1. **Ministry for Foreign Affairs**
2. **Ministry of the Interior**
3. **Finnish Security Intelligence Service**
4. **National Bureau of Investigation**
5. **Border Guard**
6. **National Board of Customs**
7. **Ministry of Defence**
8. **Defence Command**
9. **Mission of Finland to NATO**
10. **Ministry of Transport and Communications**
11. **Finnish Transport Safety Agency**
12. **Finavia Corporation / Area Control Centre Finland**
13. **Office of the President of the Republic**
14. **Prime Minister's Office**
15. **Office of the Prosecutor General**

Ref: Investigation about Finland's possible involvement or the use of Finnish territory in rendition flights.

REQUEST FOR REPORT AND STATEMENT

1
BACKGROUND

In 2003 the Council of Europe Committee for the Prevention of Torture expressed suspicions concerning secret prisons in the Northern Caucasus. Numerous reports concerning secret places of detention and flights transporting detainees were published in 2004–05 (see the 2006 Marty report mentioned in the following, footnote 12 in the explanatory memorandum).

On 26.4.2005 the Parliamentary Assembly of the Council of Europe issued a Resolution (1433(2005))[1] and a Recommendation (1699(2005))[2] on the situation in Guantanamo Bay and the secret rendition flights and prisons used to transport and hold detainees in the so-called war on terror. Suspicions about secret Central Intelligence Agency (CIA) places of detention in specifically Europe were voiced in the beginning of November 2005 by Human Rights Watch, the Washington Post and ABC News. On 5.12.2005 ABC News broadcast a report on secret detention centres in Poland and Romania and the "enhanced" interrogation methods used in them.

In the international discourse, suspicions of Finland's involvement were prompted by the publication in February 2010 of a UN report. For the first time, an allegation that there was a secret detention centre in Lithuania was mentioned in the report. Finland's possible role as a stopover place for aircraft and/or a suspicion that Finland was being made use of in flight data when the flights carrying detainees were in reality bound for Lithuania were brought up. The suspicions are still being mentioned in, inter alia, this year's UN Universal Periodic Review of Human Rights.

[1] http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/ERES1433.htm
[2] http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/EREC1699.htm

Report, dated 28.2.2006, by Council of Europe Secretary General Terry Davis on suspected flights transporting detainees[3]

On 21.11.2005 Secretary General Terry Davis of the Council of Europe sent a questionnaire, based on Article 52 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), to the Council of Europe Member States enquiring about safeguarding of the rights protected by the ECHR in the matter in the heading. The countries were asked:
1) how their national legislation ensures adequate controls over acts by foreign agents in their jurisdiction
2) what safeguards exist to prevent, as regards any person in their jurisdiction, unacknowledged deprivation of liberty, including transport, with or without the involvement of foreign agents
3) are there adequate responses (including effective investigations) to any alleged infringements of ECHR rights, notably in the context of deprivation of liberty, resulting from conduct of foreign agents
4) whether since 1 January 2002 any public official has been involved, by action or omission, in such deprivation of liberty or transport of detainees; whether any official investigation is under way or has been completed.

The Secretary General received replies from 45 Member States (out of 46). He issued his report on 28.2.2006.

With respect to the first three questions, the conclusion arrived at in the report was that all forms of deprivation of liberty outside the regular legal framework need to be defined as criminal offences in all Member States and be effectively enforced. Offences should include aiding and assisting in such illegal acts, as well as acts of omission (being aware but not reporting), and strong criminal sanctions should be provided for intelligence staff or other public officials involved in such cases. According to the report, significant shortcomings in the authorities' ability and opportunities to recognise the illegalities in question and respond to them are in evidence. In particular, shortcomings were identified in four areas: 1) inadequate regulation and control of the activities of states' intelligence and security authorities, 2) the inadequate character of international air traffic regulations when it comes to preventing abuse (states should have the possibility to check whether transiting aircraft are being used for illegal purposes), 3) international rules on State immunity often prevent States from effectively prosecuting foreign officials who commit crimes on their territory, and 4) mere assurances by foreign States that their agents abroad comply with international and national law are not enough.

With respect to the fourth question, something that was stated in the Davis report as causing serious concern was the fact that some Member States had either not replied to the question at all or have done so only incompletely.

[3] https://wcd.coe.int/ViewDoc.jsp?id=976731&Site=COE

Finland is mentioned in the report as having welcomed the Council of Europe Secretary General's enquiry (point 6). Finland had indicated that its civil aviation authorities are merely informed of the registration number and destination of every aircraft entering Finnish airspace and that measures available for the control of aircraft which merely transit their airspace are limited (points 49 and 51). With respect to question 4, it was stated that Finnish authorities had had nothing to do with transporting detainees and that internal government enquiries had been conducted in the matter. Finland specified one flight, which landed in Helsinki on 16.5.2003 and which the US Embassy had stated was delivering cargo to it (points 80 and 84 and annex table III).

The Council of Europe Committee on Legal Affairs and Human Rights Rapporteur, Senator Dick Marty, submitted his first report on alleged secret detentions and unlawful inter-state transfers of detainees on 12.6.2006 (the 2006 Marty Report or the 1st Marty Report).[4]

The view taken in the report was that the United States has created a global network connected with illegal deprivation of freedom and "exceptional rendition"/transfers of detainees. The network has operated also in Europe as a consequence of the intentional or grossly negligent actions or collusion of some Council of Europe Member States. Secret detention centres have existed and unlawful inter-state transfers have taken place in Europe.

According to the report (points 268–273), the United States has officially admitted to practising rendition, denying however that the purpose of torture is associated with the practice or that it -"more likely than not" would lead to a person being tortured. The United States has taken the view that the prohibition on refoulement in Article 3 of the UN Convention Against Torture (CAT) is not binding on the United States outside its own territory. The United States has announced that it follows its own interpretation, but not for example the interpretation line of the European Court of Human Rights in the matter. The United States does not comment on whether rendition flights have taken place in the European region.

Participation by European countries in operations beyond democratic control has, according to the report (point 10), taken eight main forms:
1) persons have been secretly deprived of liberty in Europe for an indeterminate period and without habeas corpus rights or other legal remedies
2) persons have been handed over to CIA agents in the knowledge that these persons would be illegally transferred to detention facilities maintained by the USA
3) unlawful "rendition" flights carrying detainees have been permitted in European airspace and on European territory
4) information has been given to the US authorities in a situation where it was foreseeable that the information would be used to carry out unlawful detentions
5) there has been direct participation in interrogations of detained persons

[4] http://assembly.coe.int/Documents/WorkingDocs/doc06/edoc10957.pdf

6) accepting the use of information obtained within the framework of the programme through torture or threatening to use it
7) permitting the use of civilian airports or military airfields as staging points for unlawful detainee transfer operations
8) permitting the use of civilian airports and military airfields for unlawful detainee transfer operations, e.g. as stopover points for aircraft service and maintenance functions.

The Council of Europe Parliamentary Assembly called on the Member States[5] to, inter alia, critically review regulation of the activities of their intelligence and security authorities in such a way that special attention is paid to collaboration with foreign intelligence and security agencies and, in order to safeguard implementation of human rights, to undertake a review of any bilateral agreements they may have made with the United States. In a resolution concerning the 1st Marty Report (point 22) the Council of Europe Member States were called on to conduct thorough national reviews in the matter and to base these on the (above-mentioned) report submitted by the Council of Europe Secretary General on 28.2.2006.

Report by the Temporary Committee of the European Parliament on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (2006/2200(INI) – (A6-0020/2007) 30.1.2007[6] – the so-called TDIP Report (also the Fava Report)

According to the report of the Temporary Committee, "the Member States cannot circumvent the requirements imposed on them by Community and international law by allowing other countries' intelligence services, which are subject to less stringent legal provisions, to operate on their territory; whereas, in addition, the operations of intelligence services are consistent with fundamental rights only if adequate arrangements exist for monitoring them" (C).

The report further states that "the Temporary Committee has obtained, from a confidential source, records of the informal transatlantic meeting of European Union (EU) and North Atlantic Treaty Organisation (NATO) foreign ministers, including US Secretary of State Condoleezza Rice, on 7 December 2005, confirming that Member States had knowledge of the programme of extraordinary rendition, while all official interlocutors of the Temporary Committee provided inaccurate information about this matter" (N).

