COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Information Documents

SG/Inf (2006)13 14 June 2006

Supplementary report by the Secretary General on the use of his powers under Article 52 of the European Convention on Human Rights, in the light of reports suggesting that individuals, notably persons suspected of involvement in acts of terrorism, may have been arrested and detained, or transported while deprived of their liberty, by or at the instigation of foreign agencies, with the active or passive co-operation of States Parties to the Convention or by States Parties themselves at their own initiative, without such deprivation of liberty having been acknowledged

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This report may also be referred to as (short title):

Secretary General's supplementary report under Article 52 ECHR on the question of secret detention and transport of detainees suspected of terrorist acts, notably by or at the instigation of foreign agencies

Internet : www.coe.int/sg/e/

EXECUTIVE SUMMARY

This summary is not authoritative and only serves to give a short overview of the main points of the official supplementary report. It does not form part of the report itself.

This report supplements the report by the Secretary General under Article 52 of the European Convention on Human Rights (ECHR) on the question of secret detention and transport of detainees suspected of terrorist acts, notably by or at the instigation of foreign agencies (SG/Inf(2006)5). It contains the results of an analysis of the replies received in response to a second series of letters sent by the Secretary General.

In the case of Albania, the second letter sent on 22 February 2006 covered all four questions of the inquiry. In the case of 36 other States, the second letters on specific issue of my initial request were sent on 7 March 2006. As regards Finland, the letter asked for further explanations on question 3 of the initial request. The remaining letters requested further explanations and/or clarifications on one or more of the following specific points:

- control mechanisms (administrative, judicial, parliamentary or other) in respect of activities of national and foreign intelligence services;
- control mechanisms regarding transiting aircraft which may be used for rendition purposes;
- possible involvement of public officials in and official investigations into allegations of unacknowledged detentions or rendition flights (question 4 of the original request).

Most States appear to provide some form of control over *national security services*, be it administrative, judicial or parliamentary, or other. However, the information provided by States does not always make it possible to assess whether, in practice, the existing control mechanisms offer sufficiently effective guarantees against unlawful interference with ECHR rights and freedoms.

Control over *foreign security services* seems to be possible chiefly when their activities come within the framework of co-operation with national security services. Overall, legislative and administrative measures effectively to protect individuals against violations of human rights committed by agents of foreign security services appear to be the exception rather than the rule.

The replies confirm that the current controls and procedures for *civil air traffic* lack adequate safeguards against human rights violations. Requests for further information regarding passengers or search of a *civil aircraft* presupposes the existence of serious grounds for suspicion. Moreover, most States do not appear to exercise effective controls in order to verify whether *State aircraft* in transit are used for purposes incompatible with the ECHR. States concerned do not indicate that they have resorted to possibilities of granting overflight permissions for *State aircraft* subject to a waiver of immunity or on conditions. Existing bilateral and multilateral agreements providing for blanket or automatic overflight rights for *State aircraft* do not appear to allow for any meaningful controls in order to ensure respect for human rights.

The Secretary General shall make proposals for concrete Council of Europe follow-up action addressing the main problems which this inquiry has identified Europe-wide.

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I. Introduction

1. On 7 March 2006, I wrote to the Foreign Ministers of 36 of the 46 Council of Europe member States as a part of my inquiry on the compliance of member States with their obligations under the European Convention on Human Rights in the context of the alleged secret detentions and rendition flights in Europe (for details on the background and scope of my inquiry see SG/Inf (2006)5).

2. The countries concerned were the following: Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Georgia, Greece, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Norway, Poland, Portugal, Romania, the Russian Federation, San Marino, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and the United Kingdom.

3. The governments concerned were asked to complete or clarify their replies in response to my initial request of 21 November 2005. The deadline for the replies to the second letters was set for 7 April 2006.

4. On 7 April, the replies of 35 States Parties had been received. The reply from Azerbaijan was received on 13 April, followed by additional information on 18 April.

5. On 22 February a second letter had already been sent to Albania asking for detailed answers to the four initial questions to be submitted without delay (see paragraph 17 of SG/Inf(2006)5). The reply from Albania was received on 7 April.

6. My letters of 22 February and 7 March 2006 as well as all replies as received from the States Parties are contained in a separate Addendum to this report which will be made available in electronic form on the Council of Europe website.

7. The structure of the present report is as follows: Section II describes the scope of the supplementary questions, Section III assesses whether States Parties have complied with their obligations under Article 52, Section IV gives my analysis of the explanations and clarifications received, and Section V sets out my overall conclusions.

II. Scope of the request for supplementary explanations or clarifications

8. Apart from Albania and Finland, the States Parties were requested to provide supplementary explanations or clarifications on one or more of the following points (Appendix I contains a synoptic table of the questions put to each of the States Parties):

- control mechanisms (administrative, judicial, parliamentary or other) in respect of activities of foreign intelligence services within the jurisdiction of the State, and whether they are conducted in co-operation with national agencies or not (in this context, available control mechanisms regarding national agencies were to be indicated and whether they extend to foreign agencies);
- control mechanisms regarding transiting aircraft which may be used for rendition purposes by foreign agencies and whether and to what extent the authorities may exercise jurisdiction over such aircraft;
- possible involvement of public officials in and official investigations into allegations of unacknowledged detentions or rendition flights (question 4 of my original request); in this context, some States received precise questions concerning cases mentioned in the information memorandum presented by Mr Dick Marty in January 2006.

9. Albania was asked to provide detailed answers to all four questions because its initial reply had been of a very general nature (see paragraph 17 of SG/Inf(2006)5). Finland was requested to provide supplementary explanations on the availability of effective investigations and compensation for victims.

III. Analysis

1. Introduction

10. The supplementary information received from States by and large confirms my initial findings about the shortcomings existing in many States Parties' legislation as regards (a) controls over security services, particularly to ensure effective oversight of foreign security services, (b) the safeguards and controls over air traffic to ensure effective enforcement of human rights obligations in respect of transiting civil and State aircraft and (c) the question of State immunity and human rights, particularly the absence of procedures which may be used to avoid immunity being invoked in order to escape accountability for serious human rights violations.

11. For this second round of letters, specific questions were put to States, taking into account the content of their reply to my initial request (see Appendix I). The replies to the first two supplementary questions are analysed in sub-sections 2 to 4 below. The supplementary replies provided by States Parties as regards any involvement of public officials and official investigations[1] are summarised (in bold text) in the consolidated table appearing in Appendix II. Only new information has been taken into account. The focus of this analysis is on the thematic issues which were the subject of supplementary questions, with some noteworthy (non-exhaustive) examples being drawn from individual replies by States Parties.

2. Control mechanisms in respect of foreign and national intelligence services

12. Twenty-eight States were requested to provide supplementary information on the control mechanisms (administrative, judicial, parliamentary or other) available in respect of activities of foreign intelligence services within the jurisdiction of States, irrespective of whether such activities are conducted in co-operation with national agencies or not. States were also asked, in this context, to indicate existing control mechanisms regarding national agencies, and whether these controls extend to foreign agencies.

