

6 April 2006

Mr Terry Davis  
Secretary General  
Council of Europe

Dear Secretary General,

referring to your letter of 7 March 2006, in which you requested supplementary explanations on the availability of effective official investigations into alleged infringements of Convention rights, notably in the context of deprivation of liberty resulting from the conduct of officials of foreign agencies as well as on the procedures and conditions under which compensation may be provided to victims of illegal acts, I have the honour to note the following in addition to the answer I have previously provided, dated 20 February 2006:

The right to liberty is guaranteed by the Constitution of Finland (number of the statute in Finland 731/1999). According to section 7 of the Constitution, everyone has the right to life, personal liberty, integrity and security. No one shall be sentenced to death, tortured or otherwise treated in a manner violating human dignity. The personal integrity of the individual shall not be violated, nor shall anyone be deprived of liberty arbitrarily or without a reason prescribed by an Act. A penalty involving deprivation of liberty may be imposed only by a court of law. The lawfulness of other cases of deprivation of liberty may be submitted for review by a court of law. The rights of individuals deprived of their liberty shall be guaranteed by an Act.

Provisions concerning arrest or detention of a suspect in criminal procedure are included in the Coercive Measures Act (450/1987). A court of law always decides on detention of a person, and the detention is re-examined at least in every two weeks, if the person in detention so requires. Under

Chapter 25, sections 1 and 2 (578/1995), of the Penal Code of Finland (39/1889), an unlawful deprivation of personal liberty is a criminal offence, with maximum sentence of four years. Also aiding and abetting in this offence is punishable.

1. With regard to the availability of effective investigations in alleged infringements of Convention rights of individuals, reference must be made to the first chapter of the Finnish Penal Code that covers the scope of application of the criminal law in Finland. It states that Finnish law applies to an offence committed in Finland. The first two sections in the Finnish Pre-Trial Investigation Act (449/1987) state that the police or other pre-trial investigation authority shall be obliged to carry out a pre-trial investigation when, on the basis of a report made to it or otherwise, there is cause to suspect that an offence has been committed. Consequently, a victim of an alleged unlawful deprivation of liberty can report it to the police and it is their duty to investigate the offence when there is reason to suspect that a crime has been committed. The investigation can lead to criminal charges against the suspected person.

According to national legislation, the obligation to carry out a pre-trial investigation, when on the basis of a report made to it or otherwise there is cause to suspect that an offence has, according to national legislation, been committed, is therefore applicable to all alleged infringements of Convention rights committed in Finland, including in the context of deprivation of liberty resulting from the conduct of officials of foreign agencies.

According to section 118 of the Constitution, a civil servant is responsible for the lawfulness of his or her official actions or omissions. Everyone who has suffered a violation of his or her rights or sustained loss through an unlawful act or omission by a civil servant or other person performing a public task shall have the right to request that the civil servant or other person in charge of a public task be sentenced to a punishment, as provided in more detail by an Act. This rule is applicable to actions or omissions of national civil servants in cases where, according to the Pre-Trial Investigation Act, authorities are obliged to carry out a pre-trial investigation.

If a civil servant has been involved in the alleged unlawful deprivation of liberty, the victim can also lodge a complaint to the Chancellor of Justice or the Parliamentary Ombudsman. Under sections 108 and 109 of the Constitution, the Chancellor of Justice and the Parliamentary Ombudsman shall ensure that the courts of law, the other authorities and the civil servants, public employees and other persons, when the latter are performing a public task, obey the law and fulfil their obligations. In the performance of his or her duties, the Chancellor and the Ombudsman monitor the implementation of basic rights and liberties and human rights. After their investigation, The Chancellor or the Ombudsman may order that charges are brought.

Furthermore, with regard to the Border Guard, it is to be mentioned that the Border Guard Headquarters of the Ministry of the Interior control and supervise regularly and comprehensively the activities of the administrative units subordinate to the Border Guard. In addition, the supreme guardians of the law, that is again, the Parliamentary Ombudsman and the Chancellor of Justice, supervise that border guard authorities and other security authorities obey the law when performing their duties.

2. As regards damages, according to section 118 of the Constitution, everyone who has suffered a violation of his or her rights or sustained loss through an unlawful act or omission by a civil servant or other person performing a public task shall have the right to request that the public organisation, official or other person in charge of a public task be held liable for damages, as provided in more detail by an Act.

According to the Tort Liability Act (412/1974), a person who deliberately or negligently causes injury or damage to another is liable for damages. Further, a public body is, under the said Act, vicariously liable in damages for injury or damage caused through an error or negligence in the exercise of public authority when the performance of the activity or task, in view of its nature and purpose, has not met the reasonable requirements set for it.

In addition, there are two compensation schemes specifically designed to ensure a compensation from state funds to victims of crime, including unlawful deprivation of liberty:

a) The general victim compensation scheme, based on the Act on Compensation for Crime Damage (1204/2005), provides for compensation for injury or damage caused by a criminal offence. Section 9 of the Act stipulates that, inter alia, a person whose liberty has been unlawfully deprived has a right to compensation for anguish caused by the offence. In order to be compensated the victim must append to his or her application either a court decision confirming the offence or other reliable accounts of the event and any other necessary evidence. The maximum amount of compensation from state funds for anguish caused by an offence against personal liberty is 3 000 euros. Compensation is granted and paid by the State Treasury whose decision is subject to appeal in the Insurance Court.

b) The other relevant compensation scheme in this context is based on the Act on Compensation from State Funds for the Arrest or Detention of an Innocent Person (422/1974), which ensures, in principle, a compensation for anguish as well as for material damage, such as loss of income, from state funds to any person who has been arrested, detained or imprisoned unlawfully. There is, however, no right to compensation for deprivation of liberty lasting 24 hours or less. The victim may file an appeal for compensation with the authority administering the scheme, i.e. the State Treasury, or may choose to claim for compensation before a civil court in accordance with general rules of civil procedure.

Under the Finnish court practice, damages have been awarded for unjustified deprivation of liberty. Such damages have not, however, been awarded because of actions taken by the Border Guard.

I would also like to mention that we have recently been made aware of a possible second rendition flight landing at the Helsinki-Vantaa airport on 18 June 2001. We are currently investigating the matter.

I sincerely hope that this supplementary explanation together with the original information I have provided sufficiently address the questions you have requested. Let me once again thank you for your important undertaking to clarify on the behalf of the Council of Europe the realisation of the Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols in the Member States.

Yours sincerely,

Minister for Foreign Affairs



Erkki Tuomioja