In the report the European Parliament: "22. Deplores the failure by the Council and its Presidency to comply with their obligations to keep Parliament fully informed of the main aspects and basic choices of the common foreign and security policy (CFSP) and of work carried out in the field of police and judicial cooperation in criminal matters pursuant to Articles 21 and 39 of the Treaty on European Union;
23. Stresses, in this context, that it is wholly unacceptable that the Council should first have concealed and then, at Parliament's request,

[5] Resolution 1507 (2006) of the Council of Europe Parliamentary Assembly, 27.6.2006, points 19.3 and 19.6 (http://www.assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=17454&Language=EN)
[6] http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2007-32

only supplied piecemeal information on the regular discussions held with senior officials of the US Government, asserting that this was the only available version; furthermore denounces the fact that the Council also referred to the request by the government of a third country that the information remain confidential;
24. Points out that these shortcomings of the Council implicate all Member State governments since they have collective responsibility as members of the Council."

The European Parliament: "Deplores the refusal by the Director of the European Police Office (Europol), Max-Peter Ratzel, to appear before the Temporary Committee, particularly because it has emerged that liaison officers, in particular for the US intelligence services, were seconded to Europol requests that the Director provide Parliament with comprehensive information concerning the role of those liaison officers, their tasks, the data to which they had access and the conditions of such access" (29).

The European Parliament "Condemns extraordinary rendition as an illegal instrument used by the United States in the fight against terrorism; condemns, further, the condoning and concealing of the practice, on several occasions, by the secret services and governmental authorities of certain European countries" (39).

"Stresses that at least 1,245 flights operated by the CIA flew into European airspace or stopped over at European airports between the end of 2001 and the end of 2005, to which should be added an unspecified number of military flights for the same purpose; recalls that, on one hand, there may have been more CIA flights than those confirmed by the investigations carried out by the Temporary Committee, while, on the other, not all those flights have been used for extraordinary rendition." (42).

"Regrets that European countries have been relinquishing their control over their airspace and airports by turning a blind eye or admitting flights operated by the CIA which, on some occasions, were being used for extraordinary rendition or the illegal transportation of detainees, and recalls their positive obligations arising out of the case law of the European Court of Human Rights, as reiterated by the European Commission for Democracy through Law (Venice Commission)" (43)

"Recalls that Article 1 of the Convention on International Civil Aviation (the Chicago Convention) establishes the principle that contracting States have complete and exclusive sovereignty over the airspace above its territory, and accordingly does not imply any exclusion from the States' full responsibility for the observance of human rights within their territory, including the airspace above it." (46).

Several countries are dealt with individually in the report. Finland is not dealt with separately. In point 149, which relates to "other European countries", the Parliament: "Notes the stopovers made by CIA-operated aircraft at other European countries' airports and expresses serious concern about the purpose of those flights which came from or were bound for countries linked with extraordinary rendition circuits and the

transfer of detainees; encourages the authorities of those European countries to launch adequate investigations into this matter".

It is mentioned in Annex 3 to the report that Finland had not replied in writing to a letter sent by the Chair of the Temporary Committee on 22.2.2006 and that meetings had not been requested.

Ambassador Tapio Saarela attended a meeting of the Temporary Committee in Bucharest on 17 and 19.10.2006, representing the EU presidency trio (Finland having held the EU Presidency from 1.7 to 31.12.2006).

The Council of Europe Committee on Legal Affairs and Human Rights Rapporteur, Senator Dick Marty, submitted his second report on the themes in question on 11.6.2007 (the 2007 Marty Report or the 2nd Marty Report)[7]

It was confirmed in the second Marty Report that the CIA had had secret prisons in Poland and Romania and considered possible that there had been secret detention centres in other Council of Europe Member States as well. The President of the United States had on 6.9.2006 disclosed the existence of a so-called HVD (High Value Detainee) programme. Six weeks after this, the United States passed the Military Commission Act, in which US citizens were distinguished from others, habeas corpus rights stripped away and US service personnel insulated from prosecution for violations of Common Article 3 of the four Geneva Conventions; this article forbids secret prisons and contains regulations on the treatment of wounded and sick prisoners. Secret places of detention were deemed to be a part of this programme. According to the report, the programme is a CIA creation and has been implemented with the collusion of the intelligence agencies of several other states, including European ones. The programme long remained secret thanks to the North Atlantic Treaty Organisation (NATO) confidentiality rules. The purpose of the arrangement was seen as being to make it possible for the CIA and its partners to avoid all kinds of oversight and accountability systems (Resolution of the Council of Europe Parliamentary Assembly concerning the report (1562 (2007), 27.7.2007[8]) point 6 and points 25, 35, 80, 83 and 109–110 of the explanatory memorandum).

For the first time in the history of NATO, the United States had invoked Article 5 of the NATO Treaty, which provides for collective defence, and this position had been approved by NATO on 2.10.2001. This adoption of a policy line was seen in the report as having constituted the foundation for future covert CIA activities (points 85–87). The NATO countries dealt with the United States' proposals at a meeting on 4.10.2001, and adopted an eight-point programme of action, which had been drafted in its entirety by the American authorities, dealing with, inter alia, enhanced cooperation between intelligence agencies and flight clearances to be granted unconditionally to aircraft belonging to the United States and other of its allied countries in operations against terrorism as well as access to harbours and airports for the purpose

[7] http://assembly.coe.int/main.asp?link=/documents/workingdocs/doc07/edoc11302.htm
[8] http://www.assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/ERES1562.htm#1

mentioned.[9] After the 4.10.2001 meeting, several bilateral agreements, most of which were secret, were made between states (points 10, 39 and 42). According to the 2nd Marty report, the NATO countries in practice gave the CIA a mandate for a war against terrorism without published decision documents and partly in complete secrecy (points 91–97).

It was noted in the 2007 Marty Report adopted by the Council of Europe that several states (Germany, Italy, Poland, Romania, the Russian Federation in the Northern Caucasus, the "former Yugoslavian republic of Macedonia" and the United States) had invoked the concepts of state secrecy and national security in a way that makes it more difficult to conclude judicial and/or parliamentary proceedings aimed at ascertaining responsibility for rehabilitating and compensating the alleged victims of human rights violations. (Council of Europe Resolution (1562 (2007) point 8). The importance of setting up a genuine European parliamentary inquiry mechanism within the Parliamentary Assembly was stressed in the Resolution adopted by the Council of Europe (Council of Europe Resolution (1562 (2007) point 19).

A point highlighted in the report is that the operational methods of national intelligence and security agencies give rise to chain reactions of blackmail and lies between different agencies and individual in individual states, as well as between states, which at least partly explains the states' reluctance to explain the matter (point 18). Rumours and unfounded allegations since November 2005 have fuelled mutual suspicion and distrust between countries (point 37).

The Council of Europe Parliamentary Assembly called on the Committee of Ministers to ensure that various legal immunities and factors associated with national security do not prevent investigation of serious violations of human rights and the guilty being called to account.[10]

UN joint study on secret detention in February 2010

In February 2010 the UN published an extensive report, drafted by four special rapporteurs and working groups, on the global use of secret detention in the context of countering terrorism.[11] The report was based on, inter alia, intergovernmental reports, flight data and interviews. Different flight data were comprehensively combined in the report and it was confirmed that detainee transfer flights operated by the CIA had landed in, among other countries, Lithuania and that the flights had been kept secret with the aid of dummy flight plans. One was a flight that arrived from Bagram on 20.9.2004. According to the report, the destination for prisoner transfer flights to Vilnius had regularly been

[9] See also Venice Commission: Opinion 363/2005 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), 17.3.2006, points 112–113.
[10] Recommendation 1801 (2007), 27.6.2007 of the Council of Europe Parliamentary Assembly, point 3, http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=17560&Language=EN
[11] http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.13.42_re-iss.pdf

stated as some airport other than Vilnius Airport (see points 120–122, 124).

Finland had in its reply to the enquiry reported that one cargo plane (N8213G) had landed at Helsinki-Vantaa on 16.5.2003 (p. 139 of the report).

Findings in report on Lithuanian parliamentary investigation 20.1.2010

On 20.1.2010 the Seimas, the parliament of Lithuania, adopted a report by its Committee on National Security and Defence concerning secret detention centres maintained by the CIA on Lithuanian territory and detainee transfer flights.[12] The Committee had interviewed 55 persons, obtained written information and visited the premises of various institutions. A summary of the results of the investigation was published in the report in a way that did not disclose information deemed to be state secrets.

With respect to rendition flights, numerous flights linked to CIA detainee-transporting flights were itemised in the report (three flights had not been reported to Marty in his 2006 investigation). One of the flights was N733MA from Porto on 25.3.2006 and it was at Vilnius Airport from 20.25 to 23.55. The Lithuanian intelligence services had continually exchanged information within the framework of countering terrorism. In at least three cases, the Lithuanian security authorities had participated in concrete terms in events at the airport. Not one of the flights had been subjected to customs or border controls and in the case of at least one flight (N787WH; landing in Vilnius on 6.10.2005) the border guard authorities were prevented from inspecting the aircraft and a motor vehicle bypassed the border guard when it departed from the vicinity of the aircraft. The Lithuanian intelligence services had agreed in writing with the civil aviation authorities that the inspections would be bypassed.

