

Reykjavik, Iceland, 7 January 2008

Dear Mr. President and Vice-Presidents.

At the Standing Committee Meeting of the Parliamentary Assembly of the Council of Europe (PACE) held 28th of November 2008 in Madrid, a current affairs debate took place at the request of the Icelandic Delegation. The topic was the decision of the Government of the United Kingdom (UK) on the 8th of October 2008 to apply its Anti-Terrorism Act 2001 against Landsbanki, an Icelandic bank in the UK, and related actions and statements.

Request: In accordance with Rule 52.5 which states that the Bureau "may propose that the subject be referred to the appropriate committee for report", the Icelandic Delegation hereby kindly requests your support at the upcoming PACE Bureau meeting on 9th January in Barcelona to have the subject of the current affairs debate referred to the **Committee on Legal Affairs and Human Rights for report**. The Committee might on the basis of its report consider the desirability of referring the matter to the **Committee on Economic Affairs and Development for an opinion** as well as the **Committee on the Honouring of Obligations and Commitments by member states of the Council of Europe**.

Background: Application of the UK Anti-Terrorism Act in response to a financial crisis

On the 8 October 2008 the UK Treasury issued the *Landsbanki Freezing Order 2008* in exercise of powers under section 4 of the UK Anti-Terrorism, Crime and Security Act 2001. This Order freezes the assets of the Icelandic bank, Landsbanki, in the UK. This was done without prior consultation with the Government of Iceland or the owners of the bank in question.

The application of these measures **raises two serious issues:**

- (1) The question of necessity and proportionality
- (2) The question of applying legislation, which principally addresses terrorism, in circumstances that have nothing do with terrorism.

Firstly, there is the issue of necessity and proportionality in relation to the threat which the UK Government sought to address. The Freezing Order immediately imposed restrictions on free movement of capital, and thus interfered with protected property rights and continues to have a negative effect on the Icelandic Government, the Icelandic banks (including Landsbanki), their depositors, Icelandic businesses and the wider Icelandic economy.

The UK Finance Minister (Alistair Darling) stated in a radio interview by way of explanation for issuing the Order that "the Icelandic government ... have told me yesterday they have no intention of honouring their obligations." A transcript of the discussion referred to by the UK Finance Minister shows this claim to be unfounded.

Even had the Chancellor's explanation been accurate, it would not have been sufficient to justify the making of the Freezing Order. Subsequently, the UK Finance Ministry referred to a

systemic threat to the economic or financial stability of the UK – though this was a bank whose deposits constituted a maximum of 0.5% of the total number of deposits in the UK. The application of these measures constitutes a breach of article 1 of Protocol 1 to the European Convention on Human Rights (ECHR), on the protection of property. The Freezing Order neither fulfils the requirement of necessity nor that of proportionality, provided for in article 1.

Secondly, there is the issue of basing such measure on legislation which principally addresses terrorism. The Order placed Landsbanki on a list of terrorist and criminal organisations, or regimes supporting such activities. Landsbanki is still listed on the same list at the website of the UK Treasury. This continues to cause confusion among financial market operators and to make it very difficult for Icelandic companies to go about their ordinary business. The confusion manifested itself in a critical disruption of currency transactions to and from Iceland seriously hurting the reputation and interest of Icelandic companies in the UK and elsewhere.

Counter-terrorism measures must take place with full respect for international law, including human rights. Human rights experts have continually warned of the dangers to human rights of untrammelled anti-terrorist measures. Mr. Martin Scheinin the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, has indeed stated that “Britain’s use of anti-terror laws to freeze the assets of failing Icelandic banks shows how such legislation can be abused for purposes other than originally intended”.

It is vital that all governments - in particular those which present themselves as leaders in the field of human rights, permanent members of the UN Security Council and current members of the UN Human Rights Council - adopt and apply anti-terrorist legislation carefully and precisely. Anti-terrorist legislation is by nature Draconian – justified by the seriousness of the terrorist threat. But by the same token, governments which misapply terrorist legislation risk the credibility of their anti-terrorism measures as a whole – both with their public and with their international partners.

In addition to the freezing order, the UK subsidiary of Landsbanki was forcefully taken into administration on October 8th, again without consultation. On the same day, the UK Treasury used the Banking Act of 2008 to put into administration another unrelated bank, Singer & Friedlander, a UK based subsidiary of Kaupthing, the largest bank in Iceland. The putting into administration of Singer & Friedlander, while other banks based in the UK were assisted financially, was both unfounded and constituted a clear breach of the principle of non-discrimination. Kaupthing was expected to survive the financial crisis, but the UK action against Singer & Friedlander contributed to the downfall of the global Kaupthing corporation.

The detrimental effect of applying anti-terrorism legislation against a friendly ally was reinforced by less than friendly words from UK Prime Minister Gordon Brown on 10 October 2008 made to the BBC in which he said, “We are freezing the assets of Icelandic companies in the UK where we can. We will take further action against the Icelandic authorities wherever that is necessary to recover the money.”

Subsequent to these events, the grave financial situation in Iceland was aggravated to the point of collapse of the entire financial system and economic devastation forcing the Icelandic

Government to apply for an emergency loan from the International Monetary Fund, the first western country to do so in more than 30 years.

In light of the above, the Delegation of Iceland requests to have the subject of the current affairs debate at the Standing Committee of the 28th of November referred to the Committee on Legal Affairs and Human Rights for report.

Suggested elements of a Report of the Committee on Legal Affairs and Human Rights

Among the points the report could focus on are the following:

First, to give an overview of anti-terrorism legislation in force in the member states of the Council of Europe.

Second, to identify clearly and separate out provisions of anti-terrorism legislation directly related to the threat of terrorism on the one hand and other kinds of threats on the other hand.

Third, to compile information on the use of such legislation with an eye towards potential abuse tested against the commitments of the member states of the Council of Europe to respect human and democratic rights and the principles of rule of law. This could also be tested against the Council of Europe Guidelines on Human Rights and the Fight against Terrorism, not least the principles on prohibition of arbitrariness and lawfulness of anti-terrorism measures.

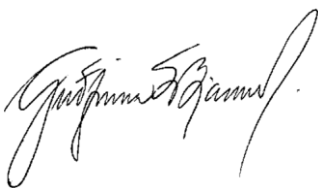
Fourth, to make a recommendation to all member states to clearly separate between responses to the threat of terrorism and responses to different kind of threats such as threats to financial or economic stability. The aim of the recommendation would be to avoid unintended consequences of not having a clear separation thus risking disproportionate harm to an individual, organization or a state and thereby undermining the common fight against the threat of terrorism.

Fifth, a proposal could be made that the Council of Ministers (or a steering committee) examine and/or monitor the application of national anti-terrorist legislation to non-terrorist acts.

A comprehensive and well-founded analysis could be helpful in order to gather lessons learned and possibly to inform the issuance of guidelines that might be helpful to deal with problems arising in such crisis situation in the future.

Sincerely,

On behalf of the Icelandic Delegation to the Parliamentary Assembly of the Council of Europe,



Mrs. Guðfinna S. Bjarnadóttir, Chairperson