



17 March, 2006

M. Carlos Coelho
Président
Commission Temporaire TDIP
European Parliament

PE - COURRIER EP - ENTRÉE
21.03.2006
N° 3340

Dear M. Coelho,

I refer to your letter of 22 February 2006 and the attached Resolution of the European Parliament of 18 February 2006, establishing the Temporary Committee.

I am instructed to inform you of my Government's intention to cooperate to the fullest extent practicable with the work of the Temporary Committee. A statement to this effect was made in Dáil Éireann on 22 February 2006, a copy of which I attach.

In this context, I understand that arrangements are being made in Dublin to facilitate the Irish part of your request to Eurocontrol to provide data relating to movements of certain aircraft through European airports.

I have arranged for a copy of your letter to be transmitted to the Oireachtas (Parliament of Ireland).

For your information, I am attaching a copy of the Government's reply to a request made under Article 52 of the European Convention on Human Rights, by the Secretary General of the Council of Europe. It provides a comprehensive overview of the legal and factual background to the matters which you are investigating, and may be of some use to the Temporary Committee.

Yours sincerely,

Bobby McDonagh
Permanent Representative

Question No 109

Parliamentary Question - Dept Details

To ask the Minister for Foreign Affairs if he or officials of his Department will be appearing before the ongoing European Parliamentary Committee investigation into the operation of secret prisons and the practice of extraordinary rendition by the United States in Europe; and if so, if they will be expanding on the reasons for their acceptance of a diplomatic assurance in the area of fundamental guarantees in human rights as established in international law.

- Brendan Howlin. (Nominated by: Michael D. Higgins).

For ORAL answer on Wednesday, 22nd February, 2006.

Ref No: 7006/06

Question No 134

Parliamentary Question - Dept Details

To ask the Minister for Foreign Affairs if, further to his statement to Dáil Éireann in response to Parliamentary Question No. 118 of 14 December 2005 a detailed questionnaire on the subject of secret detention and the practice known as extraordinary rendition from the Council of Europe's Secretary General has been completed by Department officials; if its contents, and the full submission made to the Council of Europe, will be laid before the Houses of the Oireachtas; and if he will make a statement on the matter.

- Willie Penrose. (Nominated by: Michael D. Higgins).

For ORAL answer on Wednesday, 22nd February, 2006.

Ref No: 7007/06

Question No 160

Parliamentary Question - Dept Details

To ask the Minister for Foreign Affairs if the question of the possible existence of secret detention centres within the EU has been discussed with his European counterparts; and if he will make a statement on the matter.

- Seymour Crawford. (Nominated by: Bernard Allen).

For ORAL answer on Wednesday, 22nd February, 2006.

Ref No: 6808/06

REPLY

I propose to take questions 109, 134 and 160 together. I would refer Deputies to my reply to question 72 of today.

The Government's response to the questionnaire circulated by the Secretary General of the Council of Europe, Mr Terry Davis, issued on Monday, in advance of the deadline set by the Secretary General. In its response the Government emphatically answers in the negative the Secretary General's questions on whether "unacknowledged deprivation of liberty" might have taken place in Ireland. The Government's response was laid before Dáil Éireann yesterday afternoon. It has now been made public, and is available for download from the website of the Department of Foreign Affairs .

Within the EU, the question of the possible existence of secret prisons has been discussed at official level between the European Commission and officials in member states in Eastern Europe. The issue was also discussed informally during the General Affairs and External Relations Council on 21 November 2005. Following this meeting, the Presidency wrote to the US Secretary of State seeking clarification on the issue of secret prisons and rendition flights. Secretary Rice's reply of 7 December 2005 reiterated her widely-reported statements on the matter.

The Government will cooperate to the fullest extent practicable with the Temporary Committee established by the European Parliament to investigate "whether the CIA carried out torture or illegal detentions on EU territory, and whether citizens from Member States or candidate countries have been detained". There will, presumably, be a very considerable overlap between the investigation of the European Parliament and those of the Council of Europe. As yet, there has been no invitation to any Government representatives to attend. In the event that any representatives are invited to attend, I expect that the issue of the clear and unambiguous assurances the Government has received from the US authorities will arise.