With respect to secret detention centres, it was concluded in the parliamentary investigation that the Lithuanian intelligence services had, at the request of their foreign partner, built a detention centre which this foreign partner could use without being subject to the oversight of the Lithuanian intelligence services or other authorities.

The top political leaders or parliament of Lithuania were not deemed to have been aware of individual intelligence operations or to have had anything more than information of a general nature about collaboration with the CIA.

In the parliamentary investigation, the Prosecutor General was asked to examine the actions of three heads of the intelligence services. Numerous recommendations were presented in the report, including more effective control of the international collaboration engaged in by the intelligence services and their other activities, development of the regulations relating to the right of top officials to receive information, development of oversight of the use of financial resources for

[12] http://www3.lrs.lt/pls/inter/w5_show?p_r=6143&p_k=2

intelligence activities and development of the regulations on civil aviation in a way that ensures the border control authorities are able to perform their task without being impeded by the intelligence services.

CPT inspection visit to Lithuania 2010

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) confirmed in the course of its inspection visit to Lithuania on 14–18.6.2010 that two secret detention centres existed in the country.[13]

Amnesty International report on Lithuania 2011

Amnesty International published a report dealing with secret prisons and Lithuania on 29.9.2011 (Unlock the Truth in Lithuania: Investigate Secret Prisons Now[14]). Mentioned in the report (pp. 22–24) is a link with Finland in the form of the Boeing 707 aircraft N88ZL, which landed in Finland on 20.9.2004 and about which Finland had requested additional information from the United States in 2006.

According to the report, the official version of events is that the plane flew from Bagram (a US military base in Afghanistan) to Helsinki on 20.9.2004, and was photographed there, but according to CIA sources it landed in Vilnius on the same day. It is stated in the report that, according to CIA sources, an al-Qaeda suspect, who was being transferred from one secret prison to another, was on the flight. Amnesty International had requested flight data on the aircraft from Finavia Corporation, which had not provided the information, considering it a commercial secret.

(According to information subsequently given to the Ministry for Foreign Affairs by Finavia Corporation, 13 passengers had been on board the aircraft, which spent the night at the airport. The aircraft continued to Washington DC the following morning and from there to Miami. The US Department of Defense announced a few days later that new prisoners had been transferred to the prison in Guantanamo Bay).

Investigations by the Ministry for Foreign Affairs 2011–12

On 16.11.2010 Amnesty International's Finnish section asked the Ministry for Foreign Affairs to provide it with flight information concerning aircraft N88ZL on 20.9.2004, in response to which the Ministry requested additional information from Amnesty. The Ministry announced in December 2010 that it had begun examining the matter.

On 4.10.2011 the Minister for Foreign Affairs met representatives of Amnesty's Finnish section to discuss the suspicions that Amnesty had raised concerning flights transporting detainees. The Minister stated that the Ministry was asking the aviation authorities for information relating to the matter. The focus of attention was a list, compiled by

[13] http://www.cpt.coe.int/documents/ltu/2011-17-inf-eng.pdf
[14] http://www.amnesty.org/en/library/asset/EUR53/002/2011/en/dd6dc600-25ea-4299-8aec-1d3d16639d4c/eur530022011en.pdf

Amnesty and dated 3.10.2011, of suspected flights to Finland. The list specified the registration numbers of ten aircraft.

The Ministry for Foreign Affairs obtained additional information from the Finnish Transport Safety Agency and the Defence Command and announced the results of its investigations in a bulletin issued on 28.10.2011. It is stated in the bulletin that the only Defence Command permit required for an aircraft belonging to a foreign power had been granted for the aircraft N733MA to make a stopover in Helsinki on 18.12.2002. It had been stated in the permit application that the plane was en route from Kyrgyzia to Iceland. The Ministry for Foreign Affairs stated that it had requested additional information about this flight from the US Embassy. Appended to the bulletin had been a flight data report and a report on the registration identifiers of the aircraft in question.[15]

Amnesty International returned to the matter in a letter, dated 1.11.2011, to the Ministry for Foreign Affairs. It claimed that the material raised additional questions and called for further investigations. Amnesty pointed out that, according to the Ministry's bulletin, all but one of the flights had been civilian in character and therefore could not be associated with unlawful activities or require further investigation. Amnesty considered the classification into civilian aircraft and military aircraft erroneous, because it has been widely documented that the CIA has had agreements providing for transportation of detainees with specifically private airlines and that the Agency has intentionally concealed its activities associated with transporting detainees behind civilian companies and dummy companies. In the view of Amnesty, many of the companies used by the CIA feature in information publicised by the Ministry for Foreign Affairs. Amnesty pointed out that several flights prompt suspicions that Finland may be a participant in the CIA's programme to transfer detainees by air.

The Ministry for Foreign Affairs announced on 3.11.2011 that the flight data requested by Amnesty International were being published for human rights reasons.[16] Appended to the bulletin was a report in Excel table form of flight data for 3.11.2011.

The Ministry pointed out, inter alia, that under international law free use of airspace is permitted in civil aviation and that the only things monitored are air safety and flying. Airlines are not required to provide advance information on the purposes or objectives of individual flights. For this reason, the competent authorities do not have the power to oversee private airlines predicatively in the manner suggested by Amnesty International. The role played by the Ministry for Foreign Affairs in the matter was stated to be based on its expertise in relation to international human rights conventions and humanitarian law, and it did not have any power in matters relating to civil aviation.

Amnesty's international secretariat contacted the Ministry for Foreign Affairs by letter on 8.11.2011 and proposed several additional

[15] http://formin.finland.fi/public/default.aspx?contentid=232959&nodeid=15146&contentlan=2&culture=en-US
[16] http://formin.finland.fi/public/default.aspx?contentid=233565&nodeid=15146&contentlan=2&culture=en-US

investigation measures. The additional information asked for included, inter alia, where the data published had originated, complete flight route information, any border and customs formalities, any special statuses that may have been granted for flights as well as passenger data broken down into personnel and passengers proper. Amnesty's international secretariat itemised in particular six objects about which complete data had to be obtained:

- aircraft N733MA that landed in Helsinki on 25.3.2006
- aircraft N8123G that arrived in Helsinki from Frankfurt in May 2003
- aircraft N1HC that arrived in Helsinki from Kabul in July 2005
- aircraft N88ZL that arrived in Helsinki from Bagram in September 2004
- aircraft N510MG that arrived in Helsinki en route from Cleveland to Tunis in March 2004
- several flights by aircraft N510MG to Helsinki from countries in North Africa and the Middle East (Tunisia, Morocco, Egypt).

A further point to which attention was drawn in the letter was that publication of the data for 28.10 and 3.11.2011 had happened only years after the Council of Europe and the European Parliament had made enquiries about Finland's possible involvement in CIA detainee transfer flights. According to a bulletin published by the European Parliament in November 2006, information about landings by only two CIA aircraft (N1HC and N8213G) had been received from the Finnish authorities, for which reason it had to be asked why the information that had now come to light about the several other flights had not been provided to help the Council of Europe and European Parliament investigations.

The Ministry for Foreign Affairs made further enquiries about the matter from, among other bodies, the Finnish Transport Safety Agency, the Ministry of Defence, the Border Guard and the National Board of Customs as well as from the US Ambassador to Finland.

The Ministry replied to Amnesty on 15.2.2012. It stated in the reply that there was no information on new flights landing in Finland. It was stated in the letter that, under the Act on handling of personal data by the Border Guard (579/2005), data recorded in conjunction with border inspections must be expunged from the Border Guard's register not later than two years after they are recorded. Therefore data for the period 2001–06 do not exist.

The National Board of Customs had reported in its reply, dated 3.1.2012, to the request for information from the Ministry for Foreign Affairs that the vast majority of the about 250 flights on the list had been declared to be not transporting cargo. In addition, some of the flights mentioned on the list had been between EU countries, i.e. intra-EU traffic that under EU legislation is not subject to customs inspection measures. The Schengen regulations have applied to Iceland since 25.3.2001 and flights to and from that country have not been subject to border controls after that date.

The National Board of Customs had stated also that, in accordance with the archiving regulations, the Finnish Customs normally keep documentary material for six years. The customs authorities at Helsinki-Vantaa Airport had checked the material stored in the Customs central archives with respect to the flights mentioned. The material in the archives indicated that the Customs had not conducted inspection measures affecting the flights on the list in the period 2001–06.

According to the reply, dated 15.2.2012, from the Ministry for Foreign Affairs, Finavia Corporation is not aware that “special exempt status” or another comparable status would have been granted to even one of the flights mentioned on the list. All additional information relating to the flights is set forth in the “remarks” section of the material published on 3.11.2011.

