



Постојана мисија на Република Македонија при Советот на Европа
Permanent Representation of the Republic of Macedonia to the
Council of Europe

13, rue Andre Jung, 67000 Strasbourg; tel: 03 88 37 17 00 fax: 03 88 37 19 04

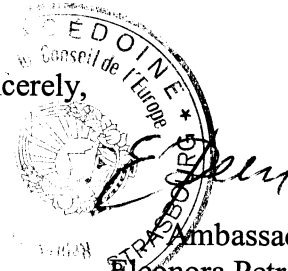
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Date: 17. 02. 2006

Dear Secretary General,

With regard to your letter with the request for an explanation in accordance with Article 52 of the European Convention on Human Rights, dated 21st of November 2005, please find enclosed the reply from the Government of the Republic of Macedonia.

Yours sincerely,



Ambassador,
Eleonora Petrova Mitevaska

Secretary General of the Council of Europe
TERRY DAVIS

**Reply to the Letter of Secretary General of the Council of Europe Terry
Davis of 21 November 2005**

The Republic of Macedonia attaches priority importance to the protection, respect for and promotion of human rights and freedoms. In this context, we pursue the strategic commitment of ensuring, both in law and in practice, effective respect for international obligations we have assumed and for domestic legal norms in this field.

The legal system of the Republic of Macedonia regulates the relations between domestic and international law envisaging that international agreements ratified in accordance with the Constitution are an integral part of the domestic legal order and may not be amended by law, placing thus international agreements ratified in pursuance with the Constitutional hierarchically above national laws. (Article 118 of the Constitution of the Republic of Macedonia). This also applies to the European Convention for the Protection of Human Rights and Fundamental Freedoms. In addition to the direct applicability of the said Convention, the prevailing number of its provisions have been directly incorporated in the text of the Constitution of the Republic of Macedonia, more specifically in its II Chapter entitled Basic Freedoms and Rights of the individual and citizen, and in other laws as well.

The prohibition of torture envisaged under Article 3 of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms is transposed in Article 11 of the Constitution, according to which the right to physical and moral integrity of the person is inviolable. Consequently, the physical and moral integrity of the person must be respected in all circumstances, both by state bodies and by individual citizens.

The right to liberty and security of the person is established under Article 12 of the Constitution, which guarantees that the right to freedom is inviolable. No person can be restricted freedom except by a court decision or in cases and procedures determined by law. The person summoned, apprehended or detained must be immediately informed of the reasons for their summons, apprehension or detention as well as on their legal rights and must not be forced to make a statement. The person has the right to defense counsel in the police and court procedure. Detained persons must be brought before court as soon as possible, within a maximum period of 24 hours from the moment of detention, and the court will, without any delay, decide on the legality of the detention. A person unlawfully or without any grounds detained, apprehended or convicted has the right to legal redress and other rights determined by law (Article 13 of the Constitution). The said provisions are integrated and further elaborated in the Law on Criminal Procedure.

Foreign nationals in the Republic of Macedonia enjoy the freedoms and rights guaranteed by the Constitution, under conditions set forth in law and international agreements. A foreign national may be extradited only based on ratified international treaty and the principle of reciprocity. A foreign national may not be extradited on grounds of political criminal offences. Acts of terrorism are not regarded as political criminal offences (Article 29 of the Constitution).

In accordance with Article 54 of the Constitution the restriction of freedoms and rights may not be applied to the right to life, the prohibition of torture, inhuman and degrading treatment and punishment, the legal determination of punishable

offences and sentences, and to the freedom of personal conviction, conscience, through and public expression of thought and religion.

As regards the protection mechanisms in case of violation of the rights guaranteed under the Convention, both in terms of deprivation of freedom and in terms of violations of any other rights, there is a guarantee for the protection of the fundamental rights and freedoms through a procedure, regulated by law, before the regular courts in the Republic of Macedonia, as well as before the Constitutional Court of the Republic of Macedonia, the National Ombudsman, and before the Survey Committee for Human Rights at the Parliament of the Republic of Macedonia.

The domestic legislation of the Republic of Macedonia guarantees and enables the fulfillment of the obligation of the state to ensure effective implementation of the provisions contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms related to the effective exercise of the judicial competence, including at airports and the airspace under the state's jurisdiction. In accordance with Article 116 of the Criminal Code of the Republic of Macedonia, the criminal legislation is applicable to everyone (both nationals of the Republic of Macedonia and foreign nationals) who commits a crime on the territory of the Republic of Macedonia, including on a domestic ship, regardless where the ship is at the time the crime is committed, as well as on a domestic civil or military aircraft during flight, regardless where the aircraft is at the time the crime is committed.

The Chapter entitled "Crimes against the freedoms and rights of the individual and citizen" of the Criminal Code of the Republic of Macedonia contains provisions protecting these rights and freedoms.

Article 140 of the Criminal Code "Unlawful Deprivation of Freedom", incriminates any unlawful apprehension, detention or any other way of deprivation or limitation of freedom of movement of another person, including (paragraph 4) if the unlawful deprivation of freedom is performed by an official person, by misusing the official position or authorization.

Article 141 "Kidnapping" of the Criminal Code the incrimination of kidnapping sanctions the abduction of another person with the intention to force the person or someone else to commit, not to commit or to endure something.

The definition of torture contained in international conventions has been fully implemented in Article 142 of the Criminal Code.

The prohibition of torture, inhuman and degrading treatment or punishment is absolute. Thus, the violations of this prohibition may not be justified on grounds of abiding by orders issued by the superiors. In this respect, in pursuance with Article 6 of the Law on Internal Affairs, employees of the Ministry shall be obliged to carry out the orders of the Minister or the person authorized by the Minister related to the functioning of the Ministry, unless the order constitutes a criminal activity.

The employees of the Ministry are obliged to protect and preserve the life and property of the citizens when performing their tasks and duties, as well as to respect human rights and freedoms of citizens and to apply, in a regulated manner, only the measures and means of coercion determined by this law or any other regulation. (Article 7 of the Law on Internal Affairs).

The legislation of the Republic of Macedonia sets out in details the conditions under which the police may apply means of coercion (Article 34, 35 and 36 of the

Law on Internal Affairs and the Regulation on Use of Means of Coercion and Firearms).

As already mentioned above, nationals of the Republic of Macedonia, and persons under the jurisdiction of the Republic of Macedonia, including all foreign nationals on its territory must respect the laws of the Republic of Macedonia and its entire legal order.

Skopje, 17 February 2006