Article 52 Request
in respect of
Unacknowledged Deprivation of Liberty

Reply of the Government of Ireland

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I. Introduction

On 21 November 2005 the Secretary General of the Council of Europe, Mr Terry Davis, wrote to the Governments of all of the Member States of the Council of Europe. Exercising his powers under Article 52 of the European Convention on Human Rights, the Secretary General sought from each State an explanation of “the manner in which its internal law ensures the effective implementation” of certain provisions of the Convention. This document forms the response of the Government of Ireland to that request.

As the recital to the Secretary General’s request indicates, it is circulated against a background of:

“recent reports suggesting that individuals, notably persons suspected of involvement in acts of terrorism, may have been apprehended and detained, or transported while deprived of their liberty, by or at the instigation of foreign agencies, with the active or passive cooperation of High Contracting Parties to the Convention or by High Contracting Parties themselves at their own initiative, without such deprivation of liberty having been acknowledged.”

The Secretary General’s request may be divided into two parts. The first part asks for an explanation of the adequacy of domestic law relating to unacknowledged deprivation of liberty and the activity of foreign agencies. The second part asks whether any public official, or “person acting in an official capacity”, has been involved in any unacknowledged deprivation of liberty during the period since 1 January 2002. The Government’s response to the Secretary General takes its structure from his request. The conclusion records the absolute prohibition under Irish law of the unacknowledged deprivation of liberty, and confirms that the practice within the State fully conforms to this.

II. The Law

A. Controls on officials of foreign agencies

The Secretary General asks for an explanation of

“The manner in which [Irish] law ensures that acts by officials of foreign agencies within [its] jurisdiction are subject to adequate controls.”

The actions of all persons present in the territory of Ireland are governed by Irish law, including that relating to the deprivation of liberty described in Section II.C.

Consistent with Ireland’s international legal obligations, Irish law confers specified privileges and immunities upon certain representatives of other states and international organisations, which could present a procedural bar to the enforcement of Irish law against such persons. The situations in which such diplomatic and state immunity may be enjoyed by a foreign official in Ireland are set out below.

1. Diplomatic Immunity

Diplomatic immunity applies in Ireland to

- the categories of person specified by the Vienna Convention on Diplomatic Relations of 1961, and the Vienna Convention on Consular Relations of 1963;
- any additional categories created or persons specified under the Diplomatic Relations and Diplomatic Immunity Act 1967; and
- any additional categories created or persons specified by international agreement and implemented by other primary domestic legislation.

The categories of person specified by the Vienna Convention on Diplomatic Relations of 1961, and the Vienna Convention on Consular Relations of 1963.

The provisions of the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations are given effect in Irish law through the Diplomatic Relations and Immunities Acts 1967 and 1976. As a result, diplomatic and consular agents enjoy under Irish law immunity in respect of search, arrest and immunity from Irish criminal jurisdiction. It should be pointed out that, as provided by the two Conventions, such persons are under a duty to respect Irish law and regulations and, in addition, their immunity may be waived by the sending State.

The two Conventions do not include, as a category, officials of an agency of a foreign State travelling or present in the State on the business of their agency or otherwise.

Pursuant to an international agreement between Ireland and the United States of America,¹ US citizens who are permanent employees of the US Government assigned to 'preinspection' duties in Ireland are notified to the Department of Foreign Affairs as a diplomat (in the case of the head of the facility) or technical and administrative staff (in the case of other staff) and, as such, enjoy the relevant privileges and immunities under the 1967-76 Acts in respect of acts performed in the exercise of their duties under the 1986 agreement.

Any additional categories created or persons specified under the Diplomatic Relations and Immunities Acts 1967 and 1976

The Diplomatic Relations and Immunities Acts 1967-1976 also give effect in Irish law to international agreements conferring privileges and immunities upon certain

¹ Agreement between Ireland and the United States of America on Preinspection, Dublin 25 June 1986, Irish Treaty Series, No 2 of 1986

international organisations (i.e. the United Nations and specialised agencies of the United Nations, the Council of Europe, the Organisation for Economic Co-Operation and Development, and the Customs Co-Operation Council). These agreements provide for the immunities of these organisations, their officials and representatives of their Member States. The agreements all contain provisions relating to the abuse of privileges and immunity by individuals, and allow for the waiver of immunities by the relevant international organisation or Member State.