Regarding passengers, the Ministry pointed out that the reported number of passengers does not include flight crew, but only the number of passengers on commercial passenger flights. The number of passengers on most non-commercial flights has not been recorded. There is no obligation to supply Finavia Corporation with data on the number of transit passengers on aircraft, because airlines are not required to pay any fees for transit passengers.

In most cases Finavia Corporation does not keep records of the total number of passengers that the flight plan states are on board after the plane has landed. However, the data published in November 2011 may in some cases contain data on the number of passengers on non-commercial flights when a flight has landed at some other smaller airport.

The Ministry for Foreign Affairs stated that it had been in contact with the US authorities concerning the matter in an effort to ascertain any additional information that might be obtainable from them. The US authorities had assured the Ministry that the United States completely respects its obligations towards Finland under international law. The United States authorities were unable to provide itemised additional information concerning the flights.

In its reply, the Ministry dealt in greater detail with five flights:

- N733MA/25.3.2006: The partial data in the possession of Finavia Corporation and invoicing data received from Eurocontrol (the European Organisation for the Safety of Air Navigation) indicate that the destination of the flight in question had originally been notified as being Helsinki, but the route had subsequently been changed. If the flight had been destined for some other Eurocontrol member state, the authorities in the country in question should have furnished data on this to Eurocontrol. Because the aircraft in question did not enter Finnish airspace or land in Finland, the Finnish authorities have no information about the flight in question.

- N8123G/16.5.2003: All of Finavia Corporation’s dates and times are expressed in Coordinated Universal Time (UTC), which is used as the

standard in international air traffic. Flight N8213G landed in Finland at 16.31 local time (13:31 UTC). Thus there is no contradiction in the recorded landing times. The aircraft was owned by Prescott Support, insofar as Finavia Corporation's data refer to the instance that is invoiced for services, in this case the United States Air Force. No available information indicates anything other than that the purpose of the landing had been to conduct a normal supply operation associated with the US Embassy in Finland.

- N1HC/9.7.2005: According to Finavia Corporation, the correct entry "G1" or "General" relating to the flight plan was made with respect to the purpose of the flight. For this reason, the officials at the airport were not obliged to report the number of passengers on the flight and no such datum was recorded.

- N88ZL/20.–21.9.2004: There are no Border Guard or Customs data relating to flights. All of Finavia Corporation's data relating to the flight were published already in November 2011. If the destination of the flight had been changed after it left Finland, there would have been no need to inform Finavia Corporation or the Finnish authorities of this. Insofar as the destination of the flight has been changed to some other Eurocontrol member state, the authorities in the country in question should have informed Eurocontrol. Lithuania was not a Eurocontrol member state in 2004.

- N510MG/several flights: Finavia Corporation's data relating to these flights were published in November 2011. For the reasons outlined in the foregoing, the Border Guard or Customs do not have data relating to the flights.

As its conclusion, the Ministry for Foreign Affairs noted that it had collected and published all of the relevant material available to it. The Ministry took the view that it had not found proof that flights associated with extraordinary rendition had landed at Finnish airports. The matter could not be examined any further using the means available to the Ministry.

European Parliament Report, dated 11.9.2012, on alleged transportation and illegal detention of prisoners in European countries by the CIA: follow-up report by the Temporary Committee (2012/2033(INI))[17]

On 11.9.2012 the European Parliament published (as a follow-up to the TDIP or Fava report mentioned in the foregoing) a report in which it called on Finland, in addition to 11 other Member States to "disclose all necessary information on all suspect planes associated with the CIA and their territory." According to the Resolution: "no Member State has so far wholly fulfilled its obligations to protect, preserve and respect international human rights and prevent violations thereof" (G and 17).

According to the Resolution, "national inquiries and international research prove that members of the North Atlantic Treaty Organisation

[17] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bREPORT%2bA7-2012-0266%2b0%2bDOC%2bPDF%2bV0%2f%2fEN

(NATO) agreed to commit themselves to measures in the campaign against terrorism which enabled secret airline traffic and use of EU Member States' territory in the CIA-led programme of rendition, indicating collective knowledge of the programme by Member States which are also members of NATO" (Q).

It is stated that "research and court findings on the logistics involved in covering up these illegal operations, including dummy flight plans, civil and military aircraft classified as state flights and the use of private aviation companies to conduct CIA renditions, have further revealed the systematic nature and the extent of European involvement in the CIA programme; whereas an analysis of the new data provided by Eurocontrol supports in particular the argument that, in order to conceal the origin and destination of transfers of prisoners, contractors operating renditions missions switched from one plane to another mid-route" (V).

The European Parliament "Highlights the extremely sensitive nature of anti-terrorism policies; believes that only genuine grounds of national security can justify secrecy; recalls, however, that in no circumstance does state secrecy take priority over inalienable fundamental rights and that therefore arguments based on state secrecy can never be employed to limit states' legal obligations to investigate serious human rights violations; considers that definitions of classified information and state secrecy should not be overly broad and that abuses of state secrecy and national security constitute a serious obstacle to democratic scrutiny." (3).

The European Parliament "Calls on the Member States, in the light of the increased cooperation and exchange of information between their secret intelligence and security agencies, to ensure full democratic scrutiny of those agencies and their activities through appropriate internal, executive, judicial and independent parliamentary oversight, preferably through specialised parliamentary committees with extensive remits and powers, including the power to require information, and with sufficient investigative and research resources to be able to examine not only issues such as policy, administration and finances, but also the operational work of the agencies" (20).

The European Parliament "Recalls that the Council has never formally apologised for having violated the principle enshrined in the Treaties of loyal cooperation between the Union institutions when it incorrectly attempted to persuade Parliament to provide deliberately shortened versions of the minutes of the meetings of COJUR (the Council Working Group on Public International Law) and COTRA (the Council Working Party on Transatlantic Relations) with senior North American officials; expects apologies from the Council" (22).

The European Parliament "Calls on the relevant authorities not to invoke state secrecy in relation to international intelligence cooperation in order to block accountability and redress, and insists that only genuine national security reasons can justify secrecy, which is in any case overridden by non-derogable fundamental rights obligations such as the absolute prohibition on torture" (28).

The European Parliament “Stresses that the Temporary Committee which conducted the investigation underpinning Parliament's resolutions of 14 February 2007 and 19 February 2009 exposed the ways in which the procedures for authorisation and control of civilian aircraft overflying the Member States' airspace or landing in their territory were extremely flawed… calls on the EU and its Member States, therefore, to delay no longer a thorough review of their implementation of the Convention on International Civil Aviation (the Chicago Convention) as regards authorisation and inspections of civilian aircraft overflying the Member States' airspace or landing in their territory, in order to make sure that security is enhanced and checks systematically exercised, requiring anticipated identification of passengers and crews and ensuring that any flights classified as ‘state flights’ (which are excluded from the scope of the Chicago Convention) are given prior and proper authorisation” (30).

The European Parliament “Calls on the Commission to consider proposing measures for permanent cooperation and exchange of information between the European Parliament and parliamentary committees for the oversight of intelligence and security services of the Member States in cases which indicate that joint actions by Member States' intelligence and security services have been undertaken on EU territory” (36) and ”Calls on the European Ombudsman to investigate the failures of the Commission, the Council and the EU security agencies, notably Europol and Eurojust, to respect fundamental rights and the principles of good administration and loyal cooperation in their response to the TDIP recommendations” (38).

Complaint cases communicated by the European Court of Human Rights and a judgment

On 8.10.2010 the European Court of Human Rights communicated the complaint case el-Masri (no. 39630/09) to the Government of the “former Yugoslavian republic of Macedonia” for its response. At issue is an allegation that a German citizen had been kept in secret detention and treated inhumanely in, among other places, the CIA centre called Salt Pit in Afghanistan for over four months between January and May 2004 and before that for over three weeks in Macedonia.

On 10.7.2012 the European Court of Human Rights communicated the complaint case Al Nashiri (no. 28761/11) to the Government of Poland for its response and on 18.9.2012 the complaint case Al Nashiri (no. 33234/12) to the Romanian Government for its response. Several allegations of violations of human rights when European states were involved in the CIA detainee transport programme were made in the complaint cases. The European Court of Human Rights describes in detail the programme in question in the light of the available reports and allegations as well as the international law applicable to the matter.[18]

[18] See, e.g., the complaint case concerning points 2–131 and 157–163 concerning Poland; http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"documentcollectionid":["COMMITTEE","DECISIONS","COMMUNICATEDCASES","CLIN","ADVISORYOPINIONS","REPORTS","RESOLUTIONS"]}

The European Court of Human Rights has, in its judgment in the case Abdulkhakov v. Russia (2.10.2012), in which it confirmed, inter alia, that Article 3 of the European Human Rights Convention had been violated, taken the view that any extra-judicial transfer or extraordinary rendition, by its deliberate circumvention of due process, is an absolute negation of the rule of law and the values protected by the Convention.[19]

2 CASE TAKEN UNDER INVESTIGATION IN THE OFFICE OF THE PARLIAMENTARY OMBUDSMAN

On 15.2.2012 the Legal Service unit of the Ministry for Foreign Affairs sent the Parliamentary Ombudsman a letter in which it reported that, at the request of Amnesty International, it had investigated suspicions that detainees had been transported through Finland in violation of international law in the period 2001–06. The Ministry stated that it had requested additional information in the matter from the Finnish authorities and the United States Embassy, but had not discovered proof that Finnish airports or airspace had been used for unlawful transport of detainees. The Ministry announced that it had no further means of ascertaining more about the matter.

