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DIŞİŞLERİ BAKANLIĞI
Siyaset Planlama Genel Müdür Yardımcılığı

Sayı : B.06.0.SPGY.0.0-026.21-2008/561091
Konu : Yazılı Soru Önergesi/Hulusi
Güvel

ÇOK İVEDİ

13 Nisan 2009

TBMM BAŞKANLIĞINA

İlgi: 22.12.2008 tarih ve A.01.0.GNS.0.10.00.02-10195 sayılı yazıları.

Adana Milletvekili Sayın Hulusi Güvel'in 7/6074 esas numaralı yazılı soru önergesinin cevabı ilişikte sunulmaktadır.

Saygılarımla arz ederim.

YILMAZ
Dışişleri Bakanlığı

Ek: 11 sayfa.

**ADANA MİLLETVEKİLİ HULUSİ GÜVEL'İN 7/6074 ESAS NO'LU YAZILI
SORU ÖNERGESİ**

SORULAR

Amerika Birleşik Devletleri Merkezi Haberalma Teşkilatı'nın (CIA) Afganistan'daki Taliban ve El Kaide tutuklularını yasadışı bir biçimde uçakla Guantanamo Üssü'ne taşımak için Türkiye'nin de aralarında bulunduğu birkaç ülkeye önceden bildirerek "acil durum" halinde iniş izni istediği, İspanyol El Pais gazetesinin ortaya çıkardığı belgeye dayanarak iddia edilmiş ve bu iddialar ulusal basınımızda yer almıştır.

Bu itibarla;

1. Uluslararası Af Örgütü ve diğer insan hakları örgütlerinin raporlarına da yansıyan söz konusu iddialar Bakanlığınızca incelenmiş midir?
2. ABD uçaklarının Afganistan'dan Guantanamo üssüne yasadışı bir biçimde tutuklu taşımaları konusunda söz konusu ülke nezdinde Bakanlığınızca herhangi bir girişimde bulunulmuş mudur?
3. ABD uçaklarının Türkiye'de bulunan bir üssü kullanarak Afganistan'dan Guantanamo üssüne yasadışı bir biçimde tutuklu taşınması taraf olduğumuz ikili ve uluslararası anlaşmalara uygun mudur?
4. Amerika Birleşik Devletleri Merkezi Haberalma Teşkilatı'nca (CIA) İncirlik üssünün bu şekilde kullanılmasını önlemek amacıyla Bakanlığınızca alınan herhangi bir önlem mevcut mudur?

CEVAP

İncirlik Üssü'nün kullanımı çerçevesindeki tüm faaliyetler, ilgili anlaşmalara uygun olarak sürdürülmektedir. İncirlik Üssü'nde bulunan yabancı askeri unsurlar da, yine aynı şekilde ilgili uluslararası anlaşmaların çizdiği çerçeve içinde görev yapmaktadır.

Afganistan'daki Taliban ve El Kaide tutuklularının yasadışı bir biçimde uçakla Guantanamo Üssü'ne taşındığı yolundaki iddialara ilişkin olarak, Avrupa Konseyi Genel Sekreteri'nin üye ülkelerin yanıtlarına dayanarak hazırladığı rapor ve üye ülkelerin yanıtları 14 Haziran 2006 tarihinde yayınlanmıştır. Bu çerçevede, ülkemiz tarafından verilen yanıtlara <http://www.coe.int/t/E/Com/Files/Events/2006-CIA/annexes2/Turquie.pdf> adresinden ulaşılması mümkün olup, bu yanıtların bir örneği de ihtiyaten ekte sunulmaktadır.

7 April 2006

**RESPONSE OF THE TURKISH GOVERNMENT TO THE REQUEST OF THE
SECRETARY GENERAL OF THE COUNCIL OF EUROPE
FOR FURTHER EXPLANATION IN ACCORDANCE WITH ARTICLE 52
OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

In response to the second letter of Mr. Terry Davis, Secretary General of the Council of Europe, dated 7 March 2006 requesting supplementary explanations within the context of the inquiry under Article 52 of the European Convention on Human Rights (ECHR) on the allegations of "secret detentions and rendition flights" in the Member States of the Council of Europe and of the manner in which the Member States ensure effective implementation of the provisions of the ECHR and its additional Protocols; the Government of the Republic of Turkey submits the following information:

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 (including available control mechanisms regarding national agencies and their applicability to foreign agencies)

Turkey has become party to almost all the core international instruments pertaining to fundamental rights and freedoms, including all of the seven principal international human rights treaties of the UN and 94 Conventions and Protocols of the Council of Europe particularly ECHR and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Fight against torture and ill-treatment has been a priority item on the Turkish Government's agenda. From the outset, the Government has adopted and carried out a "zero tolerance" policy for combating torture. In addition to the international mechanisms with which Turkey maintains full co-operation, effective national monitoring mechanisms have been set up to ensure full implementation.

