



ԵՎՐՈՒՆՈՐՅՐԴՈՒՄ  
ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹՅԱՆ  
ՄՇԱԿԱՆ ՆԵՐԿԱՅԱՑՈՒՑՉՈՒԹՅՈՒՆ

REPRÉSENTATION PERMANENTE DE LA RÉPUBLIQUE D'ARMÉNIE  
AUPRÈS DU CONSEIL DE L'EUROPE

01/01/15

Strasbourg, 02 February 2006

Dear Secretary General,

In response to your letter dated 21 November 2005 I have the honour to transmit to you the answers and explanations of our Government on the matter of secret prisons or illegally transferred detainees, sent by the Minister of Foreign Affairs of the Republic of Armenia Mr. Vartan Oskanian.

Please accept, Secretary General, the assurances of my highest consideration.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Christian Ter Stepanian'.

Christian Ter Stepanian  
Ambassador, Permanent Representative

Enc.

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



ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹՅԱՆ ԱՐՏԱՔԻՆ ԳՈՐԾԵՐԻ ՆԱԽԱՐԱՐ  
MINISTER OF FOREIGN AFFAIRS OF THE REPUBLIC OF ARMENIA

7/00993

Yerevan, 27 January, 2006


Dear Secretary General,

In response to your letter, I have the honor to provide attached our answers and explanations on the matter of secret prisons or illegally transferred detainees.

I am proud to state that there are no secret prisons or illegally transferred detainees existing on the territory of the Republic.

Please accept, Secretary General, the assurances of my highest consideration.

Sincerely,

  
Vartan Oskanian

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

## **Replies to the issues raised in the letter of the Council of Europe Secretary General**

Concerning the issues of the first point of the letter of the CoE Secretary General, the following information is provided.

1. According to the Paragraph 4 of the Chapter 6 of the Constitution of the RA, the Convention on human rights and fundamental freedoms, since its ratification, is a part of the legislative system of Armenia and its provisions are imperative. In accordance with the same article, if the Convention provides norms other than provided by the legislation of the RA, norms of the Convention should be implemented.

Several provisions of the Convention and its protocols are reflected in the RA legislation with the aim to guarantee a full protection of human rights. Constitutional reforms adopted by referendum (27.11.2005) are also aimed at strengthening the protection of human rights and freedoms in the Republic of Armenia.

For instance, the Article 16 of the RA Constitution states that every person has the right of personal freedom and immunity; a person can be imprisoned only in cases and by procedures provided by law. The above-mentioned Article provides for the cases of legal detention, which, inter alia, include the cases of prevention of illegal entrance of any person to the RA, his/her deportation or extradition to other state with the aim of his/her imprisonment. Every imprisoned person is immediately informed about reasons and, in case of criminal accusation, about indictment in a language understandable to him/her.

The Chapter 54 of the RA Code of Criminal Procedure determines relations of courts, prosecutors, investigation bodies (including national security bodies) with the respective bodies and officials of foreign countries when providing legal assistance.

For instance, in accordance with the Article 474 of the Code, if there is an international agreement on legal assistance, in case of necessity of investigation and implementation of legal measures on the territory of foreign country, the RA court, investigator, investigation body assign it to the respective bodies of the foreign country. According to the procedure provided by international agreement of the RA, respective bodies of foreign countries can make assignments to the respective bodies of RA.

The international agreements of the RA on legal assistance on criminal cases set procedure and conditions of extradition of the person to bring him to criminal liability or execute the verdict.

If there is no agreement on legal assistance on criminal cases, such relations with respective bodies of other countries, are regulated on the basis of the principle the reciprocity obtained by diplomatic channels. Articles 487-496 of the Code regulate relations concerning the extradition on that principle.

Presence of foreign agents during implementation of tasks concerning judicial measures set by the Code is allowed if it is provided by the international agreement of the RA. In such cases,

representative of the respective body of foreign country may be present during the implementation of the task with participation of officials of the authorized body of the RA. Therefore, agents of foreign country cannot do any action on the territory of the RA differently than it is set by the RA Criminal Code. Moreover, any actions in Armenia they can take only if the authorized bodies of the RA are informed and respective officials are present.

2. Besides the Paragraph 16 of the Constitution of the RA, also the first and the second parts of the Article 11 of the RA Code of Criminal Procedure provide that every person has the right of freedom and immunity, and nobody can be detained or imprisoned on the grounds and procedure other than provided by the Code.

According to the Point 6 of the same Article of the Code, the court, as well as the investigation body, investigator and the prosecutor should immediately release any person illegally imprisoned.

