

MINISTER FOR
FOREIGN AFFAIRS
ICELAND

H.E. Terry Davis
Secretary General
Council of Europe
67075 Strasbourg Cedex
France

Reykjavík, 20 February 2006

Ref: FST05110003/82.B.120

GHH/nh

Dear Secretary General,

With reference to your letter of 21 November 2005, please find attached the explanations as requested in relation to the implementation of provisions of the European Convention on Human Rights.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Geir H. Haarde". The signature is fluid and cursive, with the first name "Geir" and last name "Haarde" clearly distinguishable.

Geir H. Haarde

**Reply by Iceland to a request from the Secretary General
of the Council of Europe
for an explanation in accordance with Article 52
of the European Convention on Human Rights**

In the following, answers will be presented to the request from the Secretary General of the Council of Europe, dated 21 November 2005, for an explanation in accordance with Article 52 of the European Convention on Human Rights.

Firstly, it should be stressed that the European Convention on Human Rights has been incorporated into Icelandic law and is frequently applied and referred to in cases and judgments before the courts and in administrative decisions. In addition the human rights provisions of the Constitution of Iceland were revised in 1995 and brought in line with the rights protected in the ECHR and other international human rights conventions. Effective domestic remedies are afforded to individuals who claim that their rights under the ECHR have been violated.

Issues to be explained according to the request

- There are no laws and regulations in force in Iceland dealing specifically with control of acts by officials of foreign agencies. If no rules flowing from international treaties regarding diplomatic immunity are involved, general rules of Icelandic law apply regarding adequate controls that human rights of individuals are not violated and Icelandic authorities have full jurisdiction to react in such situations. Serious violations on human rights, such as deprivation of liberty, torture and inhuman treatment are declared serious punishable acts in the Icelandic Penal Code No. 19/1940. There are no exceptions from the rules that Icelandic authorities have full criminal jurisdiction in their territory. Accordingly, if grounds are established for believing that such offences have been committed the prosecution authorities have the duty under the provisions of the Code on Criminal Procedure No. 19/1991 to initiate investigation on the matter. The general rules concerning the prosecuting authorities and their role and duties are set forth in the Code on Criminal Procedure. The director of Public Prosecutions is the highest holder of prosecution authority and enjoys full independence. He is therefore not subject to follow orders from any other authority. The role of the Director of Public Prosecutions is to ensure that legally prescribed sanctions are applied against persons who have committed criminal offences, and to supervise the exercise of prosecution authority by Commissioners of police. He also supervises the investigation procedures of the police. Accordingly, the adequate control in Icelandic law lies in the full independence of the prosecuting authorities, and their duty to react if suspicion arises of criminal conduct.
- The answer to the question in the second paragraph of the request partly overlaps the first answer so reference is made thereto. As regards safeguards to prevent unacknowledged deprivation of liberty of any person within Icelandic jurisdiction, such safeguards do exist in Icelandic legislation. According to the Act on Criminal Procedure, the Act on Customs No. 88/2005 and Aviation Act No. 60/1998 the Police-, Customs- and Aviation authorities have clear authority to request information from all aircraft concerning the passengers they are carrying. In addition, according to Section 76 of the Aviation Act, the Minister of Transport may enact special rules regarding organisation of certain routes of air traffic

executed by the Icelandic Civil Aviation Administration. The present Icelandic legislation could in practice provide for the possibility to establish a systematic supervision to collect information on the passengers in all aircraft landing in Icelandic airports. This has not been considered necessary as yet to prevent the possibility of an unacknowledged deprivation of liberty in Icelandic jurisdiction. There have been no instances where grounds have been established for assuming either action or omission of Icelandic authorities or whether they have aided or assisted the agents of another State in conduct amounting to deprivation of liberty.

- As regards the third paragraph of the request, a reference should also be made to previous answers regarding adequate controls of acts of foreign agencies. According to Section 79 of the Aviation Act, the Icelandic Civil Aviation Administration, the police and the custom authorities are always able to inspect aircraft. In addition the Civil Aviation Administration may order an aircraft to land in the closest airport in Iceland for the sake of public order or security. If an inspection is performed and grounds established that a criminal act has been committed, the police have full authority according to the Act on Criminal procedure to initiate an investigation. If it is revealed that individuals have been illegally deprived of their liberty by officials of foreign agencies to be transported between countries, or are being transported to another country for the purpose of torture, this would be considered to be in violation of Icelandic penal law, as offences against individual's liberty according Sections 225 – 227 of the Penal Code. The aiding and assisting of such acts is also punishable. These offences are considered as belonging to the most serious crimes with punishment up to 16 years imprisonment or life sentence. If the police start investigating such a case it would take any necessary investigative measures to continue the investigation. This could include request for court orders on detention on remand of the suspected perpetrators and temporal measures to prevent the aircraft from leaving the country. The perpetrators of offences against an individual's liberty could be prosecuted under Icelandic criminal law, as the deprivation of liberty continues in the criminal jurisdiction of Iceland, even though the initial deprivation takes place in other jurisdiction. Special rules and wider jurisdiction apply in case of suspected torture of prisoners. Iceland is a party to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 10 1984 as well as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1984. If a person maintains that he or she has suffered torture at the hands of a person acting in official capacity, as defined in Article 1 of the Convention. Icelandic law provides for investigation to take place of such cases and for criminal action against the perpetrator. In order to fulfil the commitments described in Article 5 paragraph 2 of the UN Convention against Torture, amendments were made to Section 6 of the Penal Code in 1995, which extended Icelandic criminal jurisdiction in cases involving torture offences. According to Section 6 subparagraph 9 of the Code, a person can be sentenced under Icelandic criminal law for an offence described in the Convention against Torture even if it has been committed outside Icelandic territory and irrespective of the perpetrator's nationality. However, criminal action can only be brought under this provision if so ordered by the Minister of Justice. As regards payment of adequate compensation for victims, Icelandic law secures that victims of crimes have an enforceable right to compensation against the convicted offenders both for pecuniary and non-pecuniary damage resulting from the crimes. In addition if an Icelandic public official is involved the Icelandic state

is liable to pay compensation for his acts committed in his official capacity, however this rule will not apply if the public official is foreign.

Finally, an explanation is required in the request regarding incidents that have taken place in Iceland in the period running from 1 January 2002 until the present. The Icelandic authorities have no knowledge of, or grounds to believe, that any public official or other person acting in an official capacity has been involved in any manner in the unacknowledged deprivation of liberty of any individual, or transport of any individuals while so deprived of their liberty, including where such deprivation of liberty may have occurred by or at the instigation of any foreign agency. Accordingly, there have been no grounds for initiating any official investigation on this particular issue.