



Permanent Representation of Poland to the Council of Europe

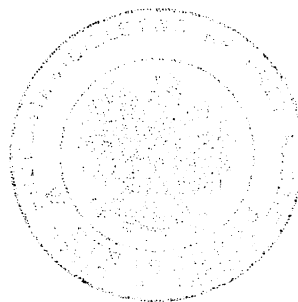
SPRE - 10/15/06

The Permanent Representation of Poland to the Council of Europe presents its compliments to the Secretary General of the Council of Europe and has the honour to transmit a letter of Mr Witold Waszczykowski, Undersecretary of State in the Ministry of Foreign Affairs of the Republic of Poland, containing the reply to the additional questions addressed by the Secretary General of the Council of Europe in his letter of 7th March 2006.

The Permanent Representation of Poland to the Council of Europe avails itself of this opportunity to renew to the Secretary General the assurances of its high consideration.

Strasbourg, 22 March 2006

The Secretary General
of the Council of Europe





Republic of Poland
Ministry of Foreign Affairs
Undersecretary of State
Witold Waszczykowski

Warsaw, 10 March 2006

Mr. Terry Davies
Secretary General of the Council of Europe

Excellency,

I am writing to you after having studied your very substantial report under Article 52 ECHR which you published on the basis of the replies from all Member States on your question.

I would like to underline an excellent expertise, balanced conclusions and important proposals for the farther standard setting process, presented in your report.

In a spirit of our good cooperation, I address you hoping that this additional explanation could change some criticism, concerning Poland's reply which you expressed.

1. I would like to add the information which also the Head of the Polish delegation to the Parliamentary Assembly, Mr. Karol Karski, passed the 9th of March to Mr. Dick Marty: The findings of the Polish Government's internal enquiry into the alleged existence in Poland of secret detention centers and related over flights fully deny the allegations in the debate.

2. Allow me also to clarify the misunderstanding which occurred in the mean time concerning Poland's position expressed on allegations. According to my knowledge based on the above mentioned findings of the enquiry, the official Polish statements should be understood in a sense that it has not been in that matter any facts in Poland in contravention of the internal laws, or international treaties and conventions, to which our State is a party.

3. Allow me as well to complete and clarify the explanation, given in our reply with regard to the question on the activities of foreign agencies on the territory of the Republic of Poland (subject of the report paragraphs 35 – 41).

We stated in our letter of February, 17th: "With reference to the responsibility for the commitment of an offence it should be noted that under Article 5 of the Penal Code, the Polish judicial organs have jurisdiction with respect to any prohibited act committed within the territory of the Republic of Poland, or on a Polish vessel or aircraft, unless an international agreement to which Poland is a party stipulates otherwise." It means that any

person, including members of Polish and foreign agencies, is under the same jurisdiction of Polish Penal Code, without any differentiation.

We can clarify it farther in a following way: the activities of foreign agencies on the Polish territory could be either to the detriment of Poland's interests or in cooperation with our services. In the first case, we quoted an Article 130 of the Polish Penal Code, prohibiting and punishing the activities of foreign intelligence agencies to the detriment of the Republic of Poland. In the second case, we informed that general "civil supervision (of Poland's intelligence), both by Parliament and Government,...also controls the Polish Foreign Intelligence Agency in matters relating to its cooperation with partner secret services of other States."

It is necessary to add that, according to the Polish Ministry of Justice' opinion, no one international agreement to which Poland is a party could exclude members of civil foreign agency from the above described principle and practice of Polish jurisdiction. Exemptions in that regard in favor of the foreign states, envisaged in the NATO – SOFA Agreement, are applicable only to members of the armed forces or of their civilian staff, and only in specified cases, assuring the adequate law enforcement.

Please accept, Mr. Secretary General, the above additional explanation in response to your question and to our previous reply.

With the assurances of my highest consideration

Yours sincerely,

Witold Warynski