



*Permanent Representation of the Republic of Cyprus
to the Council of Europe*

Strasbourg, 20 February 2006

Dear Secretary-General,

Further to your letter dated 21 November 2005 addressed to the Minister of Foreign Affairs of the Republic of Cyprus, please find attached a letter by my Minister, Mr George Iacovou, providing you with the reply of the Government of the Republic of Cyprus to your request for an explanation in accordance with Article 52 of the European Convention of Human Rights.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'F Ioannides', with a long horizontal line extending to the right.

Georgios Ioannides
Chargé d'Affaires a.i.

Mr. Terry Davis
Secretary General
Council of Europe

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Republic of Cyprus

Ministry of Foreign Affairs
The Minister

Ref.No.: A.4.1.5.1

Nicosia, 17 February 2006

Dear Mr. Secretary,

With reference to your letter of 21st November 2005, I have much pleasure to provide you with the reply of the Government of the Republic of Cyprus, to your request for an explanation in accordance with Article 52 of the European Convention on Human Rights.

Yours sincerely,

George Iacovou

Mr. Terry Davis
Secretary General
Council of Europe

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Request by the Secretary General of the Council of Europe to the High Contracting Parties for furnishing an explanation under Article 52 of the European Convention of Human Rights

EXPLANATION BY THE GOVERNMENT OF THE REPUBLIC OF CYPRUS

The effective implementation of the provisions of the Convention and its additional Protocols, (as interpreted by the European Court of Human Rights) with regard to the issues specified in the question appended to the request, (para.1) is ensured by the internal law of Cyprus, in the following manner -

The first safeguard against arbitrary deprivation of liberty is provided by the Cyprus Constitution, in that by virtue of its provisions, (Article 169) the Convention and all its Protocols form part of the domestic law of Cyprus, and are of superior force to it. Also, the Convention rights, (and of its Protocol No.1) are reproduced in almost identical terms in the fundamental rights and liberties safeguarded by Constitutional provisions (Articles 6 to 35). The result is that, concerning arbitrary deprivation of liberty, the provisions of Article 5 of the Convention are reproduced in almost identical terms in Article 11 of the Constitution. This guarantees the right to liberty and security of person, to "every person". It is the duty of legislative, executive and judicial authorities in Cyprus, to secure the effective implementation of its provisions within the limits of their respective competence (as with other Constitutional provisions reproducing Convention rights) (Article 35).

Article 11 prohibits deprivation of liberty save by arrest/detention in those instances which this is expressly permissible under its provisions (paras.(a)-(f) of Article 11.2). The instances are largely identical to those of paras.1a-f of Article 5 of the Convention. Deprivation of liberty by arrest/detention contrary to the Constitutional provisions, that is in any instance in which this is not permissible under Article 11, constitutes a criminal offence punishable with imprisonment for up to 3 years. It is also a criminal offence carrying the same term of imprisonment, to deprive a person of his liberty by arrest without a judicial arrest

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warrant contrary to the Article. Neglect or omission to perform the requirement of Article 11 to inform every person arrested at the time of his arrest in a language which he understands of the reasons for his arrest, is a criminal offence punishable with imprisonment for up to 12 months or to a fine not exceeding CY1,000, or to both. The above offences are created by statute ("The Rights of Persons under Arrest and Detention Law 2005 (Law163(I)/2005)).

The right (under Article 11) of every person arrested to a lawyer, is also regulated by the above law. Under its provisions, every person arrested has a right to contact immediately by phone, in person and in private, a lawyer of his own choosing, and to be informed of his above rights and of the police station he is to be detained in a language he understands. Violation of the above rights concerning contact with a lawyer is a criminal offence punishable with a term of imprisonment of up to 6 months or to a fine not exceeding CY1,000 or to both. Violation of the right to be informed of the above rights is a disciplinary offence.

Under Article 11, every person arrested must be brought before a judge not later than 24 hours after, or be released. The judge inquires into the grounds of arrest, and must release the person so arrested not later than 3 days from the day of such appearance on such terms as the judge deems fit, or where the investigation into the commission of the offence for which the arrest was made has not been completed, remand him in custody from time to time for a period not exceeding 8 days at any one time. The total period of such remand in custody cannot exceed 3 months from the day of arrest, and on the expiration of this period every person or authority having custody of the person arrested must forthwith set him free.

