

DER BOTSCHAFTER
DER BUNDESREPUBLIK DEUTSCHLAND
THE AMBASSADOR
OF THE FEDERAL REPUBLIC OF GERMANY

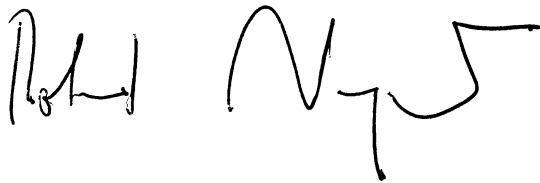
Strasbourg, 21 February 2006

Mr. Secretary General,

I have the honour to forward herewith an advance copy of the letter of the Federal Minister for Foreign Affairs, Mr. Frank-Walter Steinmeier, dated 17 February 2006 as well as the response of the German Government to the questions appended to your letter of 22 November 2005 - in the German original together with a courtesy translation into English.

The original letter of the Federal Minister is on its way to Strasbourg by post and will be forwarded to you upon arrival at the Permanent Representation.

Please accept, Mr. Secretary General, the assurance of my highest consideration.

A handwritten signature in black ink, consisting of two distinct parts. The first part is a stylized, cursive 'T' followed by a horizontal line. The second part is a larger, more complex cursive signature that appears to be 'Davis'.

H.E.
Mr. Terry Davis
Secretary General
Council of Europe

Strasbourg

Translation

The Federal Minister
for Foreign Affairs

17 February 2006

Dear Secretary General,

Please find enclosed the response from the Federal Government to your request of 22 November 2005.

You may rest assured that Germany will continue to comply with all the obligations deriving from the European Convention for the Protection of Human Rights and Fundamental Freedoms in future.

Yours sincerely,

(sgd) Frank-Walter Steinmeier

His Excellency
Mr Terry Davis
Secretary General of the Council of Europe
Strasbourg

8 February 2006

**Explanations furnished by the Federal Republic of Germany in response to the request
from the Secretary General of the Council of Europe, Mr Terry Davis,
pursuant to Article 52 of the European Convention
for the Protection of Human Rights and Fundamental Freedoms**

The request by the Secretary General of the Council of Europe, Mr Terry Davis, of 22 November 2005 pursuant to Article 52 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) refers to "reports suggesting that individuals, notably persons suspected of involvement in acts of terrorism, may have been apprehended and detained, or transported while deprived of their liberty, by or at the instigation of foreign agencies, with the active or passive cooperation of High Contracting Parties to the Convention or by High Contracting Parties themselves at their own initiative, without such deprivation of liberty having been acknowledged".

The Federal Government is aware of media reports alleging both the existence of secret prisons in Europe and the secret transportation of prisoners through Europe and Germany. The reports require clarification.

The Federal Government, together with other EU member states, first sought clarification from the United States at the EU level. The topic was also discussed on several occasions in bilateral talks between the Federal Government and the United States Government. The latter assured both the EU Presidency and the Federal Government that US activities abroad complied with US laws and international obligations but that when and if mistakes are made, the United States was willing to rectify them. It also pointed out that the actions of the United States intelligence services had to be understood in the context of the fight against international terrorism and governments' obligation to protect their citizens. Federal Chancellor Angela Merkel and Federal Minister for Foreign Affairs Frank-Walter Steinmeier have stated unequivocally that international terrorism must be tackled decisively. However, they emphasize that selection of the means to do so must at all times take full account of democratic principles as well as the law of the country concerned and its international obligations.

In Germany, respect for human rights is a constitutional mandate. The obligations deriving from the ratification of the European Convention on Human Rights are implemented at

national level. national level. Germany secures to everyone within its jurisdiction the rights and freedoms guaranteed in the European Convention on Human Rights.

The Federal Republic of Germany is complying with the request from the Secretary General of the Council of Europe concerning the manner in which German law ensures the effective implementation of the provisions of the European Convention on Human Rights by providing the following explanations:

1. In response to the question concerning the manner in which German internal law ensures that acts by officials of foreign agencies within Germany's jurisdiction are subject to adequate controls:

Foreign agencies and their officials may carry out activities on German territory only with the approval of the Federal Government. In so doing they are subject to the German legal system. They possess no sovereign powers of their own.

The condition for cooperation with foreign agencies on German territory is the compatibility of the measures and their goals with international law and the German legal order. The partners are informed of the applicable legal situation before the cooperation begins.

The Federal Office for the Protection of the Constitution closely monitors cooperation with foreign agencies, providing expertise and organizational support, to ensure that Germany's binding international obligations and its internal law are respected during the period of cooperation.

2. In response to the question concerning the manner in which German internal law ensures that adequate safeguards exist to prevent unacknowledged deprivation of liberty of any person within Germany's jurisdiction, whether such deprivation is linked to an action or an omission directly attributable to Germany or whether Germany has aided or assisted the agents of another State in conduct amounting to such deprivation of liberty:

Article 2 of the Basic Law stipulates that freedom of the person shall be inviolable. The Basic Law allows little scope for the lawful deprivation of liberty. It stipulates, among other things, that freedom of the person may be restricted only pursuant to a formal law and only in compliance with the procedures described therein. Article 104, paragraph 2 of the Basic Law states that only a judge may rule upon the permissibility or continuation of any deprivation of

freedom. If such a deprivation is not based on a judicial order, a judicial decision shall be obtained without delay. The police may hold no one in custody on their own authority beyond the end of the day following the arrest. A relative or a person enjoying the confidence of the person in custody shall be notified without delay of any judicial decision imposing or continuing a deprivation of freedom. The unlawful deprivation of freedom shall be punishable as a criminal offence.