A. Constitution

Necessary safeguards against arbitrary deprivation of liberty and torture or inhuman or degrading treatment or punishment are provided within the Turkish legislation. The protection of the individuals against arbitrary deprivation of liberty within the jurisdiction of the Republic of Turkey is under Constitutional guarantee.

1. According to Article 17 of the Constitution, no one shall be subjected to torture or ill-treatment; no one shall be subjected to penalties or treatment incompatible with human dignity.

2. According to Article 19 of the Constitution, everyone has the right to liberty and security of person.

No one shall be deprived of his or her liberty except in the following cases where procedure and conditions are prescribed by law: Execution of sentences restricting liberty and the implementation of security measures decided by the court order; apprehension or detention of an individual in line with a court ruling or an obligation upon him designated by law; execution of an order for the purpose of the educational supervision of a minor or for bringing him or her before the competent authority; execution of measures taken in conformity with the relevant legal provision for the treatment, education or correction in institutions of a person of unsound mind, an alcoholic or drug addict or vagrant or a person spreading contagious diseases, when such persons constitute a danger to the public, apprehension or detention of a person who enters or attempts to enter illegally into the country or for whom a deportation or extradition order has been issued.

Individuals against whom there is strong evidence of having committed an offence can be arrested by decision of a judge solely for the purposes of preventing escape, or preventing the destruction or alteration of evidence as well as in similar other circumstances which necessitate detention and are prescribed by law. Apprehension of a person without a decision by a judge shall be resorted to only in cases when a person is caught in the act of committing an offence or in cases where delay is likely to thwart the course of justice; the conditions for such acts shall be defined by law.

Individuals arrested or detained shall be promptly notified, and in all cases in writing, or orally, when the former is not possible, of the grounds for their arrest or detention and the charges against them; in cases of offences committed collectively this notification shall be made, at the latest, before the individual is brought before a judge.

The person arrested or detained shall be brought before a judge within at latest forty-eight hours and in the case of offences committed collectively within at most four days, excluding the time taken to send the individual to the court nearest to the place of arrest. No one can be deprived of his or her liberty without the decision of a judge after the expiry of the above-specified periods. These periods may be extended during a state of emergency, under martial law or in time of war.

The arrest or detention of a person shall be notified to next of kin immediately. Persons under detention shall have the right to request trial within a reasonable time or to be released during investigation or prosecution. Release may be made conditional to the presentation of an appropriate guarantee with a view to securing the presence of the person at the trial proceedings and the execution of the court sentence.

Persons deprived of their liberty under any circumstances are entitled to apply to the appropriate judicial authority for speedy conclusion of proceedings regarding their situation and for their release if the restriction placed upon them is not lawful.

Damage suffered by persons subjected to treatment contrary to the above-mentioned provisions shall be compensated by the State with respect to the general principles of the law on compensation.

B. Turkish Penal Code and other relevant legal provisions

1. Article 77 of Turkish Penal Code no.5237, defines the systematic act of deprivation of liberty based on political, philosophical, racial and religious motives towards particular part of the society as a crime against humanity.
2. According to Article 109 of the Turkish Penal Code, a person who illegally deprives another person's liberty shall be sentenced to imprisonment from one to five years. In case of involvement of a public official, by abuse of his duty or failure to adhere to legal procedures and conditions in this Code, the sentence shall be aggravated.
3. Articles 94-96 of the Turkish Penal Code introduce sanctions to the crimes of torture and ill-treatment.
4. According to Article 8 of the Turkish Penal Code, the crimes which were committed within the jurisdiction (including the air space) of Turkey are subject to Turkish laws.
5. Article 12 of the Turkish Penal Code sets out the conditions for the trial of foreigners. According to Article 13, torture is considered among "universal crimes" and regardless of the place and the offender's citizenship prescribes the application of Turkish laws.
6. According to Article 141 of the Turkish Code of Criminal Procedure no.5271, a person who is exposed to a detention or imprisonment contrary to the conditions set out in Article 100 of the Code, has the right to request compensation from the State.
7. The above-mentioned safeguards and principles are also guaranteed within the laws and regulations in the field of military justice.
8. There is no specifically established parliamentary mechanism in respect of activities of foreign intelligence services within the Turkish Grand National Assembly (TGNA).