Part VIII of the Diplomatic Relations and Immunities Acts 1967-1976 allows the Government, by Order, to confer on a designated international organisation or body of which the State is or intends to become a member, and its officials, “inviolability and exemptions, facilities and immunities, privileges and rights” (Section 40); to confer immunities and privileges on international judicial bodies or semi-judicial bodies established under an agreement to which the State or Government is, or intends to become, a party (Section 43); and to confer immunities and privileges on international organisations and bodies, in accordance with international agreements to which the State or Government is, or intends to become, a party (Section 42A).

Any additional categories created or persons specified by international agreement and implemented by other primary domestic legislation.

In addition to the above, privileges and immunities have been conferred on various bodies by virtue of primary legislation, or Orders made pursuant to such primary legislation.²

² Chemical Weapons Act 1997, Section 5 (members of an inspection team of the Organisation for the Prohibition of Chemical Weapons); Decommissioning Act 1997, Section 3 (Independent International Commission on Decommissioning, its property members and staff); Europol Act 1997, Section 2, (Europol and the members of its organs); Criminal Justice (United Nations Convention Against Torture) Act 2000, Section 11, (members of the UN Committee against Torture); Containment of

2. State immunity

Consistent with Ireland's obligations under customary international law, a serving Head of State or Minister for Foreign Affairs of a foreign state enjoys immunity while on Irish territory.

As stated above, Irish law on immunity reflects customary international law on this matter, and must be interpreted in light of developments in that law.

3. Foreign Aircraft

It is appropriate, having regard to other areas of Irish law referred to in this Questionnaire, to outline the controls which exist in respect of the acts of officials of foreign agencies who transit Irish territory by aircraft. The law applicable to both civil and state aircraft is explained below.

a) Civilian aircraft

(1) Aircraft in flight

Ireland's competence to exercise jurisdiction in cases of criminal offences committed on board foreign civilian aircraft is governed, as regards aircraft in flight, by the Tokyo Convention 1963³. Article 4 of the Convention allows Ireland to exercise criminal jurisdiction *inter alia* in respect of such offences committed on Irish territory.

Nuclear Weapons Act 2003, Section 5, (international IAEA Inspector); Independent Monitoring Commission Act 2003, Section 5, (members and staff of the Independent Monitoring Commission)

³ The Convention on Offences and Certain Other Acts committed on board Aircraft, Tokyo, on 14th September 1963. The Convention was adopted into Irish law by the Air Navigation and Transport Act, 1973.

(2) Aircraft not in flight

Where an aircraft is not in flight, the Tokyo Convention places no restriction on Ireland either investigating, or claiming jurisdiction to prosecute, in respect of a criminal offence appearing to have been committed on board an aircraft registered to another State. Civil aircraft used by foreign officials which land on Irish territory are not entitled to any state immunity. Hence, the powers of search outlined in Section II.C would apply to these aircraft.

b) Foreign State aircraft.

It is a requirement of Irish law that prior permission must be sought for a foreign military aircraft to land in Irish territory. In such circumstances, the foreign military aircraft enjoy immunity from search by Irish officials unless permission is conditional upon the waiver of this immunity. In addition, persons on board such an aircraft, who commit an offence while they remain on board, also enjoy immunity. Non-military state aircraft must also, in accordance with international law, seek permission to overfly or land in Irish territory if immunities are to apply.

If a person, who is believed to have committed an offence in Ireland, leaves the aircraft he or she can be arrested, charged and prosecuted, including for a crime committed against an Irish person on the aircraft, or an international crime wherever committed.

B. Safeguards to prevent unacknowledged deprivation of liberty

The Secretary General secondly asks for an explanation of

“The manner in which [Irish] law ensures that adequate safeguards exist to prevent unacknowledged deprivation of liberty of any person within [the State’s] jurisdiction, whether such deprivation of liberty is linked to an action or omission directly attributable to the [State] or whether [the State] has aided or assisted the

agents of another State in conduct amounting to such deprivation of liberty, including aid or assistance in the transportation by aircraft or otherwise of persons so deprived of their liberty.”

