



*Permanent Representation of Estonia
to the Council of Europe*

21 February 2006 No 1-8/648

Dear Secretary General,

I have the honour to transmit hereby the note by Mr Urmas Paet, Minister of Foreign Affairs of the Republic of Estonia dated 20 February 2006 No 3-3/2406 in connection of the request for an explanation in accordance with Article 52 of the European Convention on Human Rights.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'A. Streimann', with a long horizontal stroke extending to the right.

Alar Streimann
Ambassador
Permanent Representative

Encl: 7 p

Mr Terry DAVIS
Secretary General
Council of Europe
STRASBOURG



Välisminister
Minister of Foreign Affairs
Republic of Estonia

Tallinn, 20 February 2006 No 3-3/2406

Mr Terry Davis
The Secretary General
Council of Europe
F-67075 Strasbourg Cedex
France

Dear Secretary General,

Referring to your request of 21 November 2005 to furnish an explanation of the manner in which the internal law of Estonia ensures the effective implementation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols regarding the specific issues mentioned in your request, I have the honour to convey the following.

According to Article 3 of the Constitution of Estonia, generally recognised principles and rules of international law are an inseparable part of the Estonian legal system. Based on that, the provisions of international treaties, including Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols form an integral part of Estonian legal system and may be referred to directly in domestic courts.

The right to personal liberty is guaranteed also by Estonian internal laws. The unlawful deprivation of liberty is prohibited and punishable. The Constitution of the Republic of Estonia and the Code of Criminal Procedure provide the legal basis for lawful deprivation of liberty and respective safeguards to individuals. The punishment for unlawful deprivation of liberty and for abduction is provided in the Penal Code.

It need to be emphasized that the penal law of Estonia applies to all acts committed within the territory of Estonia, i.e. illegal acts committed by officials of foreign agencies on the territory of Estonia are punishable under Estonian law.

I hereby inform you that Estonian law enforcement agencies have not 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, including where such deprivation of liberty may have occurred by or at the instigation of any foreign agency.

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Estonian law enforcement agencies have not carried out any official investigation of unacknowledged deprivation of liberty of individuals and criminal cases have not been initiated under articles 134 and 136 of the Penal Code.

I would like to mention in this regard that the activities of security authorities and surveillance agencies are consistently monitored by a surveillance committee of the parliament (*Riigikogu*). The Security Authorities Surveillance Committee of the Riigikogu is a select committee which exercises supervision over agencies of executive power in questions relating to the activities of security authorities and surveillance agencies. The committee monitors inter alia that the security authorities and surveillance agencies respect human rights and fundamental freedoms. The Committee monitors the conformity of the activities of the Security Police Board with the Constitution of the Republic of Estonia, the Surveillance Act, the State Secrets Act and other legal acts, and the compliance of the activities of the Police Board, the Border Guard Administration, the General Staff of the Defence Forces, the Prison Board and the Customs Board with the Surveillance Act.

Please find enclosed extracts from particular legal acts of Estonia which are relevant in respect of your request.

Sincerely yours,



Urmas Paet

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APPENDIX

Constitution of the Republic of Estonia

§ 20

Everyone has the right to liberty and security of person.

No one shall be deprived of his or her liberty except in the cases and pursuant to procedure provided by law:

- 1) to execute a conviction or detention ordered by a court;
- 2) in the case of non-compliance with a direction of the court or to ensure the fulfilment of a duty provided by law;
- 3) to combat a criminal or administrative offence, to bring a person who is reasonably suspected of such an offence before a competent state authority, or to prevent his or her escape;
- 4) to place a minor under disciplinary supervision or to bring him or her before a competent state authority to determine whether to impose such supervision;
- 5) to detain a person suffering from an infectious disease, a person of unsound mind, an alcoholic or a drug addict, if such person is dangerous to himself or herself or to others;
- 6) to prevent illegal settlement in Estonia and to expel a person from Estonia or to extradite a person to a foreign state.

No one shall be deprived of his or her liberty merely on the ground of inability to fulfil a contractual obligation.