2.1. National security services

(i) Administrative control

13. Many States indicate that national security services act under the supervision of the executive and are directly answerable to it (e.g. **Armenia**, **Bosnia and Herzegovina**, **Georgia**, **Latvia**, **Luxembourg**, **Slovenia**, **"the former Yugoslav Republic of Macedonia"**, **Ukraine**) and/or are monitored through specialised bodies emanating from the executive (**Bosnia and Herzegovina** – Intelligence Security Advisory Service, **Estonia** – Security Police Board and Information Board, **Croatia** – National Security Council and Security Service Steering Committee, **Georgia** – Security Council, **Malta** – Commissioner reporting to the Security Committee composed, *inter alia*, of the Prime Minister and Deputy Prime Minister, **Romania** – Supreme Council of National Defence). This generally implies that national security services provide regular reports on their activities to the competent authorities of the executive.

14. **Cyprus** specifies that the Council of Ministers can set up *ad hoc* inquiry commissions to investigate allegations of violations of human rights by the security services in carrying out their activities. These commissions have powers to procure written and oral evidence, require the production of documents and summon witnesses. Their reports are sent to the Council of Ministers (e.g. for disciplinary steps or policy decisions to be taken) and, if criminal proceedings should be initiated, to the Attorney General.

15. **Greece** indicates that there are two specific administrative bodies whose task is to ensure that privacy is not unduly interfered with by the security service.

16. **Liechtenstein** and **Monaco** indicate that they do not have a national security service.

(ii) Judicial control

17. Some States point out that a special type of judicial control exists over activities of security services (**Georgia**, **Latvia**, **Moldova**, **Norway**, **Ukraine**). In **Latvia** and **Ukraine**, the public prosecutor's office

[1] See paragraph 88 of SG/Inf((2006)5.

supervises the lawfulness of the national security service's acts. In **Georgia**, the public prosecutor's office supervises investigative measures taken by the security service.

18. It appears from the replies that differences remain between States as to whether or not officials of security services can take coercive law enforcement measures. **Spain** indicates that the security service may take measures which affect the right to respect for home and correspondence subject to prior judicial authorisation. **Georgia** points out that the security service may conduct investigative or procedural activities which interfere with constitutional rights and freedoms on the basis of a court decision. In contrast, **Portugal** states that officials of the security service, not being members of the police, cannot undertake any coercive measures (searches, arrests, interrogations or launching of criminal proceedings).

19. Several States indicate that ordinary criminal law applies to any act of officials of security services and that criminal proceedings can be initiated in case of human rights violations committed by these officials (e.g. **Cyprus**, **Luxembourg**, **"the former Yugoslav Republic of Macedonia"**).

(iii) Parliamentary oversight

20. It appears from replies that normal parliamentary powers apply to the security services' activities, including the possibility for members of parliament to request information and to set up *ad hoc* inquiry committees.

21. In a number of replies, States note that there are special parliamentary committees dealing specifically with security services' activities and their monitoring (**Bosnia and Herzegovina**, **Croatia**, **Denmark**, **Georgia**, **Italy**, **Latvia**, **Luxembourg**, **Moldova**, **Romania**, **Slovenia**, **"the former Yugoslav Republic of Macedonia"**, **Ukraine**, **United Kingdom**).

22. Some States also indicate that the parliamentary committee concerned with human rights may also touch upon issues pertaining to the security services (**Cyprus**, **Georgia**, **"the former Yugoslav Republic of Macedonia"**, **Turkey**). Several States mention that other committees may examine the activities of the security services (**Bulgaria**, **Cyprus**, **Greece, Slovakia, Spain**).

23. A number of States highlight that the committees which may examine the activities of security services have extended powers and can usually request that officials concerned, including sometimes from the Government, appear before them and furnish the information sought (**Andorra, Bulgaria**, **Cyprus, Georgia**, **Italy**, **Luxembourg**, **Romania, Turkey**). In **Cyprus**, refusing to produce the requested documents or appear before a committee constitutes a criminal offence (*contempt of the House of Representatives*). Some States specify explicitly that these committees may have access to classified information (**Denmark**, **Moldova**, **Spain**, **United Kingdom**), on the condition that it is not disclosed by members of the committees. In most cases these committees report to the parliament and/or government and formulate recommendations.

(iv) Other types of control

24. **Portugal** indicates that a special independent commission composed of non-parliamentary members elected by the Parliament is responsible for monitoring the intelligence service's respect of human rights and fundamental freedoms.

25. Several States point to the existence of ombudsmen who can deal with any complaints involving human rights violations, including those which may have resulted from activities of the security services (**Andorra, Croatia, Cyprus**, **Malta**, **"the former Yugoslav Republic of Macedonia"**, **Ukraine**). **Sweden** underlines that the parliamentary ombudsman can initiate criminal proceedings if necessary. **Greece** however indicates that the competence of the Greek parliamentary ombudsman does not include control over the activities of security services.

26. The **United Kingdom** draws attention to two independent commissioners, required to have held high judicial positions, appointed by the Lord Chancellor and whose role is to monitor the lawfulness of interceptions and intrusive surveillance and interference with property by the security service.

27. **Denmark** mentions a special independent committee which monitors the registration of citizens in matters of security investigations and clearances by the national security service (*Wamberg Committee*).

28. **Malta** indicates that the activities of the Maltese Security Service are subject to the supervision of an independent commissioner appointed under the Security Service Act. According to this Act, the commissioner shall keep under review the exercise of powers under this Act and investigate complaints about the security service. The commissioner is not subject to the direction or control of any other person or authority. Members of the security service must disclose or give to the commissioner any document or information he or she may require for discharging his or her functions. The commissioner reports to the Prime Minister and to the Security Committee (mixed committee composed, inter alia, of the Prime Minister, the Deputy Prime Minister and the leader of the opposition)

29. **It appears from the supplementary information that most States have established some form of control over their security services, be it administrative, judicial or parliamentary or other. A number of replies indicate that national security services are under the responsibility of the executive and thus are directly answerable to it. It appears that intelligence activities are not always sufficiently distinguished from law enforcement activities. Some replies specify that the usual framework of the criminal law applies to national security services and their agents. A few countries provide for a special type of judicial supervision of acts of their security service which may infringe on fundamental rights and freedoms. Several replies indicate the existence of parliamentary oversight through a specialised committee of the parliament. In other States, while there are no such specialised committees, committees dealing with issues such as human rights are competent to undertake such control over security services' activities. However, the extent of their investigatory powers has not always been detailed. Overall, while there appear to be controls in principle, the information provided by States does not always make it possible to assess whether, in practice, the existing control mechanisms offer sufficiently effective guarantees against unlawful interference with the human rights and fundamental freedoms of individuals within their jurisdiction.**

2.2. Foreign security services

(i) Administrative control and co-operation between national and foreign security services

30. Some States reply that foreign security services may lawfully carry out activities on their territory subject to the prior approval of the competent national authorities (e.g. **Bosnia and Herzegovina**, **Bulgaria**, **Denmark**, **France**, **Malta**, **Romania**, **United Kingdom**). These activities usually take place in the framework of co-operation with the national security service or other competent authority (e.g. **Azerbaijan**, **Bulgaria**, **Croatia**, **Georgia**, **Malta**, **Norway**, **Portugal**, **Slovakia**, **Romania**) and foreign security services are not entitled to use coercive means, such as deprivation of liberty, or more generally take unilateral action. Certain States explicitly specify that activities of foreign security services taking place outside such a framework is prohibited (**Azerbaijan**, **Denmark**, **Georgia**, **Moldova**, **Turkey**).