Article 40.4.1 of the Constitution of Ireland provides that “No person shall be deprived of his personal liberty save in accordance with law”.

The purpose of this Section is to explain that (i) under Irish law the deprivation of a person’s liberty can only take place in defined circumstances, and that there is no concept in Irish law of a detention which is simultaneously both lawful and secret; and (ii) that Irish law provides numerous mechanisms to prevent an unlawful deprivation of liberty.

1. Lawful deprivation of liberty by Irish officials:

In addition to the power of An Garda Síochána (the Irish police service) to deprive a person of his or her liberty (which is highly regulated by law), a number of other authorities are empowered to do so in defined circumstances.⁴ It will be noted that, in

⁴ These circumstances are similar to those set out in Article 5.1 of the Convention- e.g. Section 12 of the Child Care Act 1991 permits a member of the Garda Síochána to remove the child to safety when he or she has reasonable grounds for believing that the health and welfare of a child is at serious and immediate risk; a health board can apply to a higher Court for an Order of Detention (in a unit with educational and therapeutic services) in respect of a non-offending child in need of special care and protection, which is granted under the Court’s inherent jurisdiction; Section 38(1) of the Health Act 1947, allows a chief medical officer may order the detention and isolation of a person who is a probable source of infection with an infectious disease (specified by regulation). A person so detained has a right to appeal against that detention to the Minister for Health, and must be informed of this right; under the Trial of Lunatics Act 1883, a defendant in criminal proceedings who has been found guilty but insane must be detained in the Central Mental Hospital until such time as the executive has decided that he or she has recovered- the Courts have held that such detention is permitted only so long as it is necessary to achieve the objectives of the legislation; the Mental Treatment Act 1945 permits

all of these situations, the deprivation of liberty is regulated by law and subject to judicial control.

2. Lawful deprivation of liberty by foreign agents in Ireland:

There are only two circumstances in which Irish law permits the authorities of another State to detain a prisoner on Irish territory:

- **Extradition:** The Extradition Act 1965, in Section 40 (1), permits the transit through Irish territory of a person being conveyed from one country to another pursuant to an agreement in the nature of an extradition agreement. In such a case, the transit must be consented to by the Minister for Justice, Equality and Law Reform and is subject to the relevant extradition provisions and any condition the Minister thinks proper.

The Ireland-US extradition agreement of 2001 additionally permits detention of prisoners by officials of the United States as they pass through Ireland. The agreement at Article XV requires the consent of the State for each such transit.

- **Transfer of a sentenced prisoner:** The Minister for Justice, Equality and Law Reform may also consent to the transfer of a sentenced prisoner through Irish territory pursuant to the Convention on the Transfer of Sentenced Persons 1983, when he or she is satisfied that Article 16 of that Convention is applicable.

the detention, in specified circumstances, of mentally ill patients in mental hospitals. The Act makes provision for complaints of unlawful detention to be investigated by mental health authorities. The Courts are empowered to release a patient who has recovered or who was otherwise unlawfully detained.

It is not lawful for the Minister or the State to consent to the transit of a prisoner through Irish territory other than in the two circumstances outlined above.

It is important to note that the exercise by any Minister of his or her powers and discretions must be done in a constitutional manner and, under the European Convention on Human Rights Act 2003, in a manner compatible with the European Convention on Human Rights. No Minister can lawfully consent to the transit through Irish territory of a prisoner where he or she knows, or has substantial grounds for believing, that there is a real risk of that prisoner being tortured or subjected to inhuman or degrading treatment or punishment.

3. Unlawful deprivation of liberty

All detention, whether secret or otherwise, which does not have the positive authorisation of law in the State, constitutes the criminal offence of false imprisonment.

Section 15 of the Non-Fatal Offences against the Person Act 1997 provides that a person who intentionally or recklessly takes or detains, or causes to be taken or detained, or otherwise restricts the personal liberty of another without that other's consent, shall be guilty of the offence of false imprisonment. For the purposes of the Section, a person acts without the consent of another if the person obtains the other's consent by force or threat of force, or by deception causing the other to believe that he or she is under the legal compulsion to consent. The offence of false imprisonment is punishable on summary conviction by a fine not exceeding €1,904.61 or to imprisonment for a term not exceeding 12 months or both and, on conviction on indictment, by imprisonment for life.

