
- participation of medical staff in torture.

The CIA Inspector General Special Review: Counterterrorism Detention and Interrogation Activities September 2001 – October 2003 (attachment no. 15) is an American official document and constitutes a credible source of information with regard to its non-redacted content. The American Civil Liberties Union requested its disclosure on the grounds of the Freedom of Information Act. It may prove necessary for the purposes of these proceedings to apply to the competent authorities of the USA in order to obtain the entire unredacted version of this report, certified as to its authenticity, in accordance with Article 9 of the Mutual Legal Assistance Agreement.

Moreover, the CIA Inspector General's report contains information in support of other motions regarding evidence, also presented in this letter.

ad 36)

The International Committee of the Red Cross Report on the treatment of fourteen high value detainees at CIA custody dated 14th February 2007 (attachment no. 16) is an independent opinion regarding the conditions in which some of the persons suspected of terrorism, including my Mandator, were detained. This report includes many pieces of information confirming the fact of use of torture and inhuman degrading treatment with regard to these persons, as well as causing their extreme physical and psychological exhaustion, in some cases to an extent constituting a threat of death or serious and permanent deterioration of health.

This information may be significant for the proceedings. It is therefore advisable to attach this document to the files. Moreover, this document constitutes evidence as to the necessity of examination of its authors before the Polish prosecutor in order to subject their sources and reasoning to analysis in consideration of the regulations of Polish criminal procedure.

ad 37)

The Report of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe regarding the Alleged Secret Detentions and Unlawful Inter-State Transfers of Detainees Involving Council of Europe Member States, dated 12th June 2006 by Dick Marty (attachment no. 13) contains information about the existence of a CIA secret site within the territory of the Republic of Poland, detention of prisoners, use of torture, inhuman and degrading treatment and unlawful transportation of detainees *inter alia* by unlawful crossing of the borders of the Republic of Poland. Moreover, the report contains information about Polish public officers, who possessed knowledge or suspicions regarding the CIA secret site within the territory of the Republic of Poland, and who did not undertake any actions in order to explain these circumstances, even during the proceedings aimed at preparation of said report.

In view of the above, this motion regarding evidence should be accepted. Moreover, the report constitutes evidence as to the necessity of examination of its authors before the Polish prosecutor in order to subject their sources and reasoning to analysis in consideration of the regulation of Polish criminal procedure.

ad 38)

The OMS Guidelines on Medical and Psychological Support to Detainee Rendition, Interrogation, and Detention dated 17th May 2004 (attachment no. 14) are an official public document of the USA. This document contains information regarding use by the CIA of torture, inhuman and degrading treatment with regard to detainees who were at the CIA's disposal, but also details about these activities, including cooperation of the medical staff. This indicates another group of people who took part in the unlawful activity of the CIA, also within the territory of the Republic of Poland.

In view of the above, this motion regarding evidence should be accepted. It may prove necessary for the purposes of these criminal proceedings to apply to the competent authorities in the USA in order to obtain the entire unredacted version of these guidelines, certified as to their authenticity, on the grounds of Article 9 of Mutual Legal Assistance Agreement.

ad 39)

The complaint filed with the Texas State Board of Examiners of Psychologists dated 16th June 2010 (attachment no. 18) indicates the cooperation of two persons: James Mitchell and Bruce Jessen, in use of torture, inhuman and degrading treatment in CIA secret sites,

with regard to CIA detainees, including my Mandator. This document indicates that is necessary for these persons to be examined in these proceedings. Moreover, it indicates another group of people (psychologists) who took part in the CIA activity connected with the secret sites program. In view of the above, this motion regarding evidence should be accepted.

ad 40)

The Report prepared by the Committee on National Security and Defense of the Parliament of Lithuania (attachment no. 19), which Committee which was constituted to explain the participation of Lithuania in the secret sites program, confirms the identity of several airplanes landing within the territory of the Republic of Poland or flying over its territory, as aircraft transporting detainees between CIA secret sites. Moreover, this report provides more information regarding the activity of international CIA secret sites program.

In view of the above, this motion regarding evidence should be accepted

ad 41)

The Amnesty International report dated 5th April 2006, (attachment no. 17) provides much detailed information regarding specific flights which took place in order to transport detainees between CIA secret sites, use of torture, inhuman and degrading treatment therein. It also indicates the persons who could possess knowledge about the CIA secret sites program including the site within the territory of the Republic of Poland.