31. **Bulgaria** indicates that co-operation with foreign agencies takes place through officially accredited representatives, known as liaison officers. The **United Kingdom** indicates that all accredited liaison officers of foreign security services are briefed upon their arrival on the guidelines under which they must operate in the UK.

32. A number of States underline that co-operation with foreign security services or actions of agents of these services must take place in accordance with domestic law as well as their international obligations, i.e. in full respect of human rights (e.g. **Bosnia and Herzegovina**, **Bulgaria**, **Croatia, Cyprus, Georgia, France**).

33. In some countries, national security services are responsible for supervising actions of foreign security services within the framework of co-operation (e.g. **Croatia**, **Malta**, **Spain**). In **France**, a special branch of the Ministry of the Interior is responsible for supervising the activities of foreign security services and co-operation with the national security service so as to ensure that they are in accordance with domestic law. It can initiate criminal proceedings if necessary.

34. **Cyprus** indicates that the inquiry commissions set up by the Council of Ministers (see paragraph 14) can carry out investigatory tasks in respect of activities of foreign security services.

35. **Italy** specifies that general control powers by the police apply in respect of illegal activities of foreign agents. However, in the absence of precise grounds for suspicion, foreign agents of friendly States are not subject to any particular controls.

36. **Spain** and the **United Kingdom** indicate that the national security service may investigate illegal activities of foreign security services if, for instance, they pose a threat to individual rights and freedoms or national security. More generally, certain States specify that one of the tasks of their security service is to prevent illegal activities of foreign agencies on their territory (e.g. **Armenia**, **Serbia and Montenegro**).

37. **Andorra** and **Bosnia and Herzegovina** explicitly state that there is no special legal framework for controlling foreign security services.

(ii) Judicial control

38. Some States specify that the domestic criminal law framework also applies to foreign security services, for instance in cases of violations of human rights (e.g. **Cyprus**, **Estonia**, **France**, **Latvia, Slovenia, Sweden**). In these countries, there is in principle nothing to prevent criminal law proceedings from being initiated and conducted against agents of foreign security services, although mention is made of possible immunity obstacles (e.g. **Norway**, **Sweden**). On the other hand, **Cyprus** indicates that members of foreign agencies travelling or present on its soil are not among the categories of persons covered by the immunity provisions of the Vienna Convention on Diplomatic Relations 1961 and the Vienna Convention on Consular Relations 1963. **Latvia** underlines that foreign officials shall be treated as national officials when they commit a criminal offence under the Latvian Criminal Law and therefore can be brought to justice in the same way.

39. **Malta** specifies that certain specific activities led by foreign security services (e.g. criminal investigations by foreign agents under covert or false identity) need to be authorised by the Attorney General.

(iii) Parliamentary oversight

40. In **Armenia**, **Croatia**, **Slovakia** and **"the former Yugoslav Republic of Macedonia",** for instance, parliamentary control as described in the previous section (2.1 (iii)) concerns national security services only.

41. In some other countries, on the other hand, activities of foreign security services are not excluded from parliamentary control which will usually be indirect and carried out exclusively through the prism of co-operation of national security services with foreign services (**Bulgaria**, **Cyprus**, **Italy**, **Luxembourg**, **Moldova, Slovakia**).

(iv) Other types of control

42. In **Malta**, the independent commissioner (see paragraph 28) can control activities of co-operation between foreign and national security services. The activities of the security service fall within the commissioners remit when they are monitoring or assisting foreign security services.

43. **It transpires from most replies that control over foreign security services is possible chiefly when their activities come within the framework of co-operation with national security services. While only a few countries have expressly indicated that domestic criminal law applies without distinction to foreign agents, it can be assumed that this is the case in most countries. Nonetheless, obstacles linked to immunity may prevent effective enforcement of the criminal law. A number of States indicate that their parliamentary oversight mechanism does not extend to activities of foreign agencies or only through the prism of co-operation with the domestic security service. Overall, it is apparent from the replies received that, while some form of control exists in most States over actions of national security services, specific controls over foreign agencies are often absent or are indirect and limited to co-operation activities with domestic services.**

3. Control mechanisms regarding transiting aircraft

44. Twenty-eight States Parties received supplementary questions regarding control mechanisms and jurisdiction over transiting aircraft.

3.1. Civil aircraft

45. Controls over civil aircraft are carried out within the existing legal framework of the Convention on International Civil Aviation of 7 December 1944 ("Chicago Convention"), to which all Council of Europe member States, with the exception of Liechtenstein and Moldova, are Parties. The main purpose of controls appears to be checking compliance with customs, immigration and security regulations.

46. **Georgia** and the **Russian Federation** indicate that all international flights through their air space are subject to prior authorisation. Under the Chicago Convention civil aircraft, including those performing unscheduled flights, have a right to make flights into or transit non-stop across the territory of another Party, including the right to land for technical purposes such as refuelling or maintenance. Prior controls are usually carried out for the purpose of obtaining air traffic control clearance. Overflight clearances are granted on the basis of the aircraft's flight plan, which contains general information on the aircraft, the purpose of the flight, its route and the number of persons on board (see the replies of e.g. **Bulgaria, France, Georgia, Greece, Moldova** and **Romania**). Submission of a list of passengers or detailed information on cargo is not requested. **Turkey** indicates that further information may be requested in advance about the identity of passengers, but this does not happen routinely.

47. Some of the applicable domestic law provisions mentioned in the replies would appear to allow the grounding and search of an aircraft that has obtained overflight clearance as a civil aircraft, when it is in reality being used for the transport of detainees. **Denmark** declares that such an aircraft would be considered a State aircraft requiring prior overflight permission. According to the Danish Air Navigation Act, an aircraft may be ordered to land when required in the interest of public order and safety, for instance to prevent a breach of the law. If the order is not complied with, the competent authority may prevent the aircraft from carrying out further operations. Under the legislation of **Cyprus**,[2] foreign aircraft may be grounded in the event that the competent authority has suspicions that illegal migrants, terrorists or other illegal or dangerous passengers are aboard the aircraft; or illegal cargo has been loaded on the aircraft; or there are factors that endanger the flight or the conditions for a safe flight are not met. If the order is not complied with, the competent authorities may, using relevant means, prevent the aircraft from further operations. **Malta** on the other hand indicates that its authorities do not carry out any searches of aircraft in transit in order to determine what goods or passengers are being carried.

48. **Andorra** and **Turkey** refer to Article 29 of the Chicago Convention which lists the documents that all aircraft must carry. These documents include a list of passengers indicating their place of embarkation and destination as well as detailed information about cargo. However it seems that, under the procedures in force, this information is not routinely submitted to the competent authorities of a State whose airspace is used for transit.