A person who aids, abets, counsels or procures the commission of the above offence is liable to be indicted, tried and punished as a principal offender (Section 22 of the Petty Sessions (Ireland) Act 1851; Section 7 of the Criminal Law Act 1997).

It is relevant to note that Section 2 of the Criminal Justice (United Nations Convention Against Torture) Act 2000 provides that it is an offence for a public official (or a person acting at the instigation of, or with the consent or acquiescence of a public official), whatever his or her nationality, to carry out an act of torture, whether within or outside the State. Section 3 of the Act provides that it is an offence to attempt to commit or to conspire to commit the offence of torture.

As stated above, there is no such concept in Irish law as detention which is simultaneously both lawful and secret.

4. Prevention of unlawful deprivation of liberty

An Garda Síochána are under a common law duty to detect and prevent crime. To assist the Gardaí in the performance of this duty, a number of common law and statutory powers of entry, search and seizure are available.

The Irish Courts have recognised the entitlement of a Garda to enter a premises or dwelling in order to protect the constitutional rights of an individual (a term taken to mean all persons, regardless of nationality).

In addition, the Irish Air Navigation and Transport Acts of 1988 and 1998⁵ provide (in Section 33 of the 1988 Act) that, in a case where it is suspected that a crime is being committed on a civil aircraft, an authorised officer (which includes a member of An Garda Síochána) may, in the interest of the proper operation or the security or safety of an aerodrome, or the security or safety of persons, aircraft or other property thereon, arrest without warrant any person who assaults, or whom he or she reasonably suspects to have assaulted, another person.

Section 49 of the 1998 Act provides a power for an authorised officer to enter an aircraft in an Irish airport when he or she considers it necessary for the purpose of

⁵ Air Navigation and Transport Act 1988; Air Navigation and Transport (Amendment) Act 1998

exercising any power conferred upon him or her by, or under, this Act, or the Act of 1988. Subsection (3) provides that the authorised officer may, at any time, require the operator or registered owner of the aircraft to produce for inspection by him or her such documents, relating to the aircraft or passengers or goods on board the aircraft, as he or she may require; or inspect the aircraft for the purpose of ensuring compliance with the relevant legislation.

Habeas corpus applications

The availability of the habeas corpus application, the procedure for which is set out in Article 40.4.2 of the Constitution of Ireland, provides a mechanism by which all forms of unlawful detention can be judicially challenged.

Where a person is being unlawfully detained, he/she or a person acting on his/her behalf may apply to the High Court alleging that he/she is being unlawfully detained. The High Court must then enquire into this complaint, and may order the person, in whose custody he/she is detained, to produce the “body” of that detained person before the High Court and to certify the grounds of the detention.

Having considered the reasons justifying the detention, the Court must order the release of the detained person, unless it is satisfied that the detention is lawful.

This remedy is supported by the unenumerated Constitutional right to communicate with the court for the purpose of making this application.

C. Adequate response to alleged infringements

The third part of the Secretary General’s requests asks about

“the manner in which [Irish] law provides an adequate response to any alleged infringements of Convention rights of individuals within [its] jurisdiction, notably in the context of deprivation of liberty, resulting from the conduct of officials of foreign agencies. In particular, explanation of the availability of effective

investigations that are prompt, independent and capable of leading to the identification and sanctioning of those responsible for any illegal acts, including those responsible for aiding or assisting in the commission of such acts, and the payment of adequate compensation to victims;"

The previous Section outlines the measures which can be taken under Irish law to prevent the unlawful deprivation of a person's liberty. The following explains the remedies open to a victim arising from a situation in which he or she has been unlawfully deprived of his or her liberty.

In a situation where the unacknowledged deprivation of an individual's liberty had taken place, a crime under Irish law would have been committed (see above). In such a case, the Gardaí are empowered and obliged to investigate the crime, and in doing so would have at their disposal the powers of search outlined above.

In addition to a possible criminal action, the victim could pursue civil damages through a number of legal means:

The Constitution of Ireland provides a number of personal rights to be enjoyed by citizens (a term taken to mean all persons, regardless of nationality). These rights are enforceable by the Courts, which can award damages for breach of constitutional rights.