If action is taken on German territory at the request of foreign agencies, it is classified as legal assistance and implemented by authorized German officials. Representatives of foreign agencies may be present but only as observers.

The fact that only authorized German officials are entitled to take action ensures that any measures are implemented in accordance with Germany's obligations under international law, specifically the European Convention on Human Rights, and with the regulations of internal law, notably the Basic Law.

Foreign nationals may be taken from another state via the Federal Republic of Germany to a third country as part of repatriation measures deriving from other states' aliens law or asylum law by way of so-called transit operations. This includes transit by land or air via German airports.

Transit operations may be prompted by measures deriving from the national aliens law in the country concerned, from the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities of 15 June 1990 (Dublin Convention) or from the provisions on international legal assistance in criminal matters. Performing sovereign acts – particularly compulsory measures – in this context is the exclusive responsibility of the Federal Police.

The competent Federal Police authorities therefore ensure that, for all transit operations accompanied by foreign officials, the citizen from the third state and the police officers escorting him or her are met at the border and accompanied by members of the Federal Police until they leave the country.

Section 64, paragraph 4, sentence 3 of the Act on the Federal Police provides for the possibility of entrusting law enforcement officers from other EU states with the performance of official tasks in the area of responsibility of the Federal Police. This takes place in accordance

with the provisions applying to the appointment of auxiliary police officers (Section 63, paragraphs 2 to 4, Act on the Federal Police). The foreign police officers answer to the competent Federal Police authority for the duration of these operations with the consent of the sending state and on condition of their individual agreement, and act only on Federal Police instructions and orders. Foreign law enforcement officers are always deployed in a team with a Federal Police law enforcement officer.

Furthermore, foreign police officers may be deployed in the Federal Police's area of responsibility on German territory pursuant to Section 64, paragraph 4, first and second sentence of the Act on the Federal Police if international accords provide for this. Such activity is based on the treaties on cross-border police cooperation in security and criminal matters and in principle takes the form of joint operations, e.g. joint patrols and controls. The foreign police officer is accompanied by a Federal Police law enforcement officer and acts under his or her orders also during these operations.

In premises made available by the Federal Republic of Germany to the armed forces of foreign states signatory to the Agreement between the Parties to the North Atlantic Treaty Regarding the Status of their Forces (NATO Status of Forces Agreement) of 19 June 1951 and to the Agreement to Supplement the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces with respect to Foreign Forces stationed in the Federal Republic of Germany (Supplementary Agreement to the NATO Status of Forces Agreement) of 3 August 1959 for their exclusive use, the military police of the force have in principle the right to exercise police powers (Article VII, paragraph 10 (a), NATO Status of Forces Agreement). However, without prejudice to the above-mentioned provisions, the German police are entitled to exercise their authority within such accommodation to the extent that the public order and safety of the Federal Republic of Germany are jeopardized or violated (Article 28 of the Supplementary Agreement to the NATO Status of Forces Agreement).

3. On the question of the manner in which German internal law provides an adequate response to any alleged infringements of Convention rights of individuals within German jurisdiction, notably in the context of deprivation of liberty, resulting from the conduct of officials of foreign agencies. In particular, explanation of the availability of effective investigations that are prompt, independent and capable of leading to the identification and sanctioning of those responsible for any illegal acts, including those responsible for aiding or assisting in the commission of such acts, and the payment of adequate compensation to victims:

German law provides for various procedures to ensure an adequate response to any potential infringements of the rights and liberties set down in the European Convention on Human Rights on German territory. This applies particularly in the case of suspicion of illegal deprivation of liberty.

Deprivation of liberty may incur various punishments under German law. Sections 234, 234a and 239 of the German Criminal Code (text in Annex) are particularly relevant. In addition, depending on the circumstances of the individual case, other provisions of the Criminal Code may apply. These primarily include the provisions concerning bodily injury (Sections 223 ff., German Criminal Code) and coercion (Section 240, German Criminal Code).

According to the principle of mandatory prosecution applicable in Germany, laid down in Section 152 paragraph 2 of the Code of Criminal Procedure, the public prosecution office shall be obliged to take action in the case of all criminal offences which may be prosecuted, provided there are sufficient factual indications. An investigation must in principle be launched and conducted against every suspect, i.e. including employees of foreign corporate bodies. Members of NATO armed forces stationed in Germany, however, are exempt from the provisions of the German criminal justice system in certain cases, pursuant to the regulations in the NATO Status of Forces Agreement and the Supplementary Agreement to the NATO Status of Forces Agreement.