49. **The supplementary information given confirms my finding that the current international legal framework for civil air traffic appears to lack adequate safeguards against human rights violations. Turkey declares explicitly that it is possible for an aircraft belonging to a foreign intelligence service to fly with civil registration and without notifying the authorities of the identity of passengers. Requests for further information regarding passengers or search of an aircraft - in accordance with Article 16 of the Chicago Convention – presupposes the existence of serious grounds for suspicion.**

3.2. State aircraft

50. Under international law, State aircraft do not enjoy overflight rights. In the absence of any general or permanent clearances for specific types of aircraft (see paragraphs 54 and 55 below), authorisation for overflight by State aircraft is obtained on a case-by-case basis through the competent military or civil authorities.

[2] Article 249, paragraph 3, of the Civil Aviation Law N. 231/(I)/2002.

51. Several States explain in detail their national legislation stipulating clearance requirements for foreign State aircraft (**Denmark, Croatia, Georgia, Latvia, Lithuania** and **Portugal**). From the replies given, it appears that foreign governments are generally not required to provide information on the identity and status of persons on board. Once an authorisation is granted, the State aircraft benefits from immunity and is not subject to controls. **Portugal** and **"the former Yugoslav Republic of Macedonia"** declare that their authorities have no responsibility for verifying whether the cargo or other aspects relating to the flight are in accordance with the information initially provided. No country mentions the use of specific procedures or clauses designed to ensure effective guarantees against serious human rights violations.

52. **Latvia** (in 2005) and **Lithuania** (in 2004) enacted comprehensive regulations prescribing the procedure of granting permits for foreign State aircraft. Requests for permission must be made in advance. They must indicate, among other things, the number of passengers (but not their identity, except for VIPs), the purpose of the flight, the flight route and the airports used. **Romania** declares that, according to documents issued to clear the flights of US aircraft which operated on the basis of diplomatic clearances, only flights using military call signs were authorised. There were no situations where civil US aircraft requested the use of military airfields.

53. **Estonia**, **Georgia**, **Lithuania** and **Slovenia** indicate that any transport of detained persons through their respective territories requires prior consent by the Ministry of Justice or the Prosecutor General's Office. However, according to the replies of **Lithuania** and **Slovenia**, such consent would not be required for transportation by air without a scheduled landing.

54. In contrast to the replies to my first letter (see paragraph 55 of SG/Inf(2006)5), several countries now refer to "general" or "blanket" overflight clearances or rights. Referring to NATO regulations,[3] **Latvia** and **Lithuania** declare that NATO has the right to carry out the control and defence of their respective airspace. Military aircraft of NATO member States are accordingly exempt from existing control mechanisms. **Turkey** mentions "restricted block permissions" for routine military flights. Such flights do no require individual permission. The block permission number is simply entered into the flight plan, which must be submitted in order to obtain air traffic control clearance. Such arrangements appear to be based on mutual trust. No information is provided about possible safeguards against abuse.

55. **Lithuania** indicates that it granted permanent permissions (valid each time for one year) to use its airspace to US State aircraft from 2001 to 2006. Under an agreement between **Georgia** and the US, aircraft operated or used by the US armed forces are entitled to use Georgian airspace freely and without inspection. However, the agreement's preamble specifies that it is subject to the respect of principles of human rights and international law. **Portugal** mentions two types of diplomatic flyover and landing authorisation for US aircraft: "one-time diplomatic clearances" (granted sporadically on a case-by-case basis) and "blanket diplomatic clearances" (usually issued for a period of one year for eleven types of missions, ranging from the transportation of special visitors to military operations). Overflights and landings of US State aircraft in Portuguese territory amount to about 350 each month, around 25 % of which are bound for Afghanistan and Iraq. The reply does not specify which information the US authorities must provide to obtain such clearances and whether aircraft benefiting from them may be subject to any controls.

56. **The supplementary information provided confirms that most States Parties do not appear to exercise effective controls in order to verify whether a State aircraft in transit is used for purposes incompatible with the European Convention on Human Rights. Overflight permissions can be granted subject to a waiver of immunity or on condition that "human rights clauses" be respected and searches be carried out in appropriate cases.[4] However, it seems from the explanations received that most States have so far not felt the need to resort to such restrictions. Bilateral and multilateral agreements providing for blanket or automatic overflight rights do not appear to allow for any meaningful controls in order to ensure respect for human rights.**

[3] NATO Air Policing Guidelines, Document No MC 54/1 (Latvia); North Atlantic Council decision of 17 March 2004 (Lithuania).
[4] See the initial replies by Ireland and Norway referred to in SG/Inf(2006)5, paragraph 50 and European Commission for Democracy through Law (Venice Commission), 'Opinion on the international legal obligations of Council of Europe member States in respect of secret detention facilities and inter-state transport of prisoners' (CDL-AD(2006)009), paragraph 159, (i).

3.3. Jurisdiction over transiting aircraft

57. As regards the exercise of jurisdiction, most States refer generally to the Chicago Convention and the Convention on Offences and Certain Other Acts Committed on Board Aircraft of 14 September 1963 ("Tokyo Convention"), to which all member States of the Council of Europe, with the exception of Andorra, Moldova and San Marino, are Parties.[5] **Romania** specifically mentions Article 4 of the Tokyo Convention (see paragraph 65 of SG/Inf(2006)5) which enumerates the conditions under which a State which is not the State of registration may interfere with an aircraft in flight in order to exercise its criminal jurisdiction. Among other grounds, the exercise of jurisdiction is allowed if it is necessary to ensure the observance of obligations under a multilateral international agreement.

58. **Slovakia** generally declares that its authorities may exercise jurisdiction over aircraft transiting Slovak airspace. **Malta** and the **Russian Federation** affirm more specifically that they exercise criminal jurisdiction over a person who commits an offence on board an aircraft within their airspace. Referring to the opinion of the Venice Commission, **Georgia** emphasises that it is entitled to exercise its jurisdiction over foreign aircraft in flight *inter alia* to ensure the observance of the international obligations under the European Convention on Human Rights. It points out that the Tokyo Convention does not place any restriction on the exercise of the jurisdiction over aircraft not in flight. **Azerbaijan** indicates that any illegal passage of the State border entails criminal responsibility.

59. **France** declares that civil aircraft in transit are subject to police control in the event of offences being committed on French territory and brought to the attention of the police authorities. State aircraft on the other hand benefit from immunity. **Portugal** declares that its authorities do not have the right to control the passengers on board unless they actually leave the aircraft.

60. **The supplementary replies confirm that there would appear to be no legal obstacles which would prevent States from exercising in practice jurisdiction over transiting aircraft in order to enforce their obligations under the European Convention on Human Rights.**

4. Questions of State immunity

61. **Georgia** explicitly states that it supports the Secretary General's recommendation to re-examine the relationship between State immunity and human rights (see paragraph 101 iii of SG/Inf(2006)5). **Luxembourg** and **Norway** refer to the 1961 Vienna Convention on Diplomatic Relations, in particular to Article 3 (one of the functions of a diplomatic mission being to ascertain by all lawful means conditions and developments in the receiving State, and reporting thereon to the government of the sending State), Article 4 (the receiving State is not obliged to give reasons for the refusal of an *agrément* for the head of the mission), Article 7 (the receiving State is entitled to require the names of military or air *attachés* for its approval), Article 9 (the receiving State may, at any time and without having to explain its decision, declare the head of the mission or any member of its staff *persona non grata*), Article 11 (the size of a mission must be kept within reasonable limits) and Article 41 (all persons enjoying diplomatic immunities must respect the laws and regulations of the receiving State).