The tort of unlawful imprisonment, defined similarly to the criminal offence, also gives a right of action for damages. Insofar as a situation of false imprisonment is likely also to involve an assault, an action for damages for assault would also be open to a victim.

In the case where a criminal conviction has been obtained against the perpetrators, the victim can also seek compensation from the Criminal Injuries Compensation Tribunal.

III. The question of unacknowledged deprivation of liberty

The Secretary General finally requests

“an explanation... as to whether, in the period running from 1 January 2002... until the present, any public official or other person acting in an official capacity has 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. Information is to be provided on whether any official investigation is under way and/or on any completed investigation”.

The request refers to the possibility of the involvement in unacknowledged deprivation of liberty of any public official or person acting in an official capacity either by action or by omission. The issues raised in responding are different, so, for the sake of clarity, the reply addresses the two questions separately.

A. Involvement by action

The question of the possible involvement of any public official or person acting in an official capacity has necessarily been the subject of close interdepartmental coordination, involving the Departments of Foreign Affairs; Justice, Equality and Law Reform; Defence; Transport; Education and Science; and Health and Children. The Revenue Commissioners were also included in order to confirm that Customs facilities had not been used for this purpose.

Officers from the Department of Foreign Affairs met on several occasions in order to formulate a process which would answer the Secretary General's questions in the most comprehensive manner. In December 2005, the Secretary General of the Department of Foreign Affairs wrote to his colleagues in all relevant Departments,

attaching the Article 52 request, explaining its context and requesting their cooperation in preparing a comprehensive reply. Relevant Departments were identified as all of those in control of detention facilities, as well as the Department of Transport. The Department of Foreign Affairs chaired an interdepartmental coordination meeting for representatives of these Departments on 12 January in order to explain the context of the Secretary General's request, and to reinforce the commitment to ensuring a comprehensive reply by the due date. At this meeting, the Department of Foreign Affairs provided information in response to Departments' specific questions on the Article 52 process.

Following this meeting, internal investigations were set in train within the Departments concerned in order to prepare categorical replies to the Secretary General's questions. These investigations involved consultation within the responsible Departments, and with the Irish Prison Service, Prison Governors, the Inspector of Prisons and Places of Detention, the Chairpersons of all the Prison Visiting Committees, the Chief of Staff of the Defence Forces, the Army Director of Legal Services, the Army Director of Intelligence, An Garda Síochána and the Directors or Deputy Directors of the State's five industrial and reformatory schools.

1. Detention facilities in Ireland

The Departmental investigations included an examination of the possibility that unacknowledged deprivation of liberty might have occurred in any of the State's detention facilities. These facilities include prisons, Garda stations, psychiatric institutions and children's detention facilities. The Revenue Commissioners and the Department of Transport reported that, while customs officers and airport police officers have rights of arrest and detention, in practice their rights of detention are exercised by An Garda Síochána.

2. Format of enquiry

Departments contacted the bodies responsible, under their auspices, for running detention facilities, to explain the concept of unacknowledged deprivation of liberty.

These bodies were then asked to investigate the possibility that unacknowledged deprivation of liberty might have occurred in those facilities over the period of the request.

To ensure completion, oversight bodies — e.g. the Chairpersons of the Prison Visiting Committees and the Inspector of Prisons and Places of Detention — were also consulted as to whether they had received complaints about any unacknowledged deprivation of liberty.

3. Results of investigation into possibility of involvement by action

These investigations have confirmed that no unacknowledged deprivation of liberty has occurred in any of the State’s detention facilities as the result of an act of a public official or other person acting in an official capacity. Similarly, these investigations have revealed no instance of unacknowledged deprivation of liberty to have occurred in any of the State’s detention facilities as the result of an omission of a public official or other person acting in an official capacity.

B. Involvement by omission

The Government are fully aware of their obligations to prevent involvement by omission in the unacknowledged deprivation of liberty, and to fulfil all of their positive obligations in respect of this matter. As far as the Secretary General’s request is concerned, the issue arises largely in the context of the “transport of any individual while so deprived of their liberty”, which has become known as extraordinary rendition.