§ 21

Everyone who is deprived of his or her liberty shall be informed promptly, in a language and manner which he or she understands, of the reason for the deprivation of liberty and of his or her rights, and shall be given the opportunity to notify those closest to him or her. A person suspected of a criminal offence shall also be promptly given the opportunity to choose and confer with counsel. The right of a person suspected of a criminal offence to notify those closest to him or her of the deprivation of liberty may be restricted only in the cases and pursuant to procedure provided by law to combat a criminal offence or in the interests of ascertaining the truth in a criminal procedure.

No one shall be held in custody for more than forty-eight hours without the specific authorisation of a court. The decision of the court shall be promptly communicated to the person in custody in a language and manner which he or she understands.

Code of Criminal Procedure

§ 9. Safeguarding of personal liberty and respect for human dignity

- (1) A suspect may be detained for up to forty-eight hours without an arrest warrant issued by a court.
- (2) A person under arrest shall be immediately notified of the court's decision on arrest in a language and manner which he or she understands.
- (3) Investigative bodies, Prosecutors' Offices and courts shall treat the participants in a proceeding without defamation or degradation of their dignity. No one shall be subjected to torture or other cruel or inhuman treatment.
- (4) In a criminal proceeding, it is permitted to interfere with the private and family life of a person only in the cases and pursuant to the procedure provided for in this Code in order to prevent a criminal offence, apprehend a criminal offender, ascertain the truth in a criminal matter or secure the execution of a court judgment.

§ 130. Arrest and grounds for arrest

- (1) Arrest is a preventive measure which is applied with regard to a suspect, accused or convicted offender and which means deprivation of a person of his or her liberty on the basis of a court ruling.
- (2) A suspect or accused may be arrested at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling if he or she is likely to abscond from the criminal proceeding or continue to commit criminal offences.
- (3) In pre-trial procedure, a suspect or accused shall not be kept under arrest for more than six months. The term shall not include the time spent under provisional arrest in a foreign country by a person whose extradition has been applied for by the Republic of Estonia.
- (3¹) In the case of particular complexity or extent of a criminal matter or in exceptional cases arising from international cooperation in a criminal proceeding, a preliminary investigation judge may extend the term for keeping under arrest for more than six months at the request of the Chief Public Prosecutor.
- (4) The accused who has been prosecuted and is at large may be arrested on the basis of a ruling of a city, county or circuit court if he or she has failed to appear when summoned by the court and may continue absconding from the court proceeding.
- (5) A convicted offender who is at large may be arrested by the court pursuant to the procedure provided for in § 429 of this Code in order to secure execution of the court judgment.
- (6) A member of the Defence Forces who is a suspect and does not stay in the territory of the Republic of Estonia may, at the request of a Prosecutor's Office, be arrested on the bases provided for in subsection (2) of this section in order to bring him or her to the Republic of Estonia on the basis of an order of a preliminary investigation judge.

§ 131. Procedure for arrest

- (1) At the request of a suspect or accused, the Prosecutor's Office shall immediately notify his or her counsel of preparation of an application for an arrest warrant.

(2) On the order of a Prosecutor's Office, an investigative body shall convey a suspect or accused with regard to whom an application for an arrest warrant has been prepared to a preliminary investigation judge for the hearing of the application.

(3) In order to issue an arrest warrant, a preliminary investigation judge shall examine the criminal file and interrogate the person to be arrested with a view to ascertaining whether the application for an arrest warrant is justified. The prosecutor and, at the request of the person to be arrested, his or her counsel shall be summoned before the preliminary investigation judge and their opinions shall be heard.

(4) For the purposes of arresting a person who has been declared a fugitive or a member of the Defence Forces who is a suspect and stays outside the territory of the Republic of Estonia, a preliminary investigation judge shall issue an arrest warrant without interrogating the person. Not later than on the second day following the date of apprehension of the fugitive or bringing the member of the Defence Forces who is a suspect into Estonia, the arrested person shall be taken to the preliminary investigation judge for interrogation.

(5) If there are no grounds for arrest, the person shall be released immediately.

§ 133. Notification of arrest

(1) A preliminary investigation judge or court shall immediately give notification of the arrest of a person to a person close to the arrested person and his or her place of employment or study.

(2) Notification of an arrest may be delayed in order to prevent a criminal offence or ascertain the truth in a criminal proceeding.

(3) If a foreign citizen is arrested, a copy of the arrest warrant or court judgment shall be sent to the Ministry of Foreign Affairs.