In view of the above, this motion regarding evidence should be accepted.

ad 42)

The special report prepared by Prof. Manfred Nowak and Martin Scheinin, the United Nations rapporteurs for torture and human rights matters while countering terrorism (attachment no. 22), was published on January 27, 2010 in Geneva. The report describes the story of 24 persons – victims of human rights violations. With regard to Poland, the report consists of information regarding flights for the CIA, which information was obtained by analysis of flight data, including information about the flight from Thailand to Szymany airport, Podlaskie District, via Dubai on December 5, 2002. The rapporteurs cite information received in the USA, according to which my Mandator was detained in Poland from December 2002. This information is directly connected with these proceedings. Thus it is necessary to include in the case files not only the attached fragment but the entire special report which can be found at the following internet address: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.doc>.

ad 43)

Several press releases (attachments no. 6, 7, 8, 9, 10, 11 and 12) concerning various aspects of the CIA secret sites program, including the site in Poland, serve to prove the publicly available character of information about the sites and use of torture and inhuman, degrading treatment therein. They are a source of information about evidence and persons who possess specific knowledge about circumstances concerning detention of my Mandator by the CIA. It is for this reason, that multiple reference is made herein to attached press materials. For this reason, these articles should be included in the case files as evidence regarding the existence of further, specific evidence.

Mikołaj Pietrzak
advocate

Attachments:

1. Power of attorney
2. "Interrogation of al Qaeda operative" dated August 1, 2002 prepared by the US Department of Justice
3. Configuration of Landings and Take-Offs of Boeing I Gulfstream at the Szymany Airport Within the Years 2002-2005
4. Copy of letter of Border Director of Central Border Guard Office dated 23rd July 2010
5. "Landings and Take-Offs of CIA Airplanes in Poland"
6. Editor's Note by The New York Times dated 22nd June, 2008
7. "Inside a 9/11 Mastermind's Interrogation" by Scott Shane from New York Times dated 22th June 2008
8. "Key omission in memo to destroy CIA terror tapes" by Matt Apuzzo and Adam Goldman, Associated Press, dated 26th July 2010
9. "Specification of CIA flights to Poland" by Włodzimierz Nechamkis, Nowy Dzień, dated 10th December 2005
10. "To keep program secret, CIA whisks 9/11 figures from Gitmo before court ruling" by Matt Apuzzo and Adam Goldman, Associated Press, dated 6th August 2010
11. "Did President Kwaśniewski Agree to Secret CIA Prisons in Poland?" Wprost/IAR dated August 22, 2008
12. "Americans Had a Secret Base in Mazury" Dziennik, dated Sept. 6, 2008
13. Report of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe regarding the Alleged Secret Detentions and Unlawful Inter-State Transfers of Detainees Involving Council of Europe Member States, dated 12th June 2006 by Dick Marty
14. OMS Guidelines on Medical and Psychological Support to Detainee Rendition, Interrogation, and Detention, dated 17th 2004
15. CIA Inspector General Special Review: Counterterrorism Detention and Interrogation Activities September 2001 – October 2003, dated 7th May 2004 file no. 2003-7123-IG
16. International Committee of the Red Cross Report dated 14th February 2007, on the treatment of fourteen high value detainees in CIA custody, file no. ICRC WAS 07/76
17. Amnesty International report dated 5th April 2006, regarding the secret flights ordered by the Government of the USA
18. Complaint filed with the Texas State Board of Examiners of Psychologists dated 16th June 2010

19. Report prepared by the Committee on National Security and Defense of the Parliament of Lithuania
20. Copy of Transcript of Combatant Status Review Tribunal Hearing on March 14th, 2007
21. Printout of flight documentation concerning the flights of the aircraft marked N63MU
22. Excerpt of the special report of the United Nations rapporteurs for torture and human rights matters while countering terrorism, prof. Manfred Nowak and Martin Scheinin
23. "Soviet-era compound in northern Poland was site of secret CIA interrogation, detentions" by Larissa Alexandrovna and David Dastych, The Raw Story, dated March 7, 2007