1. US Assurances

When the Government became aware in 2004 of allegations regarding extraordinary rendition, urgent contact was made with the United States authorities, through both the US Embassy in Dublin and the Irish Embassy in Washington, to ensure that the Irish position was fully understood and respected. The Government sought and

received assurances that prisoners had not been, nor would they be, transferred through Irish territory without the express permission of the Irish authorities. It was made clear that, in conformity with the relevant domestic and international law, permission would not be granted for the transit of an aircraft participating in an extraordinary rendition operation or for any other unlawful act. The US authorities' assurances were subsequently reiterated in a number of meetings throughout 2005, and they were confirmed at a bilateral meeting in Washington D.C. between the Minister for Foreign Affairs, Dermot Ahern, T.D., and the US Secretary of State, Condoleezza Rice, on 1 December 2005. They have been repeated at several meetings in 2006.

The Government accept these assurances, which are of a particular clarity and completeness. They are factual and in no way qualified by any reference to the circumstances in which, or the purpose for which, any hypothetical prisoner might be transported.

The Government have carefully considered the value of these assurances having regard to their obligations (including their positive obligations) under the Convention. This has included an examination of the European Court of Human Rights' consideration of a Contracting Party's entitlement to rely on "diplomatic assurances" made to it by a third state, in the quite different context of extradition or expulsion of known individuals to that state.

The Government are satisfied that they are entitled under the Convention to rely on clear and explicit factual assurances given by the Government of a friendly state, on a matter which is within the direct control of that Government.

2. Involvement of An Garda Síochána

Notwithstanding the US assurances, the Government have repeatedly made clear that any person with specific evidence that persons are being transported through Ireland in so-called extraordinary rendition operations should present this to An Garda

Síochána. The vast majority of allegations surrounding extraordinary rendition flights in Europe refer to civil aircraft. As set out in Section II above, such aircraft are liable to search and inspection according to the provisions of Irish law. The Minister for Justice, Equality and Law Reform informed the Dáil (Parliament) as early as November 2004 that, in the case of a credible complaint of criminal activity being made to An Garda Síochána, a full investigation would be conducted, which could include an inspection of the aircraft in question.

Three complaints have been made. In two instances, in accordance with standard procedures in cases of allegations of serious offences, papers were forwarded to the Office of the Director of Public Prosecutions. In neither instance was any further action found to be warranted, owing to a lack of evidence that any unlawful activity had occurred. The Director of Public Prosecutions is the authority responsible for deciding — independent of the Government or the Gardaí — whether to charge people with criminal offences and what the charges should be.

3. Conclusion on Positive Obligations

The above confirms that Ireland and its officials have fulfilled all of their positive obligations in respect of preventing unacknowledged deprivation of liberty, particularly with respect to any possible “transport of individuals while... deprived of their liberty”. There is therefore no question of any public official or person acting in an official capacity being involved in such activity by omission.

C. Overall Results of investigation

In light of the foregoing, and after the thorough investigation outlined above, the Government are in a position emphatically to answer in the negative the Secretary General’s question as to:

“whether, in the period running from 1 January 2002... until the present, any public official or other person acting in an official capacity has 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.”

IV. Official investigations

With regard to the Secretary General’s request for information on whether any official investigation is underway or has been completed, the Government are satisfied that, apart from the investigation undertaken in order to provide as comprehensive a reply as possible to the Secretary General’s request, no official investigation is required.

V. Conclusion

In no circumstances would the unacknowledged deprivation of liberty be legal in Ireland. In this respect, all of Ireland’s obligations in respect of the European Convention on Human Rights are fulfilled.

On 10 November 2005 the Minister for Foreign Affairs, Dermot Ahern, T.D. made clear the Government’s “very deep concern” over allegations of the possible existence of secret prisons, and on 14 December 2005, he recorded the Government’s “complete opposition to the practice of so-called extraordinary rendition”. A thorough examination of practice throughout the State in response to the Secretary General’s request has revealed no indication of the occurrence either of unacknowledged deprivation of liberty, or the transportation of any individual while so deprived of his liberty. This is entirely in keeping with the Government’s stated position on the matter.