However, Human Rights Inquiry Commission of the TGNA established by Law No. 3686 of 5 December 1990, functions basically as a parliamentary monitoring mechanism with respect to allegations of human rights violations. A 25-member body where all political party groups and independent deputies are proportionately represented according to their seats, the Commission examines the extent to which human rights practices in Turkey comply with the requirements of the Constitution, national legislation and international conventions to which Turkey is a party.

The Commission receives and examines applications from individuals relating to alleged violations of human rights and conveys its findings to competent government bodies for action. The Commission possesses extensive powers of investigation and, in the performance of its duties, is empowered to request information from Ministries and other

governmental departments, local authorities, universities and other public institutions as well as private establishments, to conduct inquiries on their premises and to invite the representatives of these bodies to appear before it and provide information. The Commission also conducts, when it deems necessary, on-site inspections in detention centres and prisons. While discharging its duties, it functions also in cooperation with relevant NGOs.

The Commission is also tasked with proposing legislative amendments to ensure the alignment of the national legislation with the international conventions on human rights to which Turkey is a party. The Commission submits to the Presidency of the TGNA annual and *ad hoc* reports concerning the issues within its mandate and the discharge of its duties. These reports may be included in the agenda of the General Assembly of the TGNA. The Commission's reports are submitted also to the Prime Ministry and to the related ministries.

C. Activities of Foreign Intelligence and/or Other Officials in Turkey

Foreign intelligence services under no circumstances have the authority to take unilateral actions within the territory of the Republic of Turkey.

Cooperation between different intelligence services is carried out within the legal context of their mandates. Turkish National Intelligence Organization (MIT) may establish relationship with the third country intelligence services if it is deemed necessary in terms of national interests. The framework of this cooperation is determined by the Protocols/Memorandum of Understandings which are based on common interests. This cooperation can under no circumstances comprise any elements contrary to the legislation in force.

Deprivation of liberty of persons is solely initiated and executed by the judicial authorities in accordance with the legal regulations as well as bilateral agreements and multilateral conventions such as European Convention on Mutual Assistance in Criminal Matters and European Convention on Extradition. Officials of another State may observe the act of deprivation of liberty only with the consent of the judicial authorities. However, foreign officials are not entitled to conduct and/or actively participate in this process.

D. Regulations Under the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces (London, 19 June 1951)

The control mechanism in relation to the activities of the foreign military personnel deployed in the territory of the Republic of Turkey under the Agreement between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces is established in Article VII of the said Agreement:

"1. Subject to the provisions of this Article,

a) the military authorities of the sending State shall have the right to exercise within the receiving State all criminal and disciplinary jurisdiction conferred on them by the law of the sending State over all persons subject to the military law of that State;

b) the authorities of the receiving State shall have jurisdiction over the members of a force or civilian component and their dependents with respect to offences committed within the territory of the receiving State and punishable by the law of that State.

2. (a) The military authorities of the sending State shall have the right to exercise exclusive jurisdiction over persons subject to the military law of that State with respect to offences, including offences relating to its security, punishable by the law of the sending State, but not by the law of the receiving State.

b) The authorities of the receiving State shall have the right to exercise exclusive jurisdiction over members of a force or civilian component and their dependents with respect to offences, including offences relating to the security of that State, punishable by its law but not by the law of the sending State.

c) For the purposes of this paragraph and of paragraph 3 of this Article a security offence against a State shall include

i) treason against the State

ii) sabotage, espionage or violation of any law relating to official secrets of that State, or secrets relating to the national defense of that State.

3. In cases where the right to exercise jurisdiction is concurrent the following rules shall apply:

a) The military authorities of the sending State shall have the primary right to exercise jurisdiction over a member of a force or of a civilian component in relation to

i) offences solely against the property or security of that State, or offences solely against the person or property of another member of the force or civilian component of that State or of a dependent;

ii) offences arising out of any act or omission done in the performance of official duty.

b) In the case of any other offence the authorities of the receiving State shall have the primary right to exercise jurisdiction.

c) If the State having the primary right decides not to exercise jurisdiction, it shall notify the authorities of the other State as soon as practicable. The authorities of the State having the primary right shall give sympathetic consideration to a request from the authorities of the other State for a waiver of its right in cases where that other State considers such waiver to be of particular importance.

4. The foregoing provisions of this Article shall not imply any right for the military authorities of the sending State to exercise jurisdiction over persons who are nationals of or ordinarily resident in the receiving State, unless they are members of the force of the sending State...."