The Ministry sent the material that it had accumulated in the matter to the Ombudsman for his information.

I note that the European Parliament has taken the view that in the matter in question not even one EU Member State has thus far fulfilled in all respects its obligation to protect and respect international human rights and prevent violations of them. The European Parliament has also, on 11.9.2012, specifically called on Finland to provide all necessary data on all aircrafts that are suspected of being connected with the CIA programme. The matter is the focus of international interest also in, for example, the most recent UN Universal Periodic Review of Human Rights that concerns also Finland.

There are still significant investigation interests in the matter and they are a ground to look into it as thoroughly as possible. Therefore and because the Ministry for Foreign Affairs has reported that it has used up all of the means at its disposal to investigate the matter, I have decided to take it under investigation on my own initiative under the provisions of Section 4 of the Parliamentary Ombudsman Act.

3 THE RIGHT OF THE OMBUDSMAN TO RECEIVE INFORMATION

Under Section 111.1 of the Constitution, the Ombudsman has the right to receive from public authorities or others performing public duties the information needed for his oversight of legality.

The Government Bill concerning the Constitution (HE 1/1998 vp) states that “The proposed provision would replace the mentioned regulations

[19] See § 156 of the judgment.

in the Constitution, but it is proposed that the right to receive information be couched in a more general form than the existing regulations and sufficiently comprehensively from the perspective of the effective discharge of the tasks of the Chancellor of Justice and the Parliamentary Ombudsman. Thus the right to receive information that is enshrined in the Constitution would not be restricted to official protocols, but would cover in principle all information that is in the possession of public authorities or others performing public duties and is necessary for oversight of legality."

Section 7 of the Parliamentary Ombudsman Act states that the Ombudsman's right to receive the information that he needs for oversight of legality is provided for in Section 111.1 of the Constitution.

The Government Bill concerning the Parliamentary Ombudsman Act (HE 202/2001 vp) states that the mentioned "provision of the Constitution is regarded as meaning a general right to receive information, which does not depend on for example the secrecy of information or documents, but rather on what is needed for the discharge of the task of oversight of legality (PeVM 7/2000 vp)."

4
CONTENTS OF REQUESTS FOR REPORTS AND/OR STATEMENTS

Invoking Section 111.1 of the Constitution, I hereby request that you supply me with the report that is necessary to investigate the matter and give me your statement in the matter. I ask you for **all of the information and documents that you have in relation to the matter (including those that are required by law to be kept secret) as comprehensively and precisely as possible**.

In addition to this, I shall ask **questions that are specific to those to whom they are addressed.** The questions are grouped below under the heading indicating the recipient. I ask you to use the numbering system that I have adopted in this request for a report and statement in your replies.

Insofar as you take the view that an item of information must be kept secret from others besides the Ombudsman, I ask you to itemise such information as well as to state on what legal provision the requirement of secrecy is based. You can, for example, include secret information separately from other, public information.

Ministry for Foreign Affairs

1) In light of the information that has been brought to notice, is there or has there been reason to suspect that the flights in question that have been declared to be civil aviation have been used in reality as state aircraft? Has the foreign affairs administration received any information or allegations of this kind of abuse of civil aviation? If so, when, how and from what source?

2) Have the arrangements in accordance with the Chicago Convention been reviewed or are changes being made in relation to it? Do the matters that have come to light constitute a ground to refer some flights

for handling under the provisions of Article 54 of the Chicago Convention?

3) Did the Finnish Foreign Minister or some other representative of Finland attend the unofficial transatlantic meeting of European Union and North Atlantic Treaty Organisation (NATO) foreign ministers on 7.12.2005? If so, I request all information relating to the matter that may have come up at the meeting.

4) It is noted in the 2007 report of the European Parliament's Temporary Committee (point 23) that the Council initially failed to disclose the results of the negotiations that it regularly conducted with high-ranking officials of the United States Administration, and provided the Parliament with only part of the information that it had requested. – In its report dated 11.9.2012 (2012/2033(INI)) the European Parliament "Recalls that the Council has never formally apologised for having violated the principle enshrined in the Treaties of loyal cooperation between the Union institutions when it incorrectly attempted to persuade Parliament to provide deliberately shortened versions of the minutes of the meetings of COJUR (the Council Working Group on Public International Law) and COTRA (the Council Working Party on Transatlantic Relations) with senior North American officials; expects apologies from the Council;" (point 22). – I request all possible information with a bearing on the Finnish Government about the mentioned procedures. Is Finland a member of COJUR or COTRA?

5) How has Finland replied to the enquiry made by the Secretary General of the Council of Europe under the terms of Article 52 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) on 21.11.2005? Has the Council of Europe Parliamentary Assembly's Rapporteur Dick Marty made enquiries directly to the Finnish representatives in the Assembly? What other enquiries may have been received from Marty (see point 14 and footnote 38 of the 2006 Marty report)? What other enquiries, if any, have been made by Marty; when and how have the enquiries been replied to?

6) It is stated in Annex 3 of the report by the European Parliament's Temporary Committee that Finland has not replied in writing to a letter from the Chair of the Temporary Committee dated 22.2.2006 or requested a meeting. – Why was the letter, dated 22.2.2006, from the Chair of the Temporary Committee not replied to?

7) Why is it that all of the flight data that subsequently came to light have apparently not been obtained and reported in the response to the mentioned enquiries from the Council of Europe and the European Parliament's Temporary Committee? Would such information as Border Guard and Customs registry data, flight data or other relevant information, which were subsequently in the 2011 investigation found to have been destroyed been available then (in 2005, 2006 and 2010; as I understand it, the Border Guard and Customs registry data would still have been available in 2006; the Border Guard data were expunged by 31.8.2008 at the latest, and the Helsinki-Vantaa Airport information system was modernised in 2010)?

8) According to the report from the Ministry, there are no Border Guard or Customs data relating to flight N88ZL on 20–21.9.2004. I ask the Ministry for Foreign Affairs to request flight data and other information from Lithuania.

9) Flight N733MA 25.3.2006 has been brought up as one flight for which a misleading flight plan or flight data may have been provided in a manner that deliberately and falsely presented Finland as the country of destination. Finavia Corporation has stated that the Eurocontrol invoicing data were found to contain the entry "25.3.2006 BSK700A (REG/N733MA) flight thus Finland has received a flight route fee for it." According to the reports, the obligation to make notification of the flight resided with Portugal, and the last flight plan was made to Finland. If the flight was diverted to a Eurocontrol member state, the Route Charge Office in the country in question should have made a notification of it to the Eurocontrol Route Charge Office. – I ask the Ministry for Foreign Affairs to request flight data and other information from Portugal and Eurocontrol.

10) It is stated in the 2006 Marty report (points 268–272) that the United States has officially admitted the practice of rendition, denying however that the purpose of torture is associated with it or that it would "more likely than not" lead to a person being tortured. According to the report, the United States took the view that the prohibition on refoulement in Article 3 of the UN Convention Against Torture (CAT) is not binding on the United States outside its own territory. The United States has announced that it follows its own interpretation, but not for example the interpretation line of the European Court of Human Rights in the matter. The United States does not comment on whether rendition flights have taken place in the European region (point 273). – Has the Ministry for Foreign Affairs requested or would it need to request from the United States an assurance that none of the flights in question were in reality made by a state aircraft?[20]

11) On 8.10.2010 the European Court of Human Rights communicated the complaint case el-Masri (no. 39630/09) to the Government of the "former Yugoslavian republic of Macedonia" for its response. At issue was an allegation that a German citizen had been kept in secret detention and treated inhumanely in, among other places, the CIA centre called Salt Pit in Afghanistan for over four months between January and May 2004 and before that for over three weeks in Macedonia. The places of detention specified in the complaint case are flights from Skopje to Afghanistan (N313P) 23.1.2004 and from Kabul to Albania (N982RK) 28.5.2004. The first-mentioned aircraft was included in the investigation of flight data conducted by the Finnish

[20] A suspicion that a state aircraft from the United States touched down at Arlanda Airport in February 2006 has been reported in the news in Sweden (http://www.expressen.se/nyheter/expressen-avslojar/sapo-erkanner-spanade-pa-cia-plan/?print=true). According to the news report, the Swedish Defence Forces failed in their investigation of the matter to establish with certainty that it had been a state aircraft. However, it was claimed in the news reports that the US Homeland Security authorities had confirmed, when asked by the newspaper, that the plane was a state aircraft and was carrying 51 Pakistanis. It was further stated in the news report that the Swedish security police had in April 2006 secretly inspected an aircraft that was suspected of being a US state aircraft.