62. **Poland** points to "exemptions" existing under the applicable NATO Status of Forces Agreement (SOFA), observing that this Agreement is applicable only in specified cases to members of the armed forces or their civilian staff. Therefore it does not appear that foreign intelligence agencies may lawfully operate under the cover of this agreement.

63. Referring to the immunity of State aircraft, **Romania** declares that such immunity also extends to aircraft personnel for acts committed on board the aircraft and even those committed on the territory of the State where the aircraft made a stop.

64. **The further replies received confirm my finding that the relationship between State immunity and human rights should be reconsidered. The existing rules on immunity can create obstacles**

[5] The Convention on the Suppression of the Illegal Acts Against the Safety of Civil Aviation and the Law on Air Traffic, signed in Montreal on 23 September 1971, is also mentioned. This Convention applies to acts of violence against a person on board an aircraft in flight and aviation sabotage in general, such as bombings aboard aircraft in flight.

for effective law enforcement in relation to the activities of foreign agents, especially when they are accredited as members of diplomatic and consular missions.

65. **The immunity of State aircraft on the other hand appears to be less of an impediment to effective controls. Since the overflight of State aircraft requires prior permission, respect for human rights can be ensured through appropriate authorisation procedures. The use of civil aircraft for rendition purposes constitutes a flagrant violation of the Chicago Convention and should be dealt with accordingly. If a State aircraft has presented itself as if it were a civil aircraft, it will not be entitled to immunity. The territorial State may search such an aircraft pursuant to Article 16 of the Chicago Convention and take all necessary measures to secure human rights.**[6]

IV. Conclusions

66. I am grateful to all those Governments that have loyally co-operated in this inquiry. My more detailed supplementary questions have permitted States to complete their initial replies and to dispel some ambiguities. Having regard also to the supplementary information provided, it can now be said that the vast majority of States Parties have generally speaking given complete, precise and adequate explanations, although there are important variations as to the degree of detail provided. The information about the existence or otherwise of control mechanisms regarding national and foreign intelligence services as well as transiting aircraft will be useful in the context of follow-up action by the Council of Europe on these issues.

67. The analysis of the supplementary explanations and clarifications, in general, has confirmed my initial conclusions (paragraph 101 of SG/Inf(2006)5). With respect to control over national security services, I concluded on the basis of the information initially provided that there are some mechanisms in place in a number of countries regarding the activities of national secret services. The supplementary information received demonstrates that control mechanisms over the activities of national security services, be they administrative, parliamentary, judicial or other, exist in more States than the initial information suggested. Nonetheless, even on the basis of this additional information, it is difficult to assess whether the existing mechanisms are capable of ensuring in practice full respect for the rights and freedoms of the European Convention on Human Rights. In addition, it appears that intelligence activities are not always sufficiently distinguished from law enforcement activities.

68. My conclusion regarding the activities of foreign intelligence services remains fully valid. Legislative and administrative measures effectively to protect individuals against violations of human rights committed by agents of foreign security services operating on the territory of member States appear to be the exception rather than the rule. Almost all replies refer to the normal exercise of powers by law enforcement authorities or to control mechanisms regarding national security services, which would also cover foreign services, but only to the extent that these are carrying out their activities in co-operation with the former. Such an indirect and partial control is insufficient and should be addressed in the follow-up activities to my inquiry.

69. As regards controls over air traffic, my initial findings remain valid. Very few countries appear to have adopted adequate and effective procedures to monitor whether aircraft transiting through their airspace are used for purposes incompatible with the European Convention on Human Rights. I am convinced that ways and means can be found to reconcile respect for human rights with the requirements of efficient, orderly and safe air traffic.

70. Some further information received on State immunity, which was not the subject of supplementary questions, confirmed my initial conclusions.

* * *

[6] Opinion by the Venice Commission as quoted above, paragraphs 103 and 148.

71. As regards the next steps to be taken, I shall:

- make this report public;
- make public on the Council of Europe website all the supplementary replies received from the States Parties together with my letters requesting such replies;
- make public any further information received;
- make proposals to the Committee of Ministers for Council of Europe action addressing the main problems which this inquiry has identified Europe-wide.

* * *

APPENDICES

I. Synoptic table of questions raised in complementary letters[7]

Country	Control mechanisms		Question 4 (including specific cases)	Other
	Intelligence service	Transiting aircraft		
Albania				All four questions
Andorra	√	√	√	
Armenia	√	√		
Azerbaijan	√	√	√	
Bosnia and Herzegovina	√	√	√	
Bulgaria	√	√	√	
Croatia	√	√	√	
Cyprus	√	√		
Denmark	√	√		
Estonia	√	√	√	
Finland				Question 3 (Availability of effective official investigations and compensation for victims)
France	√	√	√	
Georgia	√	√	√	
Greece	√	√	√	
Italy	√	√	√	
Latvia	√	√	√	
Liechtenstein	√		√	
Lithuania		√	√	
Luxembourg	√			
Malta	√	√		
Moldova	√	√		
Monaco	√	√	√	
Norway	√		√	
Poland			√	
Portugal	√	√		
Romania	√	√		
Russian Federation		√	√	
San Marino	√	√		
Serbia and Montenegro	√	√	√	
Slovakia	√	√	√	
Slovenia	√	√	√	
Spain	√			
Sweden	√			
"the former Yugoslav Republic of Macedonia"	√	√	√	
Turkey	√	√	√	
Ukraine	√	√	√	
United Kingdom	√			

[7] The following countries were not sent a letter on 7 March: Austria, Belgium, Czech Republic, Germany, Hungary, Iceland, Ireland, Netherlands and Switzerland.

II. Consolidated table containing summaries of the replies given to question 4 of the request[8]

- Whether, since 1 January 2002 (or since the date of entry into force of the Convention if it occurred later) any public official has been involved in any manner - by action or omission – in the unacknowledged deprivation of liberty of any individual or transport of any individual so deprived of their liberty, including where such deprivation of liberty may have occurred by or at the instigation of any foreign agency.
- Information on any official investigation under way or completed.

Country	***Applicable starting date for period under review (1/1/2002 or later date)***	***Public official(s) involved?***		***Official investigation***					
		Deprivation of liberty	***Transport of any individual deprived of their liberty***	*Official investigation? (yes/no/no reply)*	*By whom*	*Subject of investigation*	*Underway*	*Completed*	*Results*
Albania	**1/1/2002**	**NO**	**NO**	**YES**	**Law enforcement bodies**	**Khaled el-Masri, German citizen of Lebanese origin (in response to a request by the Prosecutor General of Munich in October 2005)**		**YES**	**A complete file of the investigation was sent to the German authorities. Khaled el-Masri left Albania on 29 May 2004.**
Andorra	1/1/2002	NO	**NO**	NO					
Armenia	26/4/2002	NO	NO	NO					
Austria	1/1/2002	NO	NO	YES 1. General: official request for clarification by Austrian officials to US authorities through the US embassy in Vienna	1. "Austrian officials"	1. Allegations of deprivation of liberty and transport of individuals	1. No information	1. No information	1. No information
				2. Illegal Transport: particular investigation	2. No information			2. YES	2.No substantial information that the flight in question was actually used to illegally transfer terrorist suspects through Austria

[8]. Text in bold is based on supplementary explanations or clarifications (as compared to SG/Inf(2006)005). See the Addendum to this Report for the full text of the replies given (to be published on the Council of Europe website: http://www.coe.int).