The practices described in the Secretary General’s request would plainly be in breach of international law, Irish law, and of the principles upon which the Council of Europe is founded, namely the maintenance and realisation of human rights and fundamental

freedoms. They are practices to which the Government of Ireland are completely opposed.

VI. Annex I: Secretary General's Request

Nowan
I have original
letter.
CDS

Council of Europe
The Secretary General

Strasbourg, 21 November 2005

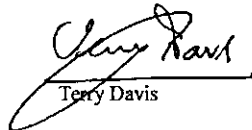
Dear Minister,

I refer to Article 52 of the European Convention on Human Rights which states that "On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention."

I hereby avail myself of the powers conferred on me by this provision and ask your Government to furnish the explanations requested in the appended question.

I should appreciate receiving these explanations before 21 February 2006.

Yours sincerely,

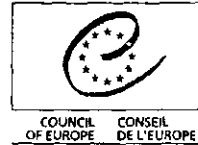

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Request for an explanation in accordance with Article 52 of the European Convention on Human Rights

The Secretary General of the Council of Europe,

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter referred to as "the Convention") and its Protocols;

Having regard also to the case law of the European Court of Human Rights which has given concrete expression to the rights and freedoms guaranteed thereunder and which has affirmed that the law and practice of the High Contracting Parties must comply with the provisions of the Convention and its additional Protocols;

Noting that there have been recent reports suggesting that individuals, notably persons suspected of involvement in acts of terrorism, may have been apprehended and detained, or transported while deprived of their liberty, by or at the instigation of foreign agencies, with the active or passive cooperation of High Contracting Parties to the Convention or by High Contracting Parties themselves at their own initiative, without such deprivation of liberty having been acknowledged;

Bearing in mind the fundamental importance of the safeguards contained in the Convention against arbitrary deprivation of liberty both in their own right and for the protection of the right to life and for upholding the absolute prohibition of torture or inhuman or degrading treatment or punishment;

Considering that, under Article 1 of the Convention, the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms guaranteed therein and that the participation, acquiescence or connivance of the authorities of a Contracting State in the acts of the agents of another State affecting Convention rights may engage the Contracting State's responsibility under the Convention and that such responsibility may also be engaged where that State's agents are acting *ultra vires* or contrary to instructions;

Considering also that unacknowledged deprivation of liberty raises serious questions concerning the effective implementation of, and compliance with, the Convention, notably its Articles 2, 3, 5, 6, 8, 13 and Article 2 of Protocol No. 4 to the Convention;

Acting on the basis of the powers conferred on him by virtue of Article 52 of the European Convention of Human Rights:

1. Requests the Governments of the High Contracting Parties to furnish an explanation of the manner in which their internal law ensures the effective implementation of the provisions of the Convention and its additional Protocols, as interpreted by the European Court of Human Rights, regarding the following specific issues:
 - explanation of the manner in which their internal law ensures that acts by officials of foreign agencies within their jurisdiction are subject to adequate controls;
 - explanation of the manner in which their internal law ensures that adequate safeguards exist to prevent unacknowledged deprivation of liberty of any person within their jurisdiction, whether such deprivation of liberty is linked to an action or an omission directly attributable to the High Contracting Party or whether that Party has aided or assisted the agents of another State in conduct amounting to such deprivation of liberty, including aid or assistance in the transportation by aircraft or otherwise of persons so deprived of their liberty;
 - explanation of the manner in which their internal law provides an adequate response to any alleged infringements of Convention rights of individuals within their jurisdiction, notably in the context of deprivation of liberty, resulting from the conduct of officials of foreign agencies. In particular, explanation of the availability of effective investigations that are prompt, independent and capable of leading to the identification and sanctioning of those responsible for any illegal acts, including those responsible for aiding or assisting in the commission of such acts, and the payment of adequate compensation to victims;

In the context of the foregoing explanations, an explanation is requested as to whether, in the period running from 1 January 2002 (or from the moment of entry in force of the Convention if that occurred on a later date) until the present, any public official or other person acting in an official capacity has 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. Information is to be provided on whether any official investigation is under way and/or on any completed investigation;
 2. Requests that these explanations be provided by 21 February 2006.
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