Ministry for Foreign Affairs, but the aircraft N982RK was not included in the investigation.

I request a report on comparable flight data (as in the 3.11.2011 report) on the aircraft N982RK as well as on the aircraft N6106 (flight on 18.5.2005) and 09001 (flight on 12.11.2003).

12) After Finland had joined the NATO Partnership for Peace programme in 1994, an agreement on exchanges of classified security information (the so-called security data agreement) was signed between Finland and NATO on 22.9.1994. The decision to sign the agreement was made in the Ministry for Foreign Affairs. The agreement was not dealt with as an international treaty and has not been published in the treaties series of the Statutes of Finland. The Act on International Security Obligations (588/2004) is not applied to the agreement. – Has the agreement in question been applied in the matter at hand and/or security data exchanged?

13) In December 2002 the then Prime Minister visited Washington and had discussions with Vice-President Dick Cheney on 9.12.2002, and with President George W. Bush on 10.12.2002. It was announced that the discussions had concerned, inter alia, the situation in Iraq, NATO enlargement, the war on terror as well as Russia's attitude to NATO and Turkey's membership of the EU. – I request all documentary material and other information on the visit in question insofar as they may relate to the questions now being discussed.

14) Have the matters under discussion been dealt with in any way by the Foreign and Security Policy Committee?

15) Has the European Parliament's request, made on 11.9.2012 to Finland and other countries, to supply all necessary information concerning all aircraft that are suspected of being linked to the CIA programme led to any measures?

Ministry of the Interior

I ask the Ministry of the Interior to supply all information that it may have relating to the matter. Insofar as there is information, I request a report on how it may have been used and/or processed.

Finnish Security Intelligence Service

1) Has the Finnish Security Intelligence Service reported on the matters under discussion to ministries, Eduskunta committees, the President of the Republic or other instances, or correspondingly been given information or informed of suspicions about these matters by other sources in Finland? I ask to be provided with all information that will cast light on the matter.

2) I ask to be informed if, and if so in what way, the Finnish Security Intelligence Service is (or has been) involved in exchanges of information with the intelligence and/or military intelligence authorities in various countries regarding the matters now under discussion.

More specifically, I additionally request all of the information that the Finnish Security Intelligence Service may have about the actions of Säkerhetspolisen (the Swedish Security Service) on 18.12.2001 in the so-called Alzery and Agiza cases (in which the UN Human Rights Committee found that several violations of the International Covenant on Civil and Political Rights had been committed; see the Alzery decision issued on 10.11.2006 (CCPR/C/88/D/1416/2005[21]). If such information exists, I request also a report on whether and how the information or suspicions may have been used or reported onwards, for example to make it possible to prevent anything of a comparable nature from happening in Finland.

Allegations that Säkerhetspolisen was aware of suspected CIA detainee transfer flights having landed at Arlanda Airport also in February and April 2006 have been made in public. There were news reports that Säkerhetspolisen had secretly inspected the latter flight.[22] Insofar as the Finnish Security Intelligence Service has information about the mentioned events, I request a report on whether and how the information or suspicions may have been used or reported onwards, for example to make it possible to prevent anything of a comparable nature from happening in Finland.

3) Does the Finnish Security Intelligence Service have any cooperation agreements or other official or unofficial arrangements relating to the matter?

National Bureau of Investigation

1) It is stated in the report of its Temporary Committee (point 29) that the European Parliament "… Deplores the refusal by the Director of the European Police Office (Europol), Max-Peter Ratzel, to appear before the Temporary Committee, particularly because it has emerged that liaison officers, in particular for the US intelligence services, were seconded to Europol, requests that the Director provide Parliament with comprehensive information concerning the role of those liaison officers, their tasks, the data to which they had access and the conditions of such access." – Has the National Board of Investigation (also in its capacity as the Interpol, Europol and Schengen national centre and money laundering investigation centre) information relating to the matter? If so, I request that all of the information be made available to me.

2) If the National Board of Investigation or its representative has had a meeting or meetings in the Europol central unit with officers or other personnel of intelligence services belonging to the United States or other states, I request that I be supplied with all information that may relate to the matter under discussion and an explanation of any other way in which this information may have been handled.

[21] http://www.unhchr.ch/tbs/doc.nsf/0/13fac9ce4f35d66dc12572220049e394?Opendocument
[22] See news reports http://www.expressen.se/nyheter/expressen-avslojar/sapo-erkanner-spanade-pa-cia-plan/ and http://www.aftonbladet.se/nyheter/article12691165.ab

Border Guard

1) I ask the Border Guard to ascertain (on the basis of roster lists and other data) all of the persons who are or have been in its service who may have information or observations concerning the following flights:
- 20–21.9.2004 N88ZL
- 16.5.2003 N8213G
- 9.7.2005 N1HC
- 25.3.2006 N733MA and
- N510MG

I ask the Border Guard to question the persons specified in the investigation about the events now under discussion (if necessary about also flights other than those specified in the foregoing and to take the following question 2 into account), to supply me with the names of the persons questioned as well as to provide an explanation of all of the information that may come to light.

2) Have any of the mentioned aircraft been, to the knowledge of the Border Guard authorities, at the airport overnight or otherwise made a stopover of the kind where no one exited the plane? Has anyone left a plane and gone beyond the apron or terminal building, or have other persons boarded the plane? Have the Border Guard authorities made observations of any exceptional or suspicious matter associated with the mentioned flights and which may be of significance in the matter?

3) I request an explanation of the practices (and differences in practices) that are applied by the Border Guard authorities to the various kinds of flights now in question (3.11.2011 list of flights).

4) What kind of border control practices apply to private flights / irregular general aviation, such as in the case of Gulfstream-type small aircraft?

5) Under Section 30.1 of the Act on handling of personal data by the Border Guard, the data specified in Section 6 of the Act are expunged not later than two years after they have been recorded, unless a datum is still needed in the planning, implementation and oversight of activities. Under the second paragraph of the provision, the necessity of continuing to store data is examined not later than two years after the previous examination of the necessity of keeping them, and the re-examination of the data is recorded.

Are data expunged in a completely routine fashion? How does expunction happen in concrete terms? Is there an archive database or are there archiving details of the data now under discussion (if there are, I request that the data be supplied to me)? Can the view be taken that keeping the data for a longer period is (or has been) necessary in order to, e.g., oversee activities?

6) Has the Border Guard given or received from the European Union border security agency Frontex or other instances information with a bearing on the matter?

National Board of Customs

1) I ask the National Board of Customs to ascertain (on the basis of roster lists and other data) all of the persons who are or have been in its service who may have information or observations concerning the following flights:
- 20–21.9.2004 N88ZL
- 16.5.2003 N8213G
- 9.7.2005 N1HC
- 25.3.2006 N733MA and
- N510MG

I ask the National Board of Customs to question the persons specified in the investigation about the events now under discussion (if necessary about flights other than those specified in the foregoing and to take the following question 2 into account), to supply me with the names of the persons questioned as well as to provide an explanation of all of the information that may come to light.

2) Have any of the mentioned aircraft been, to the knowledge of the customs authorities, at the airport overnight or otherwise made a stopover of the kind where no one exited the plane? Has anyone left a plane and gone beyond the apron or terminal building, or have other persons boarded the plane? Have the customs authorities made observations of any exceptional or suspicious matter associated with the mentioned flights and which may be of significance in the matter?

3) I request an explanation of the practices (and differences in practices) that are applied by the customs authorities to the various kinds of flights now in question (3.11.2011 list of flights).

4) What kind of customs control practices apply to private flights / irregular general aviation, such as in the case of Gulfstream-type small aircraft?

5) The National Board of Customs has stated in its reply, dated 3.1.2012, to the request for information sent to it by the Ministry for Foreign Affairs that the vast majority of the about 250 flights on the list were of a kind that had been declared as not carrying cargo. – Have the customs authorities conducted an inspection of even a single one of the aircraft in question in spite of the fact that it had not been declared that they contained cargo (is a declaration always believed)?