According to the Article 133 of the RA Criminal Code illegal deprivation of freedom, not related to kidnapping, is considered to be a penal action, the sanction for which, in case of aggravating circumstances, is imprisonment up to 8 years. The Article 131 provides for up to 7-10 years of imprisonment as a punishment for kidnapping.

Besides that, the Paragraph 1 of the Article 7 of the RA Law on National Security Bodies states that human and civil rights protection is guaranteed during the operations and activities organized by the national security bodies, and in accordance with the Paragraph 6 of the same Article, employees of the national security bodies bear responsibility provided by the law in case of violation of human and civil rights and freedoms when exercising their duties. Similar provisions are also provided by the Law on Police Service.

Consequently, foreign agent cannot take any action with the purpose of imprisonment of person (imprisonment, detention) without knowledge, sanction and participation of the RA authorized bodies and legal grounds provided by the RA international agreements and Criminal and Criminal Procedure Codes.

It can be concluded from the above-mentioned that the RA legislation reflects the provisions concerning protection of human rights and freedoms and restricts the possibilities of illegal imprisonment of persons, consecutive exercising of which will sufficiently promote the prevention of illegal imprisonment.

As regards bringing to liability the person assisting the illegal imprisonment (inter alia, by providing transport), the 1<sup>st</sup> Point of the Article 38 of the RA Criminal Code states that person is acknowledged an accomplice if he/she supports the crime by advise, instructions, by providing information or other means and devices. According to the 2<sup>nd</sup> Point of the Article 39 of the Code the assistant with the executor are subject to liability by the Article covering the crime.

According to the Article 128 of the RA Law on Criminal Procedure it is allowed to detain only the person who is suspected in crimes, sanctions for which are arrest, short-term imprisonment, or for violation of terms of the applied precautionary measure.

The Article 134 of the Code provides for the types of precautionary measures: detention, pledge, signature for not leaving, personal guarantees, assignment for supervision etc. According to 3<sup>rd</sup> Point of the Article, detention and mortgage may be applied only with regard to the accused.

The Article 135 of the Code provides for the grounds for precautionary measures. For instance, court, prosecutor, investigator or investigation body can enforce precautionary measures only in that case when it is supposed that the person under suspicion or the accused may hide from the criminal procedure body, hamper the pre-trial process or court proceeding, do an action forbidden by the Criminal Code etc.

According to the second part of the Article 136 of the Code, detention and pledge may be applied as precautionary measures only upon the court decision by the petition of investigator or prosecutor or the court initiative during the case trial.

3. In accordance with the Article 27 of the RA Code of Criminal Procedure, investigation body, investigator, prosecutor are obliged, within their jurisdiction, to institute a criminal proceeding in each case of revealing the crime elements, to undertake all measures stipulated by law to reveal the crime and the criminals.

As to the respective compensation to aggrieved persons, the fourth part of the Article 16 of the RA Constitution stipulates that everyone has a right of compensation for harm caused by illegal deprivation of liberty or search on the grounds and procedure provided by law.

The provisions of the Article 20 of the RA Code of Criminal Procedure regulate the procedure and terms of civil suit institution during the criminal proceeding. According to the Article 158 of the Code, during the criminal proceeding a civil suit against the suspect, accused or a person, who may be brought to property liability for the actions of the accused, can be instituted at any time. The claim statement should contain a request for expropriation of certain sum and property to reimburse the losses.

Additionally, according to the Paragraph 4 of the Article 7 of the RA Law on National Security Bodies, state institutions, organizations and citizens have the right, by the procedure stipulated by law, to demand compensation for material damage caused by the illegal actions of the national security bodies. The same provisions are also provided by the Law on Police Service.

In accordance with the Article 1064 of the RA Civil Code, the harm caused to a citizen as a result of illegal conviction, illegal bringing to criminal liability, application of detention or signature for not leaving or administrative sanctions as precautionary measures is subject to full compensation by the Republic of Armenia, regardless of the fault of the officials of independent investigation, preliminary investigation bodies, Prosecutor's office and the court.

4. From the moment of coming into force of the Convention until now no person, including official or foreign agent has been brought to responsibility for illegal deprivation of freedom or transfer to another country and no such case has been instituted.

Thus, proceeding from the above-mentioned it can be concluded that the RA legislation provides necessary guarantees for protection of rights and freedoms stipulated by the European Convention on human rights and fundamental freedoms, prevention of illegal deprivation of freedom in Armenia and transfer to another country of any person, defining respective punishment for illegal actions performed by responsible and any other persons.