Country	***Applicable starting date for period under review (1/1/2002 or later date)***	***Public official(s) involved?***		***Official investigation***					
		Deprivation of liberty	***Transport of any individual deprived of their liberty***	*Official investigation? (yes/no/no reply)*	*By whom*	*Subject of investigation*	*Underway*	*Completed*	*Results*
Azerbaijan	15/4/2002	NO	NO	**NO**					
Belgium	1/1/2002	NO	NO	YES	"Belgian authorities" It is also stated that the *Permanent Control Committee on Police Services* was not informed of complaints or denunciations of allegations mentioned in the request of the Council of Europe	Questions as put by the Secretary General		YES	No public official or other person acting in an official capacity was involved
Bosnia and Herzegovina	12/7/2002	**The Government acknowledges the "hand-over" of six persons of Algerian origin to US forces on 18 January 2002 by police officers of the Federation of Bosnia and Herzegovina and officials of the Ministry of the Interior of Sarajevo Canton**		YES [reference to a request for information addressed to several authorities]	1. Ministry of Justice	I. Information on secret detentions and actions by officials of foreign agencies	1. No information	1. No information	1. No information
					2. Human Rights Chamber	**2. "Hand-over" of six persons of Algerian origin, some of whom had acquired the citizenship of Bosnia and Herzegovina and of the Federation of Bosnia and Herzegovina, to US forces on 18 January 2002. They were subsequently taken to Guantánamo. (outside the reference period)**		**2. YES**	**2. Before the Human Rights Chamber, Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina admitted that the applicants had simply been handed over to the custody of the US forces despite a decision by the Supreme Court ordering their immediate release. In three separate decisions, the Human Rights Chamber found that the respondent parties had violated Article 5 paragraph 1 and Article 6 paragraph 1 of the ECHR as well as Article 1 of Protocol**

Country	***Applicable starting date for period under review (1/1/2002 or later date)***	***Public official(s) involved?***		***Official investigation***					
		Deprivation of liberty	***Transport of any individual deprived of their liberty***	*Official investigation? (yes/no/no reply)*	*By whom*	*Subject of investigation*	*Underway*	*Completed*	*Results*
Bosnia and Herzegovina cont.									**No. 6, Article 3 of Protocol No. 4 and Article 1 of Protocol No. 7. It ordered Bosnia and Herzegovina to use diplomatic channels in order to protect the internationally recognised human rights of the applicants and to take all possible steps to obtain their release and return to Bosnia and Herzegovina. (See Decision of 11 October 2002, Case Nos. CH/02/8679, CH/02/8689, CH/02/8690 and CH/02/8691, Hadž Boudellaa, Boumediene Lakhdar, Mohamed Nechle and Saber Lahmar v. BiH and the Federation of BiH; Decision of 4 April 2003, Case No. CH/O2/8961 Mustafa Ait Idir v. BiH and the Federation of BiH; Decision of 4 April 2003, Case No. CH/O2/9499, Belkasem Bensayah v. BiH and the Federation of BiH.)**
Bulgaria	1/1/2002	NO	NO	**YES**	**Competent authorities**	**Unacknowledged deprivation of liberty and transport of individuals deprived of their liberty**		**YES**	**No evidence of involvement of any public official or other person acting in an official capacity. The results were presented to the National Assembly in December 2005 and in January 2006.**
Croatia	1/1/2002	NO	**NO**	NO					

Country	***Applicable starting date for period under review (1/1/2002 or later date)***	***Public official(s) involved?***		***Official investigation***					
		Deprivation of liberty	***Transport of any individual deprived of their liberty***	*Official investigation? (yes/no/no reply)*	*By whom*	*Subject of investigation*	*Underway*	*Completed*	*Results*
Cyprus	1/1/2002	NO	NO	YES	Inquiry with all police departments / districts / services	Unacknowledged deprivation of liberty in the period from 1/1/2002		YES	No case of unacknowledged deprivation of liberty has been ascertained (whether by the Republic, or by any foreign agency)
Czech Republic	1/1/2002	NO	NO	YES Information was obtained from the "competent Czech authorities"	Unclear which authority sought that information	Whether any public officials or other persons acting in an official capacity have been involved in the unacknowledged deprivation of liberty or transport of individuals so deprived of liberty, including such acts occurring at the instigation of agents of another State		YES	No knowledge of any facts indicating such involvement
Denmark	1/1/2002	NO	NO	YES [mere reference to relevant information already provided to Parliament]					
Estonia	1/1/2002	NO	NO	NO					
Finland	1/1/2002	NO	NO	YES	1. Government	1. One specific flight that landed in Helsinki on 16/5/2003, information asked from the Embassy of the United States.		1. YES	1. The US Embassy informed the Government that the aircraft only carried cargo meant for the US embassy

Country	***Applicable starting date for period under review (1/1/2002 or later date)***	***Public official(s) involved?***		***Official investigation***					
		Deprivation of liberty	***Transport of any individual deprived of their liberty***	*Official investigation? (yes/no/no reply)*	*By whom*	*Subject of investigation*	*Underway*	*Completed*	*Results*
Finland cont.					2. Government, inter-departmental	2. Whether suspected terrorists had been placed in Finnish prisons or transported on the order of the Prison Service in Finland.		2. YES	2. No, this was not the case and there is no reason to believe that any public official or other person acting in an official capacity nor officials of foreign agencies in Finland have been involved in the unacknowledged deprivation of liberty of any individual.
France	1/1/2002	NO	NO	**YES**	***Gendarmerie des Transports aériens* (on behalf of the public prosecutor's office of Bobigny after a complaint by the FIDH)**	**The transit of a plane coming from Oslo (Le Bourget, 20/21 July 2005)**	**YES**		
Georgia	1/1/2002	**NO**	**NO**	**NO**					
Germany	1/1/2002	NO	NO	YES (two investigations on suspicion of unlawful deprivation of liberty in Germany have been launched)	Public prosecution offices Zweibrücken and Munich I	1. Alleged kidnapping of an Egyptian citizen in Italy who has allegedly been taken to Egypt via the US military airbase in Ramstein	1. YES		
						2. Alleged kidnapping of a German citizen of Lebanese origin allegedly taken by the US authorities from "the former Yugoslav Republic of Macedonia" to Afghanistan	2. YES		