Ministry of Defence

1) The Defence Command has informed the Ministry for Foreign Affairs that the only one of the flights under investigation that was a state aircraft was N733MA on 18.12.2002. The flight data for the Miami Air plane in question contain four entries relating to two days (17 and 18.12.2002) for Helsinki-Vantaa Airport. According to the information received, no permission had been sought for the first flight (Shannon-Helsinki-Bishek); an e-mail appended to the explanation provided by the Ministry for Foreign Affairs said: “Thus what is involved is obviously not a state flight???” – I request all available information on both flights, including invoicing data.

2) Were the flights mentioned on the list dated 3.11.2011 inspected as provided for in Section 23 of the Government Decree on Area Control or the Aviation Act?

3) In light of the information that has been presented, are there grounds to suspect that the flights in question that were declared to be civil aviation ones would have been in reality flights by state aircraft? Has any information relating to or suspicion of this kind of abuse of civil aviation come to the attention of the Ministry of Defence or authorities belonging to its sphere of administration? If so, when, how and from what source?

4) Have the civil aviation authorities or other actors in the aviation sector an obligation or is there, for example, an agreed or established practice according to which they notify the Ministry of Defence administration or other instance of a situation in which there is a suspicion that civil aviation is being used in reality as a state flight? Please describe practices relating to the matter.

5) What is the normal practice in a situation in which an aircraft of which notification has been made according to the flight plan does not arrive? What regulations or guidelines have been issued to deal with such a situation and the procedure involved? Is there a register or system for notifications and entries in the event of situations in which an aircraft that according to the flight plan is supposed to land in Finland, does not arrive in Finnish airspace or land in Finland? I request that you supply me with all information relating to this (for the aircrafts mentioned in the flight data report dated 3.11.2011 as well as for the aircraft N982RK, N6106 and 09001) in the period 12.9.2001–31.12.2006.

6) Has the Ministry of Defence or authorities belonging to its sector of administration obtained, received, produced, mediated or in general in any way handled information relating to the secret detainee transfer flights now under discussion, been aware of their existence or suspected it? I ask you to supply me with all information relating to the matter.

7) If information relating to the matter has been deliberated by the Security and Defence Committee (TPAK), I request a report on this information and how it was handled.

8) Has some or other North Atlantic Treaty Organisation (NATO) treaty instrument or arrangement such as the one between the NATO members and other countries participating in the Partnership for Peace programme covering the status of their forces, the SOFA supplemental agreement or the Partnership Action Plan against Terrorism (22.11.2002) been applied in questions relating to the matter?

9) Has Finland approved, within the framework of the Partnership for Peace programme, an agreement adopted by the NATO countries on 4.10.2001 to allow state aircraft belonging to the United States and its allies free access to its airspace and airports or acted in accordance

with said agreement? I request all possible information on NATO collaboration with Eurocontrol (2007 Marty report, points 91–111).

Defence Command

1) Has the Defence Command reported on the matters under discussion to ministries, Eduskunta committees, the President of the Republic or other instances, or correspondingly been given information on or informed of facts relating to these matters by other sources in Finland? I ask to be provided with all information that will cast light on the matter.

2) I ask to be informed if, and if so in what way, the Defence Command is (or has been) involved in exchanges of information with the intelligence and/or military intelligence authorities in various countries regarding the matters now under discussion.

More specifically, I additionally request all of the information that the Defence Command may have about the actions of Säkerhetspolisen (the Swedish Security Service) on 18.12.2001 in the so-called Alzery and Agiza cases (in which the UN Human Rights Committee found that several violations of the International Covenant on Civil and Political Rights had been committed; see the Alzery decision issued on 10.11.2006 (CCPR/C/88/D/1416/2005[23]). If such information exists, I request also a report on whether and how the information or suspicions may have been used or reported onwards, for example to make it possible to prevent anything of a comparable nature from happening in Finland.

Allegations that Säkerhetspolisen was aware of suspected CIA detainee transfer flights having landed at Arlanda Airport also in February and April 2006 have been voiced in public. There were news reports that Säkerhetspolisen had secretly inspected the latter flight.[24] Insofar as the Defence Command has information about the mentioned events, I request a report on whether and how the information or suspicions may have been used or reported onwards, for example to make it possible to prevent anything of a comparable nature from happening in Finland.

3) I ask the Defence Command to obtain a separate Finnish Intelligence Research Establishment (FIRE) report in the matter and to supply me with all information that FIRE may have relating to the matter. If FIRE has data relating to the matter, I request a detailed explanation of what has been done to the data, how, when and to whom they may have been mediated and how in general they have been handled.

Finnish Mission to the North Atlantic Treaty Organisation (NATO)

[23] http://www.unhchr.ch/tbs/doc.nsf/0/13fac9ce4f35d66dc12572220049e394?Opendocument
[24] See news reports http://www.expressen.se/nyheter/expressen-avslojar/sapo-erkanner-spanade-pa-cia-plan/ and http://www.aftonbladet.se/nyheter/article12691165.ab

1) Has some or other North Atlantic Treaty Organisation (NATO) treaty instrument or arrangement such as the one between the NATO members and other countries participating in the Partnership for Peace programme covering the status of their forces, the SOFA supplemental agreement or the Partnership Action Plan against Terrorism (22.11.2002) been applied in questions relating to the matter?

2) Has Finland approved, within the framework of the Partnership for Peace programme, an agreement adopted by the NATO countries on 4.10.2001 to allow state aircraft belonging to the United States and its allies free access to its airspace and airports or acted in accordance with said agreement? I request all possible information on NATO collaboration with Eurocontrol (2007 Marty report, points 91–111).

3) After Finland had joined the NATO Partnership for Peace programme in 1994, an agreement on exchanges of classified security information (the so-called security data agreement) was signed between Finland and NATO on 22.9.1994. The decision to sign the agreement was made in the Ministry for Foreign Affairs. The agreement was not dealt with as an international treaty and has not been published in the treaties series of the Statutes of Finland. The Act on International Security Obligations (588/2004) is not applied to the agreement. – Has the agreement in question been applied in the matter at hand and/or security data exchanged?

4) I request any information that you may have about cooperation between NATO and Eurocontrol (2007 Marty Report, point 111).

Ministry of Transport and Communications

1) In a decision that I issued on 30.4.2012 (dnro 1634/2/12), I noted, inter alia, the following about Finavia Corporation's tasks:

> "The following of the tasks performed by Finavia must, on the basis of the Act and the related legislative documents, be deemed to be public administrative tasks: 1) maintaining and developing the State's network of airports to meet the needs of civil and military aviation; 2) maintaining and developing the Finnish air navigation system to meet the needs of civil and military aviation and providing air navigation services in the airspace for which Finland is responsible in the manner that separate statutory provisions or orders require; 3) area control, preparedness and rescue tasks, obligations relating to contingency planning and security of supply. … The Ministry of Finance has in its statement highlighted the regulations in Sections 8, 29, 106 and 169, which mainly relate to the permit procedure … Also tasks including clear exercise of public power such as arranging security checks and other activities with the purpose of safeguarding civil aviation constitute a public administrative task and, with respect to them, the Aviation Act does indeed contain a reference to general administrative laws (Section 103). Also in this respect, however, I have in my decision on the matter dnro 1242/4/2007 etc. found the regulation to be unclear … Exercise of public power that has the character of a direct intervention in the individual's fundamental rights is contained in the provisions, concerning prevention of

> aircraft departure and interception of aircraft, of Sections 171 and 172 of the Aviation Act, because these regulations can easily, alone on the basis of the provision, be conceived of as a public administrative task … It has become evident in oversight of legality that actors in the aviation sector and persons in their service are not always aware of what tasks are public administrative tasks. I consider this problematic from the perspective of the protection under the law of not only passengers, but also employees. Responsibility under criminal law for official actions, as provided for in Section 40 of the Penal Code, follows from the exercise of public power. It is important from the perspective of also other public administrative tasks that the person performing the task is aware that the scope of the guarantees of good administration that are already safeguarded in the Constitution extend to his or her actions. … I shall inform the Ministry of Transport and Communications and the Finnish Transport Safety Agency of my views. I ask the Ministry to inform me, by 31.12.2012, of the measures to which this decision has given rise."

The report, dated 19.12.2011[25], by the Reprieve and Access Info Europe human rights organisations criticized, among other things, that despite a public scandal having erupted over CIA rendition flights in 2005 several states neglected to safeguard preservation of the information necessary to investigate the matter. Flight data are kept for different lengths of time in different countries, and in some countries are not kept at all. In a number of countries, such as Canada and Finland, flight data are, according to the report, partly in the possession of private actors to which freedom of information legislation does not apply (pp. 11 and 13). The intergovernmental international organisation Eurocontrol preserves flight data for five years and invoicing data for even longer, but it is not covered by any kind of freedom of information legislation (pp. 13 and 22–23). Finland has been selected in the report as one of the countries for which example cases are outlined (p. 18). In the report, the governments of all European countries are urged to publish all material explaining the matter in an open form. According to the report, governments should ensure that the flight data needed in investigations into human rights violations are not kept solely in the custody of private instances, and that information being kept for excessively brief periods would not make investigation measures ineffectual (pp. 24–26).