The institutional human rights mechanisms which were established within the framework of the reform process launched in 2001 in Turkey constitute a milestone in the administrative approach to the allegations of human rights violations. These mechanisms play a distinctive role not only in scrutinizing the application of each individual but also in raising awareness within the society of the obligation of the State to protect their human rights and fundamental freedoms.

Prime Ministry Human Rights Department:

Established in April 2001 as an affiliate of the Prime Ministry, the **Human Rights Department** is mainly responsible for coordinating the work of various government agencies in the field of human rights. The Human Rights Department monitors the implementation of the legislative provisions related to the protection of human rights with a view to ensuring the alignment of the national legislation with the international human rights conventions to which Turkey is a party.

Another important task assigned to the Department is to receive and examine applications from individuals relating to alleged violations of human rights. The Department received 354 applications in 2004 and 547 applications in 2005. The increase being more of an indication of the rising awareness on the part of citizens with respect to the existence of such a remedy. In addition, the Department is also responsible for the coordination of the in-service training in the field of human rights of members of relevant official bodies. The Department also functions as the secretariat of both the Human Rights High Council and the Human Rights Advisory Council.

Human Rights High Council

Human rights issues within the Government are spearheaded by the Human Rights High Council. It is chaired by the Minister responsible for human rights (currently the Deputy Prime Minister and the Minister of Foreign Affairs) and comprises the undersecretaries of the Prime Ministry as well as the Ministries of Foreign Affairs, Justice, the Interior, National Education, Labour and Social Security, and Health. The High Council is mainly responsible for preparing and proposing draft legislative and administrative regulations aiming at the better promotion and protection of human rights. It also makes recommendations for the alignment of the current legislation and of the draft legislative proposals with universal standards and the international commitments of Turkey with respect to the protection of human rights.

Human Rights Advisory Council

The Human Rights Advisory Council is a consultative body which consists of high-level government officials, representatives of NGOs and professional associations, and human rights experts. As such, it constitutes a permanent forum which regularly brings the representatives of the Government and of the civil society and which ensures the active participation of NGOs in the decision-making process. The Advisory Council reports to the Human Rights High Council and functions as a consultative body with regard to national and international issues concerning human rights. The Council drafts recommendations for the consideration of the Government with regard to human rights policy and matters related to implementation.

Human Rights Inquiry Delegations

The Law No. 4643 which set up the Human Rights High Council, the Human Rights Advisory Council and the Human Rights Department also provides for the establishment of Human Rights Inquiry Delegations, composed of representatives of official and non-governmental bodies, which investigate local allegations regarding human rights violations and report their findings to relevant authorities.

Human Rights Board

The Human Rights Boards which were first created in 2000 and which have now been established in all the 81 provinces and 850 districts throughout the country are entrusted with receiving and investigating complaints and allegations of human rights abuses, and thereafter transmitting their findings to competent authorities for administrative and/or legal action. They also take measures for the prevention of all forms of discrimination and launch programmes for human rights education at the local level.

Human Rights Boards are composed of at least 16 members including representatives of academic institutions, bar associations, medical chambers, trade and industry unions, NGOs, media as well as local administrations. An amendment introduced in 2003 restricted the number of government officials represented in each Board to two and ended the representation of the gendarmerie and the police. The Human Rights Boards received 493 applications in 2004 and 830 applications in 2005 submitted on allegations of human rights violations. The sharp increase in the number of applications submitted during the 2004-2005 period is more of an indication of the rising awareness on the part of citizens with respect to the existence of such remedies than a presumable rise in the number of human rights violations.

Control mechanisms regarding transiting aircraft which may be used for rendition purposes by foreign agencies and whether and to what extent your authorities may exercise jurisdiction over such aircraft

General information on flight permissions

The procedures which are required to be implemented for the flights conducted by the third country air planes to another country are established in the second part of the Chicago Convention concerning the flights which will be made over the member States' land and are determined in detail by ICAO rules. Pursuant to ICAO rules, each country has announced the rules which are required to be complied with within its own airspace by Aeronautical Information Publication-AIP.

In this context, the planes are first distinguished as state aircraft and civil aircraft according to Article 3 of the Convention and the flights made by the civil aircrafts are branched off as scheduled and unscheduled in Articles 5 and 6.

According to Article 6 of the Convention, scheduled flights are conducted within the context of the rights granted pursuant to Bilateral Civil Aviation Agreements signed between countries. An airline which will organize scheduled cargo or passenger flights should be first designated by its own authorities and later, its schedule has to be acknowledged by the authorities of the country of destination. The planes which carry out scheduled flights are not required to obtain additional permission later.

