



**REPRESENTATION PERMANENTE DE L'UKRAINE
AUPRES DU CONSEIL DE L'EUROPE**

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Strasbourg, 7 April 2006

Dear Secretary General,

Referring to your letter dated March 7, 2006 regarding additional explanations on your inquiry in respect of reports suggesting that terrorist suspects may have been secretly detained in or transported through a number of Council of Europe member states with the possible involvement of foreign agencies, I have the honour in sending you the response of the Government of Ukraine regarding this issue.

The document you will find in the annex to this letter was prepared on the basis of comments of the Ministry of Justice of Ukraine, Ministry of Defense of Ukraine, Ministry of Interior of Ukraine, General Prosecutor office and Security Service of Ukraine.

Sincerely yours,

Yevhen Perelygin

Permanent Representative of Ukraine

**Mr. Terry Davis
Secretary General
Council of Europe
Strasbourg**

Supplementary Explanations of the Government of Ukraine to the Request of the Secretary General for an explanation in accordance with Article 52 of the European Convention on Human Rights

1. Control mechanisms in respect of activities of foreign intelligence services within the jurisdiction of Ukraine

Control over the access to the territory of Ukraine and activity of foreign intelligence services' agents within the Ukrainian jurisdiction is exercised, within their competences, by the Security Service of Ukraine, State Frontier Service and other law enforcement bodies.

Ukrainian legislation, by defining the exclusive list of state bodies of Ukraine which are authorised to take coercive measures such as arrest and detention, excludes the possibility of foreign agents carrying out such activity on the territory of Ukraine in a lawful manner.

Ensuring state security and protecting the state border of Ukraine are entrusted to the respective military formations and law enforcement bodies of the State [of Ukraine], whose organisation and operational procedure are determined by law. The Armed Forces of Ukraine and other military formations shall not be used by anyone to restrict the rights and freedoms of citizens (Article 17 of the *Constitution of Ukraine*).

Pursuant to Article 13 § 1.13 of the *Law of Ukraine on the Security Service of Ukraine (SSU)*, the SSU according to its tasks is required to take part, in particular, in the deciding on issues related to the entrance in Ukraine and exit abroad, stay on its territory of foreigners.

The Law on the SSU provides for that in order to perform its tasks the SSU can establish contacts with security bodies of foreign states and interact with them on the basis of provisions of international law, relevant treaties and agreements.

As provided by Article 2 of the *Law of Ukraine on the State Frontier Service (SFS)*, the SFS is carrying out intelligence and operative and search activity in order to protect state frontiers (land, air, water) in accordance with the laws of Ukraine on the Intelligence Bodies and on the Operative and Search Activity. The SFS is also coordinating activity of military formations and relevant law enforcement agencies connected to the protection of state frontiers, as well as of the state

bodies which exercise different types of control of the crossing of Ukrainian state frontiers. Legality and observance of human rights and freedoms are the basic principles for the activity of the SFS established by law.

Units which carry out operative and search activity are required to interact amongst themselves and other law enforcement agencies, including those of foreign states, with the purpose of prompt and full exposure of crimes and offenders. At that they must strictly comply with the principles of legality and observance of human rights and freedoms (Article 4 of the *Law of Ukraine on the Operative and Search Activity*).

All state bodies in Ukraine are required to act according to the legality principle whereby state authorities, their officials are obliged to act only on the grounds, within the limits of authority, and in the manner envisaged by the Constitution and the laws of Ukraine (Article 19 of the *Constitution of Ukraine*). Therefore, the activity of the SSU and all other relevant law enforcement agencies, in particular with regard to their interaction with special services of foreign states, is carried out exclusively within the limits of national legislation, which, according to Article 9 of the Constitution, includes ratified international treaties of Ukraine.

Control over the activity of the mentioned bodies is carried out in accordance with the *2003 Law of Ukraine on the Democratic Civilian Control over the Military Organisation and Law Enforcement State Bodies*. This Law, in order to protect national interests of Ukraine, establish and reinforce constitutional principles of democratic state governed by the rule of law in the sphere of civilian and military relations, ensure respect for human rights and freedoms and in accordance with Ukrainian international obligations, defines legal grounds of the organisation and exercise of democratic civilian control over the Armed Forces of Ukraine and law enforcement agencies.

Article 5 § 1.2 of this Law provides for that the subject of the civilian control in the sphere of defence and security, law enforcement activity of state is, in particular, the validity of state bodies' decisions on military and law enforcement issues in the view of their compliance with the principles of internal and foreign policy, international obligations of Ukraine under ratified treaties.

The system of civilian control over the military organisation and the law enforcement bodies, as set out in Article 6 of the 2003 Law, is comprised of the parliamentary control; presidential control; control exercised by the executive bodies and bodies of local self-government; control by the judiciary; supervision by the prosecutor's office; public control.

According to the Law on the SSU (Article 31), control over the activity of the Security Service is carried out by the parliamentary committee on the defence and state security issues. The Head of the SSU is to regularly inform the parliament and its relevant committee on the activity of the Service, observance of current legislation, ensuring respect for human rights and freedoms, etc. The Security Service is obliged to reply to MPs' inquiries and requests of the permanent and *ad hoc* parliamentary committees. The Head of the SSU presents annual reports to the parliament and the President of Ukraine.

Moreover, to study, prepare and preliminary consider issues in the sphere of security, defence, law enforcement activity, as well as to conduct investigation of issues in public interest, the parliament may set up *ad hoc* inquiry commissions.

The President of Ukraine as the Head of the State and the guarantor of state sovereignty, observance of the Constitution, human rights and freedoms and as the Commander-in-Chief of the Armed Forces of Ukraine takes action to stop the activity of illegal armed formations and any attempts to use the armed forces, law enforcement agencies to restrict human rights and freedoms.