§ 136. Contestation of arrest or refusal of arrest

A Prosecutor's Office, a person under arrest or his or her counsel may file an appeal pursuant to the procedure provided for in Chapter 15 of this Code against a court ruling by which arrest was imposed or refused, extension of the term for keeping under arrest or refusal to extend the term for keeping under arrest.

§ 137. Verification of reasons for arrest

(1) An arrested person or his or her counsel may, within two months after the arrest, submit a request to the preliminary investigation judge or court to verify the reasons for the arrest. A new request may be submitted two months after the review of the previous request.

(2) A preliminary investigation judge shall hear a request within five days as of the receipt of the appeal. The prosecutor, the counsel and, if necessary, the arrested person shall be summoned before the preliminary investigation judge.

(3) In order to adjudicate a request, a preliminary investigation judge shall examine the criminal file. A request shall be adjudicated by a court ruling which is not subject to appeal.

(4) If the term for keeping a person under arrest has been extended for more than six months pursuant to the procedure provided for in subsection 130 (4) of this Code, the preliminary investigation judge shall verify the reasons for the arrest at least once a month by examining the criminal file regardless of whether verification of the reasons

has been requested and shall appoint a counsel for the arrested person if he or she does not have a counsel.

§ 217. Detention of suspect

(1) Detention of a suspect is a procedural act whereby a person is deprived of liberty for up to forty-eight hours. A report shall be prepared on a detention.

(2) A person shall be detained as a suspect if:

1) he or she is apprehended in the act of committing a criminal offence or immediately thereafter;

2) an eyewitness to a criminal offence or a victim indicates such person as the person who committed the criminal offence;

3) the evidentiary traces of a criminal offence indicate that he or she is the person who committed the criminal offence.

(3) A suspect may be detained on the basis of other information referring to a criminal offence if:

1) he or she attempts to escape;

2) he or she has not been identified;

3) he or she may continue to commit criminal offences;

4) he or she may abscond criminal proceedings or impede the criminal proceedings in any other manner.

(4) A person who is apprehended in the act of committing a criminal offence or immediately thereafter in an attempt to escape may be taken to the police by anyone for detention as a suspect.

(5) An advocate may be detained as a suspect under the circumstances relating to his or her professional activities only at the request of a Prosecutor's Office and on the basis of an order of a preliminary investigation judge or on the basis of a court ruling.

(6) Section 377 of this Code applies to the detention of the President of the Republic, a member of the Government of the Republic, a member of the Riigikogu, the Auditor General, the Chancellor of Justice, or the Chief Justice or a justice of the Supreme Court as a suspect.

(7) An official of an investigative body shall explain the rights and obligations of a person detained as a suspect to the person and shall interrogate the suspect immediately pursuant to the procedure provided for in § 75 of this Code.

(8) If a Prosecutor's Office is convinced of the need to arrest a person, the Prosecutor's Office shall prepare an application for an arrest warrant and, within forty-eight hours as of the detention of the person as a suspect, organise the transport of the detained person to a preliminary investigation judge for the adjudication of the application.

(9) If the basis for the detention of a suspect ceases to exist in pre-trial proceedings, the suspect shall be released immediately.

(10) A person detained as a suspect is given an opportunity to notify at least one person close to him or her at his or her choice of his or her detention through a body conducting proceedings. If the notification prejudices a criminal proceeding, the opportunity to notify may be refused with the permission of the Prosecutor's Office.

Penal Code

§ 6. Territorial applicability of penal law

(1) The penal law of Estonia applies to acts committed within the territory of Estonia.

§ 134. Abduction

(1) Taking or leaving a person, through violence or deceit, in a state where it is possible to persecute or humiliate him or her on grounds of race or gender or for other reasons, and where he or she lacks legal protection against such treatment and does not have the possibility to leave the state, is punishable by a pecuniary punishment or up to 5 years' imprisonment.

(2) The same act, if committed:

- 1) against two or more persons, or
 - 2) against a person of less than 18 years of age,
- is punishable by 2 to 10 years' imprisonment.

§ 136. Unlawful deprivation of liberty

(1) Unlawful deprivation of the liberty of another person is punishable by a pecuniary punishment or up to 5 years' imprisonment.

(2) The same act, if committed against a person of less than 18 years of age, is punishable by 1 to 5 years' imprisonment.