Country	***Applicable starting date for period under review (1/1/2002 or later date)***	***Public official(s) involved?***		***Official investigation***					
		Deprivation of liberty	***Transport of any individual deprived of their liberty***	*Official investigation? (yes/no/no reply)*	*By whom*	*Subject of investigation*	*Underway*	*Completed*	*Results*
Greece	1/1/2002	NO (prior to the case currently being investigated)	NO (prior to the case currently being investigated)	1. YES	1. Public Prosecutor's Office at the Athens Court of First Instance (following a complaint by the President of the association "Pakistani Community of Greece – the Unity")	1. Alleged abductions of aliens of Pakistani origin	1. YES (Public Prosecutor at the Supreme Court of Justice ordered the urgent examination of the case)		
				2. YES	**2. Deputy Public Prosecutor at the Chania Court of Appeals.**	**2. Alleged transfer and/or detention of aliens in the U.S. Facility of Souda Air Base in Crete. (Under the Mutual Defence Cooperation Agreement governing the status and the operation of this facility access to certain areas dedicated to cryptographic work, is subject to agreed procedures between the parties.)**		**2. YES**	**2. The Deputy Public Prosecutor at the Chania Court of Appeals concluded that the allegations concerning the existence of a secret prison in the US Facility of Souda Air Base were unfounded.**
				3. YES	**3. Public Prosecutor at the Chania Court of Appeals**	**3. Allegations in the press concerning the landing and sojourn of a US private transport aircraft at the Iraklion-Crete Airport.**		**3. YES**	**3. The Public Prosecutor at the Chania Court of Appeals decided that the allegations were unfounded and that the case should therefore be closed.**

Country	***Applicable starting date for period under review (1/1/2002 or later date)***	***Public official(s) involved?***		***Official investigation***					
		Deprivation of liberty	***Transport of any individual deprived of their liberty***	*Official investigation ? (yes/no/no reply)*	*By whom*	*Subject of investigation*	*Underway*	*Completed*	*Results*
Hungary	1/1/2002	NO	NO	YES	Official written enquiry by Ministry of Foreign Affairs to all relevant Government authorities	Questions as put by the Secretary General		YES	No involvement; No knowledge of any secret detention or rendition activities by any foreign authority on the territory or in the airspace of Hungary.
Iceland	1/1/2002	NO	NO	NO					
Ireland	1/1/2002	NO	NO	YES	1. The Government	1. Questions as put by the Secretary General		1. YES	1. No indication found of unacknowledged deprivation of liberty or transportation of any individual so deprived of their liberty. No active or passive involvement of any official.
					2. Director of Public Prosecution	2. Investigation in respect of 2 out of 3 complaints made to the Police on allegations relating to CIA flights transporting kidnapped terrorism suspects through Shannon Airport.		2. YES	2. Files on two of the complaints were considered serious enough to be sent to the Director of Public Prosecution but no action was taken because of a lack of evidence of any unlawful activity.
Italy	1/1/2002	**NO**	NO	**YES**	**1. Public prosecutor's office of Milan**	**1. Abduction of an Egyptian citizen, Hassam Osama Mustafa Nasr, known as Abu Omar, in Milan on 17 June 2003 (Case No. 10838/05.21).**	**1. Yes**		

Country	***Applicable starting date for period under review (1/1/2002 or later date)***	***Public official(s) involved?***		***Official investigation***					
		Deprivation of liberty	***Transport of any individual deprived of their liberty***	*Official investigation? (yes/no/no reply)*	*By whom*	*Subject of investigation*	*Underway*	*Completed*	*Results*
Italy cont.					**2. Parliamentary committee responsible for the monitoring of intelligence and security services**			**2. ?**	
Latvia	1/1/2002	NO	NO	NO					
Liechtenstein	1/1/2002	NO	NO	**NO**					
Lithuania	1/1/2002	**NO**	**NO**	**NO**					
Luxembourg	1/1/2002	NO	NO	YES	Competent authorities (unspecified)	Overflight or landing of "suspect flights" as listed by the Parliamentary Assembly		YES	Two aircrafts mentioned on the Parliamentary Assembly's list of 41 "suspect aircraft" landed in Luxembourg: - on 16/11/2005, a Beech 200 with identification number N312ME landed from Corfu at 09.42 and departed to Dublin at 11.05. - on 31/01/2006, a Boeing 737-300 with identification number N368CE landed from Frankfurt at 11.44 and departed to Frankfurt at 16.15. In both cases, no passenger left or entered the aircraft. Since 7/2/2006, Luxembourg airport authorities are required to inform immediately the competent Minister in case a flight plan indicates a planned landing of one of the aircrafts mentioned on the Parliamentary Assembly list. As necessary, competent authorities will inspect the aircraft.

Country	***Applicable starting date for period under review (1/1/2002 or later date)***	***Public official(s) involved?***		***Official investigation***					
		Deprivation of liberty	***Transport of any individual deprived of their liberty***	*Official investigation? (yes/no/no reply)*	*By whom*	*Subject of investigation*	*Underway*	*Completed*	*Results*
Malta	01/01/2002	NO	NO	YES	Competent authorities (unspecified)	Questions as put by the Secretary General		YES	No public official or other person acting in an official capacity has been involved by action or omission.
Moldova	1/1/2002	NO	NO	NO					
Monaco	30/11/2005	NO	NO	**NO**					
Netherlands	1/1/2002	NO	NO	YES [replies were given to questions from the Parliament]	Parliamentary questions to the Minister of Foreign Affairs and the Deputy Minister of Transport	Flights that landed on Dutch territory of which press reports indicated that were 'CIA-flights'		YES	Details on the respective flights were provided. In one case, the name of the company that owned the plane was provided. There was no information linking these flights to the CIA and no concrete suspicion of a criminal offence.
Norway	1/1/2002	**NO**	**NO**	YES	Ministry of Foreign Affairs, Ministry of Transport and Communications	Information sought from the US authorities about 2 specific cases of intermediate landings in Norway		YES	**No evidence that Norwegian territory has been used for the deprivation of liberty of any individual contrary to Norway's responsibility under the ECHR.** (Assurances given by the US Embassy: the United States abide by Norwegian laws, respect Norwegian territorial sovereignty and will not use Norwegian airports without prior consultation with the Norwegian authorities.)
Poland	1/1/2002	NO	**NO**	YES	**Government internal inquiry**	Existence of alleged secret detention centres and related overflights.		YES	**No evidence of secret detention centres or use of Polish territory for rendition flights.**

Country	***Applicable starting date for period under review (1/1/2002 or later date)***	***Public official(s) involved?***		***Official investigation***					
		Deprivation of liberty	***Transport of any individual deprived of their liberty***	*Official investigation? (yes/no/no reply)*	*By whom*	*Subject of investigation*	*Underway*	*Completed*	*Results*
Portugal	1/1/2002	NO	NO	YES	1. Government gathered information through the Ministry of Home Affairs, the Ministry of Foreign Affairs, the Ministry of Finance, the Ministry of National Defence, the Ministry of Justice and the Ministry of Public Works, Transport and Communication	1. Questions as put by the Secretary General		1. YES	1. No evidence for any involvement of Portuguese authorities or officials in unacknowledged deprivations of liberty or transport. No evidence that any aircraft used for rendition purposes used Portuguese airspace. US assurances that the sovereignty of the Portuguese State, any bilateral agreements or international law were not violated.
					2. Ministry of Home Affairs and Ministry of Justice	2. Secret detention centres		2. YES	2. The Ministry of Justice certified that no secret detention centres exist and guarantees that no person arrested in circumstances of the type described by the media has been admitted to any Portuguese prison.
Romania	1/1/2002	NO	NO	YES	1.Official investigations: Several governmental authorities	1. unacknowledged deprivation and illegal transport		1. YES	1. Confirmation that no unacknowledged deprivation of liberty or illegal transport took place on Romanian territory.