Supervision over the compliance with legislation by the Security Service and other law enforcement agencies, intelligence services is carried out by the General Prosecutor and other prosecutors.

As provided by Article 101 of the *Constitution of Ukraine*, the Parliamentary oversight of the protection of the constitutional rights and freedoms of individuals and citizens on the territory of Ukraine is conducted by the Authorized Representative of the Verkhovna Rada of Ukraine on Human Rights (*Ombudsman*).

2. Control mechanisms regarding transiting aircrafts

Ukraine is a Party (since 1992) to the *1944 Chicago Convention* whereby no state aircraft (aircraft used in military, customs and police services) of a contracting State shall fly over the territory of another State or land thereon without authorisation by special agreement or otherwise, and in accordance with the terms thereof.

According to Articles 57-58 of the *Air Code of Ukraine*, non-scheduled international flights can be carried out under special permits, the order of issuance thereof being defined by the state authority responsible for the regulation of the aviation activity and approved by the customs service.

International flights in the airspace of Ukraine are carried out on the basis of legal acts and rules established by the state authority responsible for the regulation of the aviation activity of Ukraine.

The flight over Ukrainian state frontiers by aircrafts is made through specially provided corridors, unless otherwise provided by international treaty of Ukraine or other legal act.

According to the *Law of Ukraine on the State Frontier of Ukraine*, aircrafts cross the state frontier of Ukraine through specially provided corridors according to this Law, other legislative acts and rules approved and published by the authorised state bodies. Flight over the state frontier out of air corridors is allowed only upon the permit of authorised state bodies.

Persons, transport vehicles, cargoes and other property, which cross the state frontier of Ukraine, are subject to the frontier and customs control according to the pertinent legislation.

Control mechanisms on the use of the airspace of Ukraine has been also established by the *Decree of the Cabinet of Ministers of Ukraine No 401 of 29.03.2002 "On approval of the Regulation on the Use of the Airspace of Ukraine"*, *Order of the State Service of Ukraine on Supervision of the Aviation Safety and the Ministry of Defence of Ukraine No 897/703 of 28.11.2005 "On approval of the Regulations of provision the permissions to the operator for departure from the airports of Ukraine and arrival to the airport of Ukraine"*, which was registered by the Ministry of Justice of Ukraine under the No 1572/11852 of 28.12.2005 and some other regulations.

Part 3 of Article 1 of the *Law of Ukraine on the Armed Forces of Ukraine* provides for that the MoD directs its activity on ensuring the integrity of its airspace and preventing its possible violations by the airship of other countries' armed forces.

3. Involvement of public officials / official investigations (Fourth question of the inquiry)

The information which was previously provided by the government of Ukraine on this matter was based on the official reports received from the General Prosecutor's Office (GPU), Security Service of Ukraine and Ministry of the Interior.

Furthermore the *Ministry of the Interior* confirmed that detention on remand centres of this Ministry are under permanent control of the respective governmental organizations and NGOs, which makes impossible existence of the secret detention centres under the aegis of this state body.

The *GPU* also confirmed that, in the period running from 11 September 1997 until the present any public official in Ukraine has not been involved 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 the instigation of any foreign agency. It has no information on terrorist suspects which may have been secretly detained in or transported through the territory of Ukraine with the possible involvement of foreign agencies. The criminal investigators of the GPU have never investigated respective criminal cases.

The *Ministry of Defence of Ukraine* (MOD) has no information on involvement of its personal in creation, functioning and the use of secret detention centres established for unacknowledged deprivation of liberty of terrorist suspects, or transport of any individual while so deprived of their liberty.

The *SSU* has informed that it has no information regarding alleged involvement of any public official in Ukraine 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 the instigation of any foreign agency. There are no facts on the unlawful detention or transportation of

terrorism suspects through Ukraine with the possible involvement of foreign agencies. The criminal cases under the articles 146 and 371 of *Criminal Code of Ukraine*, which provides for the criminal liability for the illegal deprivation of liberty or abduction of person and the criminal liability for knowingly illegal arrest or detention, have not been opened by the investigating bodies of the Security Service of Ukraine and considered by them.

Additional information to the previous Government submission concerning unacknowledged deprivation of liberty and illegal detention

Article 26 of the *Constitution of Ukraine* provides for that foreigners and stateless persons who are in Ukraine on legal grounds enjoy the same rights and freedoms as citizens of Ukraine, with the exceptions established by the Constitution, laws or international treaties of Ukraine.

The *Constitution* also guarantees (Article 29) that no one shall be arrested or held in custody other than pursuant to a substantiated court decision and only on the grounds and in accordance with the procedure established by law. In the event of an urgent necessity to prevent or stop a crime, bodies authorised by law may hold a person in custody as a temporary preventive measure, the reasonable grounds for which shall be verified by a court within seventy-two hours. The detained person shall be released immediately, if he or she has not been provided, within seventy-two hours from the moment of detention, with a substantiated court decision in regard to the holding in custody. Everyone arrested or detained shall be informed without delay of the reasons for his or her arrest or detention, apprised of his or her rights, and from the moment of detention shall be given the opportunity to personally defend himself or herself, or to have the legal assistance of a defender. Everyone detained has the right to challenge his or her detention in court at any time. Relatives of an arrested or detained person shall be informed immediately of his or her arrest or detention.

These provisions are further elaborated on in the *Criminal Procedure Code of Ukraine* (Articles 14, 155, 165-2). The *Criminal Code of Ukraine* sets criminal liability for the illegal deprivation of liberty or abduction of person (Article 146). Article 371 § 2 of the Code provides for the criminal liability for knowingly illegal arrest or detention.