According to Article 5 of the Convention, all non-scheduled flight aircrafts must take prior permission, for over flight, landing and take-off. Small passenger aircrafts may take permission after take-off by contacting the relevant traffic control unit. Before take-off, all other aircraft must notify the authorities of the relevant state, over which they will fly or on which they will land or from which they will take off in accordance with the flight plan. They must indicate the permission number in the said plan and must take off after they take confirmation from the aviation authorities of all states in the itinerary.

Civil aircraft carrying cargo and passengers shall take necessary permissions directly from civil aviation authorities while civil aircraft and all state (military or civil) aircraft carrying VIP shall take necessary permissions through diplomatic channels.

The above-mentioned practice of the Turkish State concerning the said permissions are announced in detail on page GEN 1.2-4 of AIP prepared in accordance with the Turkish Civil Aviation Law.

According to Article 29 of the Chicago Convention, there must be lists containing detailed information regarding passenger names, landing and take-off points, and cargo in all international flight aircrafts.

The flight plan which is required to be filled before take-off under Annex 2 entitled "Rules of the air" to Chicago Convention includes, among others, information on the number of passengers in passenger flights, contents of the cargo which should be in accordance with the restrictions imposed by Article 35 of the Chicago Convention in cargo flights and the identity of the VIP in VIP flights. Before giving permission to the flights in question, if needed, further information may be requested concerning the identities of passengers or the

content of the cargo or it may be requested in advance for certain flights that this information be furnished in Section 18 entitled "Other Terms" of the flight plan.

Concerning routine military flights, it is possible that restricted block permission be given for a certain period of time. In such cases, it is not necessary to take permission before the flight and the flight takes place on condition that the block permission number is entered into the flight plan. In any case, the plan must be approved before the flight.

Aircrafts which may be used by foreign agencies

Within the context of the above-mentioned procedures, it is possible for an aircraft belonging to a foreign intelligence service to fly with civil registration and without notifying the identities of passengers. Request of information concerning the identities of passengers or search of aircraft in line with the right arising from Article 16 of the Chicago Convention is carried out only upon the presence of a serious doubt and/or denunciation as passengers who enter into or depart from the territory of our State by the aircrafts in question are in any case subject to customs and passport inspection.

The tasks and services set out in the National Civil Aviation Security Programme and the standards of ICAO are implemented by the Ministry of the Interior and the Ministry of Transport. Ministry of the Interior is responsible from the security of the airports. In case of a denunciation of an illegal act, airport authorities may take action by informing the Ministry of the Interior. Deputy Governor of the Province which the airport is located is responsible for the coordination of the law enforcement agencies and ensuring the security of the airport.

Furthermore, there are certain provisions regarding the security controls within the Bilateral Civil Aviation Agreements.

Specific control systems derived from multilateral regulations such as Safety Assessment of Foreign Aircraft Programme (SAFA), Universal Safety Oversight Audit Programme (USOAP), European Commission's Directive 2003/42/EC regarding SAFA controls are also applied.

On the other hand, as it was seen in most of the members of the Council of Europe, there were some media reports also in Turkey recently alleging that a number of civil aircrafts allegedly belonging to CIA has landed to Turkish airports or used Turkish air space for transiting.

Turkish national agencies have reached no findings regarding any unacknowledged deprivation of liberty conducted by foreign agencies within the territory of the Republic of Turkey or any transportation by aircraft or otherwise of the persons deprived of their liberty. It should be stressed that Turkish national agencies have not established any kind of cooperation with foreign intelligence services in this respect. On the other hand, there were no prior information that would lead the Turkish authorities to launch an official investigation.

Whether any official investigations are underway and/or have been completed into whether, in the period running from 1 January 2002 until the present, any public official or other person acting in an official capacity has been involved in any manner – whether by action or omission – in the unacknowledged deprivation of liberty of any individual while so deprived of their liberty, including where such deprivation of liberty may have occurred by or at the instigation of any foreign agency.

In response to the last question of the inquiry regarding any involvement of public official and the investigations carried out in this respect, it can clearly be stated in accordance with the records of the relevant Turkish authorities that no public official or other person acting in an official capacity has been involved in any manner in the unacknowledged deprivation of liberty, including the ones that may have occurred by or at the instigation of a foreign agency within the specified period.

Furthermore, it is concluded that there is no any official investigation of any kind either underway or completed.