



LA REPRESENTATION PERMANENTE DE LA FINLANDE  
AUPRES DU CONSEIL DE L'EUROPE

Mr Terry DAVIS  
Secretary General

COUNCIL OF EUROPE

February 27, 2006

Dear Secretary General,

Please find hereafter the answer of the Ministry for Foreign Affairs of Finland referring to your letter of 21 November 2005 concerning the Article 52 of the European Convention on Human Rights.

Yours sincerely

Ann-Marie Nyroos  
Ambassador  
Permanent Representative of Finland  
to the Council of Europe

20 February 2006

Mr Terry Davis  
Secretary General  
Council of Europe

Dear Secretary General,

Referring to your letter of 21 November 2005 in which you requested an explanation in accordance with Article 52 of the European Convention on Human Rights, I have the honour to note the following.

Under international law, the prohibition of torture is absolute. Finland is committed in all circumstances to prevent all forms of torture and arbitrary deprivation of liberty in its territory, and has also raised its views in this respect internationally.

In the context of the recent allegations concerning secret detention centres in Europe and related aircraft transportations, a reference to Finland has once been made in connection with a cargo aircraft that made a landing at the Helsinki-Vantaa airport on 16 May 2003. The Hercules aircraft of Prescott Corporation had requested a permission to land in Helsinki and had on board, according to its declaration, a 10-member-crew but no passengers.

The relevant provisions of the Finnish legislation are described below. The said provisions of law relate to the adequate control of acts by officials of foreign agencies within national jurisdiction, afford safeguards against unacknowledged deprivation of liberty as well as respond to alleged infringements of the rights of individuals within national jurisdiction.

In the assessment of aircraft transportations through the Finnish territory, a difference must be made between transportations by government aircraft and those by civilian aircraft. Where the transportation is carried out by a government or military aircraft or where it is otherwise carried out for governmental purposes, the matter falls within the competence of the Ministry of Defence and the Defence Staff shall act as the approving authority. The permission for the flight across the Finnish territory is given by the Defence Staff in accordance with the provisions of the Territorial Surveillance Act (755/2000). In the applications for permission, the identity of passengers is not indicated unless there is a VIP on board. In the latter case, the application indicates that it concerns the carriage of passengers. Where the purpose of the flight is the carriage of cargo, it is also indicated in the application. According to section 2 of the Government Decree on Territorial Surveillance (971/2000), however, an application for the entry of a military person or a military vehicle into Finnish territory shall contain, among others, the purpose of the visit.

Civilian aircraft, being aircraft not engaged in scheduled international air services, have, in accordance with Article 5 of the Convention on International Civil Aviation (Chicago Convention, 1944), the right to make flights into or in transit non-stop across the Finnish territory and to make stops for non-traffic purposes without the necessity of obtaining a prior permission. This provision also entails the right to private flights. Correspondingly, aircraft engaged in scheduled international air services have, in accordance with the International Air Services Transit Agreement (1944), the privilege to fly across the Finnish territory and to land for non-traffic purposes.

As the aforementioned aircraft that landed in Finland was, according to its declaration, used for the carriage of cargo meant for US embassies, the aircraft was considered a government aircraft within the meaning of the Territorial Surveillance Act and the permission for landing was given by the Defence Staff.

An air traffic control clearance is always required in respect of flights through controlled Finnish airspace. The clearance is given by the air control authorities on the basis of the aircraft's flight plan. It is not required that the flight plan indicate the cargo or passengers carried by the aircraft but the flight plan is merely meant for the purposes of air control. However, the Finnish aviation authorities are informed of the registration numbers of aircraft entering Finnish airspace as well as of their places of landing.

At the airport, the aviation authorities may carry out a so-called ramp inspection on the aircraft, but the purpose of such an inspection is to ensure that the aircraft meets the aviation security standards. Customs and border control authorities could also carry out an inspection, but there is no obligation to do so.

Consequently, there are no further details available concerning the aircraft that landed in Finland as the national legislation does not impose any obligation to request such details. Nor is it possible to establish the exact nature of the cargo afterwards.

The Government of Finland did, however, request the Embassy of the United States to provide general information on the landing at the Helsinki-Vantaa Airport. The Embassy has informed that the aircraft only carried cargo meant for the Embassy.

The controls over acts by officials of foreign agencies within the jurisdiction of Finland, to the extent they are possible, are thus based on the applicable national legislation and its effective implementation - in this case mainly on the operator's own declaration concerning the purpose of the flight. The relevant national legislation, in turn, is based on international obligations binding on Finland.

With regard to ensuring adequate safeguards to prevent the unacknowledged deprivation of liberty of any person in the scope of national jurisdiction, the applicable provisions are included in the Sentences Enforcement Decree (878/1995). Under Chapter 2, section 2, of the Decree, no one shall be placed in a penal institution without a written order to that effect. The placement of remand prisoners is provided for in section 1 of the Detention Act (615/1974). No one may be placed in a Finnish prison without a decision of the competent authority. The identity of prisoners is always verified upon their arrival at the prison, and the fact that such verification has been done is indicated in the prisoner's reception file. The transportation of prisoners or remand prisoners is only possible upon a written order by the police or a court. No difference is made between Finnish and foreign nationals in this respect. Foreign nationals may only be placed in Finnish prisons pursuant to the provisions of the Finnish legislation and such international agreements as have been ratified by Finland or in respect of which Finland has otherwise expressed its consent to be bound by the agreement.

In the light of information provided by the relevant Ministries and governmental authorities, no persons suspected of involvement in acts of terrorism have been placed in Finnish prisons or transported on the order of the Prison Service in Finland during the period of time referred to in your inquiry. Nor do the Finnish authorities (particularly the Criminal Sanctions Agency and the Prison Service) have any information on the involvement of any public official or other person acting in an official capacity in the unacknowledged deprivation of liberty of any individual, or transport of any individual while so deprived of their liberty. Insofar as the Finnish prisons are concerned, it is only possible to place remand prisoners in them if an order has been given by the competent court to that effect. In case the person has been deprived of his or her liberty in another country, it is further required that the transfer of the prisoner is based on an international agreement binding on Finland. Insofar as the situations referred to in your request are concerned, neither of these requirements would apparently have been met.

Generally, the operations of national officials are subject to normal supervision of the legality of the performance of official duties. The authorities supervising the legality of the performance of official duties have not detected any reason for measures relating to the aforementioned case.

In the light of the foregoing, there is no reason to believe that any public official or other person acting in an official capacity nor officials of foreign

agencies in Finland have been involved in any manner in unacknowledged deprivations of liberty of any individual, or in the transport of any individual while so deprived of liberty.

Should there be need for additional information, for the purpose of fulfilling your important undertaking, please be assured of our preparedness to provide such information.

Yours sincerely,

Minister for Foreign Affairs

  
Erkki Tuomioja