In what respects does the Finnish Transport Safety Agency act as the area control authority in the matters now under discussion? Which of Finavia Corporation's tasks in the relations now under discussion are public tasks? Does the air navigation system and the length of time for which its data are kept allow sufficiently for the requirements of preventing and investigating after the fact suspicions that civil aviation has been abused? Are the demarcation between and the applicable regulations sufficiently clear with respect to, inter alia, the Finnish Transport Safety Agency and Finavia Corporation?

[25] The report is published at: http://www.access-info.org/en/civil-liberties/212-rendition-on-record

2) Do the current regulations and the present practices make it possible to prevent the types of serious human rights violations now under discussion sufficiently well and to investigate them after the fact from, among other aspects, the perspectives of international law, human rights and humanitarian law?

3) Have the arrangements in accordance with the Chicago Convention been reviewed or are changes being made in relation to it? Do the matters that have come to light constitute a ground to refer some flights for handling under the provisions of Article 54 of the Chicago Convention?

4) What is the normal practice in a situation in which an aircraft of which notification has been made according to the flight plan does not arrive? What regulations or guidelines have been issued to deal with such a situation and the procedure involved? Is there a register or system for notifications and entries in the event of situations in which an aircraft that, according to the flight plan is supposed to land in Finland, does not arrive in Finnish air space or land in Finland? I request that you supply me with all information relating to this (for the aircraft mentioned in the flight data report dated 3.11.2011 as well as for the aircraft N982RK, N6106 and 09001 in the period 12.9.2001–31.12.2006).

5) Have the civil aviation authorities or other actors in the civil aviation sector an obligation or is there, for example, an agreed or established practice according to which they notify the Ministry of Transport and Communications or other instance of a situation in which there is a suspicion that civil aviation is being used in reality as a state flight?

Finnish Transport Safety Agency

1) I request information that is as detailed as possible on observations of flight N88ZL on 20–21.9.2004 and on documentation relating to the flight. For this purpose, I ask the Finnish Transport Safety Agency to obtain from Finavia Corporation and other bodies that were working at the airport a study (based on roster lists and other data) of all of the persons who are or were in its service and who may have information about or observed the flights in question.

I ask the Finnish Transport Safety Agency to ensure that Finavia Corporation (and any other instances) question the persons identified in the investigation about the events now under discussion (if necessary also about flights other than those specified in points 1–5), state the names of the persons questioned and provide a report outlining any information received. I ask that special attention be paid to the following questions in the interviews:

- the precise movements of the aircraft at Helsinki-Vantaa Airport
- any side flight to Lithuania or elsewhere
- did anyone disembark from the aircraft?
- was the aircraft at the airport overnight?
- how were the landing fees paid? (I request documentation on receipts, etc.)

- I ask to be supplied with all documentation on any maintenance, refuelling or other comparable measures that may have been carried out on the aircraft.

2) I request corresponding reports also with respect to flight:
- 16.5.2003 N8213G

3) I request corresponding reports also with respect to flight:
- 9.7.2005 N1HC

4) I request corresponding reports also with respect to flight:
- 25.3.2006 N733MA

5) I request corresponding reports also with respect to flight:
- N510MG

6) Does the Finnish Transport Safety Agency have access to the flight data given by Eurocontrol to the European Parliament in 2012, or to compilations of flight data made by various organisations or countries in order to investigate the matter now under discussion?[26] Do they reveal anything new compared with earlier data (e.g. data on flights N88ZL and N733MA)?

7) Do the air navigation system and the length of time for which its data are kept allow sufficiently for needs to prevent and investigate after the fact suspected abuses of civil aviation? It is, taking into account the positive obligations on the State to investigate suspected violations of human rights, acceptable if the duty to preserve flight data resides solely with private instances? To what extent does legislation on freedom of information and archiving apply to the compilation and preservation of these data?

8) What is the normal practice in a situation in which an aircraft of which notification has been made according to the flight plan does not arrive? What regulations or guidelines have been issued to deal with such a situation and the procedure involved? Is there a register or system for notifications and entries in the event of situations in which an aircraft that according to the flight plan is supposed to land in Finland, but does not arrive in Finnish air space or land in Finland? I request that you supply me with all information relating to this (for the aircraft mentioned in the flight data report dated 3.11.2011 as well as for the aircraft N982RK, N6106 and 09001) in the period 12.9.2001–31.12.2006.

9) Have the aviation authorities or other actors in the aviation sector an obligation or is there, for example, an agreed or established practice according to which they notify the Ministry of Defence or other instance of a situation in which there is a suspicion that civil aviation is being used in reality as a state flight?

[26] For example flight data available at: http://www.therenditionproject.org.uk/documents/flights-data-files.html and http://www.reprieve.org.uk/investigations/rendition/

10) The European Parliament, on 11.9.2012, “stresses that … the procedures for authorisation and control of civilian aircraft overflying the Member States' airspace or landing in their territory were extremely flawed, … calls on the EU and its Member States, therefore, to delay no longer a thorough review of their implementation of the Convention on International Civil Aviation (the Chicago Convention) as regards authorisation and inspections of civilian aircraft overflying the Member States' airspace or landing in their territory, in order to make sure that security is enhanced and checks systematically exercised, requiring anticipated identification of passengers and crews and ensuring that any flights classified as ‘state flights’ (which are excluded from the scope of the Chicago Convention) are given prior and proper authorisation.” (point 30).

Have the arrangements in accordance with the Convention been reviewed or are changes being made in relation to it in national arrangements? Do the matters that have come to light constitute a ground to refer some flights for handling under the provisions of Article 54 of the Chicago Convention?

Finavia Corporation / Area Control Centre Finland

1) Do any data or register or archive data based on radar surveillance relating to the flights in 2001–06 made public on 3.11.2011 exist? Insofar as any data of this kind are available, I request detailed data concerning especially flight N88ZL on 20.9.2004 (from what direction and when the flight arrived in Finnish airspace and in what direction and when it departed) as well as on the flights specified in the foregoing: 16.5.2003 (N8213G), 9.7.2005 (N1HC) ja 25.3.2006 (N733MA).

2) Have the aviation authorities or other actors in the aviation sector an obligation or is there, for example, an agreed or established practice according to which they notify the Ministry of Defence or other instance of a situation in which there is a suspicion that civil aviation is being used in reality as a state flight?

3) What is the normal practice in a situation in which an aircraft of which notification has been made according to the flight plan does not arrive? What regulations or guidelines have been issued to deal with such a situation and the procedure involved? Is there a register or system for notifications and entries in the event of situations in which an aircraft that, according to the flight plan is supposed to land in Finland does not arrive in Finnish air space or land in Finland? I request that you supply me with all information relating to this (for the aircraft mentioned in the flight data report dated 3.11.2011 as well as for the aircraft N982RK, N6106 and 09001) in the period 12.9.2001–31.12.2006.

Office of the President of the Republic

1) Has the Office of the President of the Republic information relating to the matter, such as contacts with especially top US political leaders or the top political leaders of other countries?

2) Has any Finnish official instance reported to the Office of the President of the Republic on anything relating to the matter?

Prime Minister's Office

1) In December 2002 the then Prime Minister visited Washington and had discussions with Vice-President Dick Cheney on 9.12.2002, and with President George W. Bush on 10.12.2002. It was announced that the discussions had concerned, inter alia, the situation in Iraq, NATO enlargement, the war on terror as well as Russia's attitude to NATO and Turkey's membership of the EU. – I request all documentary material and other information on the visit in question insofar as they may relate to the questions now being discussed.

2) How are reports on the information obtained through international and national intelligence gathering activities made to the top political leadership? Insofar as reports have been made to the top political leadership on the matters now under discussion, I request a precise explanation of what information came to light, the persons who were aware of it and the way in which it was handled.

Office of the Prosecutor General

Has the Office of the Prosecutor General (also as a Eurojust member) any information relating to the matter? I ask to be supplied with all information relating to the matter.

5
DEADLINE FOR MEETING REQUEST FOR REPORT AND STATEMENT

For any enquiries with respect to replying to the request for a report and statement, you can contact Principal Legal Officer Pasi Pölönen at the Office of the Parliamentary Ombudsman.

I request that you send your replies, addressed to the Ombudsman, by 28.2.2013.

Ombudsman
Petri Jääskeläinen

Principal Legal Adviser
Pasi Pölönen