Buildings and premises for the purpose of detaining persons following arrest, are established as police detention places following their approval as such under the authority of Law, (the Prisons Law 62(I)/96)) by the Minister of Justice and Public Order, by Notification published in the Official Gazette of the Republic. The same applies for the establishment of prisons for serving prison sentences imposed by courts following conviction, or for pretrial detention, or for detention for the imposition of sentence by the courts. Pretrial detention and detention for sentence, can take

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place instead in police detention places, if such is the wish of the person concerned, and the court so orders.

Bilateral Agreements and European Conventions ratified by Cyprus do not make possible the transfer through the territory under the effective control of the Republic, of detained/convicted persons without notification and authorization by the Republic. Thus, under the Ratification Law (Law 9(III)/97) of the Convention between the United States and Cyprus, concerning the Extradition of Fugitive Offenders, the landing of aircraft in the Republic requires authorization following an application in this respect through diplomatic channels, or directly through the respective Ministries of Justice of the two countries. Under the Ratification Law (20(III)/02) of the Convention between Cyprus and the United States concerning Mutual Assistance in Criminal Matters, the country to which an application is made for transit of a person under custody through its territory, may authorize the transit subject to constitutional limitations. Cyprus has ratified the European Convention on Extradition, (Strasbourg 13.12.95) and the European Convention on the Transfer of Sentenced Persons (31.3.83). The first concerns the extradition of fugitive offenders among European states, and the second, the transfer of sentenced persons so that they can serve their sentence in the Republic, or be transferred from the Republic for serving their sentence in another European state.

In response to the request, an inquiry was made with all Police Departments/Districts/Services as to unacknowledged deprivation of liberty in the period from 1/1/2002, and no such instance has been ascertained (whether by the Republic, or by any foreign agency). Furthermore, the Government of the Republic of Cyprus has never been informed of any illegal activities by foreign secret services on its national territory, nor does it tolerate any kind of such activities. The Government of the Republic of Cyprus is not aware of any illegal transportation of prisoners by flights landed at its airports (Larnaka and Paphos). There are no secret detention centers in the territory under the effective control of the Republic, nor has the Republic been asked by any country to grant permission for such detention.

A person alleging that he is being detained unlawfully, contrary to the provisions of Article 11, can apply to the Supreme Court of Cyprus for an order of Habeas Corpus, ordering his

immediate release (Articles 11.7 and 155.4 of the Constitution). Victims of arrest or detention in contravention of the provisions of Article 11 can institute civil proceedings in District Courts for compensation. The right to compensation is afforded not only under express provision in Article 11(para.8), but also by virtue of case law of the Supreme Court of Cyprus, which has established since May 2001 (Judgment in the Case of Yiallourou v. Evgenios Nicolaou) that violation of any of the human rights provisions of the Constitution is actionable by civil proceedings in District Courts, for obtaining damages and other relief. Compensation by District Courts for such violations, covers both pecuniary and non-pecuniary damage, and also awards of punitive damages. Furthermore, violation of any of the rights which are afforded to persons arrested/detained by the provisions of Law 163(I)/2005 referred to above, gives rise to an actionable right of compensation against the Republic and the person who perpetrated the violation (such as a member of the police, or prison personnel, or the person in charge of the relevant place of police detention). The above right to institute proceedings for compensation is expressly given under that Law. Under its provisions the victim is entitled to just compensation irrespective of whether he has suffered any real loss or damage, or any financial or other loss as a result of the violation.

Investigations into allegations of arbitrary arrest/detention, or violation of the right to a lawyer, (which as explained above are criminal offences under Law 163(I)/2005) are carried out by independent investigators (lawyers in private practice or retired Supreme Court and District Court Judges) appointed by the Attorney-General of the Republic (such investigations can be carried out concerning any allegation of human rights violation which constitutes a criminal offence under any law). Investigations are initiated not only upon a complaint, but also upon any allegation which comes to the knowledge of the Attorney-General in any manner whatsoever (ie through the press, or the media, or following investigation of a complaint by the Ombudsman).The investigators so appointed act under the directions of the Attorney-General and are invested with all the powers and duties of investigation which the Cyprus Criminal Procedure Law affords for the investigation of crime. The file of the investigation is submitted upon completion to the Attorney-General, for studying the collected evidential material, and deciding on the matter of prosecution.

PROSECUTION IS FOLLOWED BY CRIMINAL TRIAL, AND IN CASE OF GUILT, BY SENTENCE OF THE TRIAL COURT.

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