In the context of such an investigation the public prosecution office decides on the necessary procedure. The public prosecution office has a wealth of investigative and compulsory measures at its disposal, such as seizure (Sections 98 ff., Code of Criminal Procedure), search (Sections 102 ff., Code of Criminal Procedure), interception of telecommunications (Sections 100 a ff., Code of Criminal Procedure), surveillance on the suspect's private premises (Section 100 c ff., Code of Criminal Procedure) and observation (Section 463 f., Code of Criminal Procedure), which involve different prerequisites depending on the level of encroachment on the individual affected.

The outcome of the investigations is either their conclusion by the preferment of public charges (Sections 169 a, 170, paragraph 1, Code of Criminal Procedure) or the termination of the proceedings due to the absence of conclusive evidence (Section 170 paragraph 2, Code of Criminal Procedure).

When the public prosecution office has preferred public charges and the court has opened main proceedings (Section 203, Code of Criminal Procedure), a public main hearing is held. In this the court shall, proprio motu, extend the taking of evidence to all facts and means of proof relevant to the decision (Section 244, paragraph 2, Code of Criminal Procedure). It then rules whether the accused is guilty or innocent and may impose a punishment appropriate to the degree of guilt.

The victim of a crime may bring a compensation claim against the accused arising out of the criminal offence not only by way of civil law, but also in criminal proceedings against the accused (Sections 403 ff., Code of Criminal Procedure).

In the case of wilful or negligent injury of the life, body, health, freedom, property or other right of a person, the victim is entitled under civil law to compensation for any damage arising therefrom pursuant to Section 823, paragraph 1 of the German Civil Code. There is no upper limit to the compensation entitlement, which specifically includes damages for pain and suffering and legal costs. The same right exists if a statute intended for the protection of others, which specifically includes those penal provisions which protect personal legal interests, is infringed (Section 823, paragraph 2, German Civil Code).

4. The Secretary General's question regarding whether, in the period running from 1 January 2002 until the present, a public official or other person acting in an official capacity has been involved in any manner – whether by action or omission – in the unacknowledged deprivation of liberty of any individual, or transport of any individual while so deprived of their liberty, can be answered as follows:

All persons acting in an official capacity are bound by the provisions of internal law, particularly the Basic Law, in the implementation of all measures. The general rules of international law are an integral part of the Basic Law. To the knowledge of the Federal Government, public officials have not been involved in the unacknowledged deprivation of liberty of any individual or transport of any individual while so deprived of their liberty.

If infringements against the German legal order come to light, the German authorities take the steps prescribed by German law to rectify such infringements and punish them where appropriate. The necessary steps which may also be taken by the Federal Government are determined by the circumstances of each individual case.

The public prosecution office has launched two investigations on suspicion of unlawful deprivation of liberty in Germany:

- The public prosecution office in Zweibrücken is conducting an investigation into a person unknown in connection with the alleged kidnapping of an Egyptian citizen in Italy, who is alleged to have been taken by United States authorities to Egypt via the United States military airbase in Ramstein. A request for legal assistance was submitted to Italy in the course of this investigation. Documents were provided in response to the request. The investigation continues.
- The Munich I public prosecution office is conducting an investigation into a kidnapping reported by the victim himself, a German citizen of Lebanese origin. He has reported that he was arrested in late 2003 while travelling from Serbia to Macedonia and taken by United States authorities from Macedonia to Afghanistan. In connection with this case the Federal Government requested legal assistance from the United States, Macedonia and Albania in 2005. Documents have been provided by Albania in response to the request. Responses to the other two requests for legal assistance have yet to be received.

Annex

Key provisions of the German Criminal Code (StGB) on Offences involving deprivation of liberty

§ 234 StGB Kidnapping

(1) Whoever seizes another person by force, threat of appreciable harm, or trickery in order to abandon them in a helpless situation or to introduce them to service in a military or paramilitary institution abroad, shall be punished by imprisonment from one to ten years.

(2) In less serious cases the punishment shall be imprisonment from six months to five years.

§ 234a StGB Abduction

(1) Whoever brings another by trickery, threat or force into a territory beyond the territorial area of application of this law, or causes him to go there, or prevents him from returning therefrom, and thereby exposes him to the danger of being persecuted for political reasons and thus, at variance with principles of the rule of law, to suffer harm to life and limb through violent or arbitrary measures, to be deprived of his freedom or to be appreciably prejudiced in his professional or financial position, shall be punished with imprisonment for not less than one year.

(2) In less serious cases the punishment shall be imprisonment from three months to five years.

(3) Whoever prepares such an act shall be punished with imprisonment for not more than five years or a fine.

§ 239 StGB Deprivation of Liberty

(1) Whoever locks up a human being or otherwise deprives him of his liberty, shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

(3) Imprisonment from one year to ten years shall be imposed, if the perpetrator:

1. deprives the victim of his liberty for longer than one week; or
2. by the act or something he did during the act causes serious health damage to the victim.

(4) If by the act or something he did during the act the perpetrator causes the death of the victim, then the punishment shall be imprisonment for not less than three years.

(5) In less serious cases under subsection (3) imprisonment from six months to five years shall be imposed, in less serious cases under subsection (4), imprisonment from one year to ten years.