Country	***Applicable starting date for period under review (1/1/2002 or later date)***	***Public official(s) involved?***		***Official investigation***					
		Deprivation of liberty	***Transport of any individual deprived of their liberty***	*Official investigation? (yes/no/no reply)*	*By whom*	*Subject of investigation*	*Underway*	*Completed*	*Results*
Romania cont.					2. Parliamentary investigation: Investigation Committee set up by the Romanian Senate	2. Allegations concerning the existence of CIA detention centres on Romanian territory / flights chartered by CIA, which might have transported persons accused of terrorist acts.	2. YES		
Russian Federation	1/1/2002	NO	NO	**NO**					
San Marino	1/1/2002	NO	NO	NO					
Serbia and Montenegro	3/3/2004	NO	NO REPLY	**NO (Republic of Serbia)**					
Slovakia	1/1/2002	NO	**NO**	YES	Minister of Foreign Affairs, in contact with Minister of Justice, Minister of Defence and Minister of Interior, in order to prepare the reply to the Article 52 request	Existence of cases of unacknowledged deprivation of liberty		YES	No evidence of any cases of unacknowledged deprivation of liberty.
Slovenia	1/1/2002	NO	NO	NO					

Country	***Applicable starting date for period under review (1/1/2002 or later date)***	***Public official(s) involved?***		***Official investigation***					
		Deprivation of liberty	***Transport of any individual deprived of their liberty***	*Official investigation? (yes/no/no reply)*	*By whom*	*Subject of investigation*	*Underway*	*Completed*	*Results*
Spain	01/01/2002	NO REPLY	NO REPLY (but information provided about investiga-tions)	YES	1. Public prosecutor's office of Baleares (*Fiscalía de Baleares*) acting on a complaint by a member of Parliament (there had previously been an investigation by the competent police authorities [*Dirección General de la Guardia Civil*])	1. US airplanes transiting through the Baleares in 2005		1. YES	1. Public prosecutor at the *Tribunal Superior de las Islas Baleares* discontinued proceedings because of lack of evidence for the commission of an offence.
					2. Tribunal of first instance of Mallorca (*juzgado n° 7)* acting on a complaint by a group of lawyers from the Baleares' bar	2. US airplanes transiting through the Baleares in 2005	2. YES (In November 2005) (the judge decided to transfer the case to the *Audiencia Nacional* for reasons of competence, a decision that was contested by the prosecutor)		**2. On 13 March 2006, the Palma de Mallorca Court of Appeal (*Audiencia Provincial de Palma de Mallorca*) declared that foreign agents are subject to the jurisdiction of Spanish Investigating Tribunals (*Juzgados Centrales de Instrucción*).**
					3. General Prosecutor of the State (*Fiscal General del Estado*)	3. US airplanes transiting through the Canary Islands in 2005 (this enquiry concerns three types of flights: repatriation of illegal aliens to Nigeria and Liberia, military and civil flights)	3. YES (in November 2005)		

Country	***Applicable starting date for period under review (1/1/2002 or later date)***	***Public official(s) involved?***		***Official investigation***					
		Deprivation of liberty	***Transport of any individual deprived of their liberty***	*Official investigation? (yes/no/no reply)*	*By whom*	*Subject of investigation*	*Underway*	*Completed*	*Results*
Sweden	1/1/2002	1. NO	1. NO	1. YES	1. LFV Group (Swedish Airports and Air Navigation Services) and the Swedish Civil Aviation Authority	1. Investigation concerned flights made by aircraft registered in the US to and from Swedish airports			1. Reports state that it cannot be concluded that any of the more than 19.000 flights registered between 1/1/2002 and 17/11/2005 have been commissioned by the CIA.
Switzerland	1/1/2002	NO REPLY (but see official investigation columns and information is provided about the Padilla case: allegations about unlawful acts by Swiss agents are wholly unfounded)	NO REPLY (but see official investiga-tion columns).	YES 1. Criminal procedure initiated.	1. Federal Public Prosecutor's Office (*Ministère public de la Confédération*)	1. Alleged acts unlawfully executed by a foreign State (transfer via Switzerland of persons unlawfully deprived of their liberty would be contrary to the Criminal Code): Abu Omar case (alleged abduction by US agents from Italy and transfer via Swiss airspace to Germany)	1. YES		
				2. Parliamentary investigation.	2. *Délégation des commissions de gestion* (responsible for controlling activities relating to State security and intelligence)	2. Establish the information available to the federal authorities and steps made in relation to aircraft used for the transportation of unlawfully detained terrorist suspects via Switzerland and whether intelligence authorities were aware of the CIA activities.		2. YES (on 31/1/2006)	2. The Swiss authorities have no evidence that the Swiss airspace or airports have been used by the CIA for illegal purposes. The only case of doubt is being investigated (see above). The Swiss authorities have acted correctly by making clear to the US authorities that they would not condone extraordinary renditions. As regards the intercepted Egyptian fax implying that there would be secret detention places in Europe,

Country	***Applicable starting date for period under review (1/1/2002 or later date)***	***Public official(s) involved?***		***Official investigation***					
		Deprivation of liberty	***Transport of any individual deprived of their liberty***	*Official investigation? (yes/no/no reply)*	*By whom*	*Subject of investigation*	*Underway*	*Completed*	*Results*
Switzerland cont.									the Swiss authorities consider that it provides no evidence of the existence of these detention centres.
					3. OFAC (Federal Office for Civil Aviation)	3. Identify movement of suspect aircraft mentioned in the media and by NGOs		3. YES	3. Between December 2001 and December 2005, four suspect airplanes landed and 74 (as at 5/1/2006) flew over Swiss territory. All official aircraft had the necessary authorisation. Private aircraft do not need such authorisation. None of these aircraft had directly arrived or flown from Guantánamo Bay. It could not be established whether they carried out connection flights to or from Guantánamo.
"the former Yugoslav Republic of Macedonia"	1/1/2002	**NO**	**NO**	YES	**Ministry of Internal Affairs**	**Case of Mr Khaled el-Masri**		**YES**	**According to the police records, he entered the country on 31 December 2003 and left it on 23 January 2004 on land to Kosovo (Serbia and Montenegro).**
Turkey	1/1/2002	NO	NO	**NO**					
Ukraine	1/1/2002	NO	NO	NO					

Country	***Applicable starting date for period under review (1/1/2002 or later date)***	***Public official(s) involved?***		***Official investigation***					
		Deprivation of liberty	***Transport of any individual deprived of their liberty***	*Official investigation? (yes/no/no reply)*	*By whom*	*Subject of investigation*	*Underway*	*Completed*	*Results*
United Kingdom	1/1/2002	NO	NO	YES	1. Allegations by the UK NGO Liberty and others have been passed to the police	1. Use of UK airspace for transfer of detainees to locations where they may be subjected to ill-treatment	1. YES		
					2. Searches by officials of the Foreign and Commonwealth Office of records of rendition flights (records back to 5/1997)	2. Rendition by the US through UK territory or airspace		2. YES	2. No evidence of detainees being rendered through the UK or Overseas Territories since 11/9/2001 Four cases of US requests found for the year 1998: 2 granted, 2 refused.