



JANUARY 2009

COUNTRY SUMMARY

European Union

The process of improving human rights protections in European Union law stalled in June 2008, a consequence of the Lisbon Treaty being rejected by referendum in Ireland. The treaty would make the EU party to the European Convention on Human Rights, and the Charter of Fundamental Rights of the European Union binding in EU law. At present, EU institutions are not explicitly bound by the convention, unlike individual EU member states.

The European Union and leading member states continue to pursue counterterrorism measures that violate human rights. National security removals despite the risk of ill-treatment on return, inadequate safeguards in detention, and curbs on freedom of expression and the right to privacy, are among the key concerns.

Migration and asylum policies remain focused on keeping irregular migrants, including children, out of the EU and removing those who are present rather than ensuring their rights are protected. Racist and xenophobic incidents and policies, particularly affecting the Roma and Sinti, Jewish, and Muslim populations, as well as migrants, were an issue in a number of EU states.

Counterterrorism Measures and Human Rights

The EU Council approved in April an amendment to the EU Framework Decision on Combating Terrorism, introducing new offenses of provocation (intended to give effect to provisions in the Council of Europe Convention on the Prevention of Terrorism), and terrorist recruitment and training, including when committed over the internet. The provocation offense gives rise to concern about criminalization of speech with little connection to terrorism. In September the European Parliament recommended narrowing the amendment, so that only speech intended to directly incite specific terrorism offenses is criminalized.

The lack of safeguards in the EU's implementation of United Nations financial measures against terrorism was highlighted in September, when the European Court of Justice ruled in the case of *Kadi* that the inability of non-EU nationals whose assets are frozen to effectively challenge the decision violates the right to a fair hearing. This reversed the finding of the EU's Court of First Instance that the binding nature of the measures imposed by the UN Security Council, outweighed human rights obligations.

European Union member states continued to seek the expulsion of terrorism suspects, including through the use of diplomatic assurances, to a risk of torture or other prohibited ill-treatment on return, despite opposition from the courts, human rights bodies, and NGOs. In February 2008 the European Court of Human Rights unanimously reaffirmed the absolute prohibition on return to torture or other prohibited ill-treatment in its judgment in *Saadi v. Italy*, which concerned Italy's attempted expulsion of a terrorism suspect to Tunisia, with the use of assurances. It rejected a submission by the United Kingdom government to allow risk of ill-treatment on return to be balanced against a threat to national security. It also rejected the notion that diplomatic assurances necessarily constitute a guarantee against torture.

Earlier allegations in Parliamentary Assembly of the Council of Europe (PACE) and European Parliament reports of CIA renditions programs having used secret detention centers in Poland and Romania were finally being addressed in Poland, but Romania has taken no significant steps. In August, at the request of Polish Prime Minister Donald Tusk, the public prosecutor initiated an investigation into the allegations. Critics are concerned that the scope and powers of the investigation will not be sufficient to address serious allegations of torture and other human rights abuses.

Common EU Asylum and Migration Policy

A "European Pact on Immigration," adopted by the European Council in October, was the centerpiece of the migration focus under France's EU Presidency in the latter half of 2008. The non-binding pact foresees stricter controls on family reunification for migrants and calls on EU states to pursue expulsion, paying migrants to return home,

and readmission agreements with countries of origin, to remove irregular migrants. The pact raises concerns about its potential impact on the right to family life and the prohibition on return to a risk of persecution or ill-treatment.

The continued focus of EU migration policy on border enforcement rather than human rights protection was reflected in the €30 million increase to the 2008 budget for the EU border control agency, Frontex. At this writing, the Frontex operation “Hera” during 2008 has “deterred” or “diverted” back to West Africa 4,373 undocumented migrants heading to the Canary Islands.

In June the European Parliament adopted the controversial Council Directive on common standards and procedures in Member States for returning illegally staying third-country nationals, known as the Returns Directive. The measure, which will come into effect in 2010, permits the detention of undocumented migrants and failed asylum seekers, including unaccompanied children, for up to 18 months and allows for a five-year ban on reentry. In October 2008 the UN High Commissioner for Human Rights criticized the detention periods in the directive as excessive and an erosion of the right to liberty for migrants.

Human Rights Concerns in EU Member States

France

Reviews by the UN Human Rights Council in May under Universal Periodic Review and the Human Rights Committee in July identified serious human rights concerns with France’s counterterrorism law and policy. The Human Rights Committee called on France to end the practice of denying terrorism suspects in police custody access to a lawyer for 72 hours after arrest and not informing them of their right to remain silent.

The lack of an automatically suspensive appeal against expulsion in cases involving national security was identified as a particular problem; since it can result in the removal of suspects at risk of torture or ill-treatment before any appeal is determined (a similar concern applies in asylum cases subject to expedited procedures). In April the European Court of Human Rights ordered France to suspend the national security

deportation of Kamel Daoudi to Algeria, highlighting the need for an effective in-country procedure.

In a welcome development, France ratified the Optional Protocol to the UN Convention against Torture in July, following the appointment in June of France's first Inspector General of Places of Detention (fulfilling a protocol obligation).

A law adopted in February allows certain former violent offenders to be detained for renewable one-year periods of preventive detention after they have served their prison sentence. This undermines the presumption of innocence, the right to liberty, and the right not to be punished twice for the same crime.

In June France's top administrative court, the Conseil d'Etat, denied citizenship to a Moroccan Muslim woman married to a French man on the grounds that her "radical" religious practices (including wearing the niqab) were incompatible with French values, in particular that of gender equality.

Germany

The German Constitutional Court gave important rulings in February and March that laws relating to surveillance and the storing of internet and telephone data disproportionately restrict the right to privacy. Changes to the law governing Germany's federal criminal police operations adopted by the Bundestag (lower house) in November would allow investigators to use intrusive surveillance techniques on terrorism suspects based on generalized suspicion; the changes are pending before the Bundesrat (upper house) at this writing. Employment-based restrictions continue on teachers and other civil servants wearing the headscarf, despite concerns that the measures discriminate on the grounds of religion, with courts in three states upholding headscarf bans for teachers since December 2007.

The European Center for Constitutional and Human Rights, an NGO, filed a lawsuit against the German government at the Berlin Administrative Court in June for its failure to formally request the extradition of 13 CIA agents who had been charged in Germany for involvement in the kidnapping of Khaled el-Masri, a German citizen of

Lebanese descent apprehended in Macedonia and flown to Afghanistan, where he was imprisoned for five months and tortured.

An attempt by Germany to extradite to Turkey Hassan Atmaca, a refugee suspected of links to the Kurdistan Workers Party, using diplomatic assurances, is subject to a pending appeal to the European Court of Human Rights. Challenges in German courts to deportation proceedings against two Tunisian national security suspects using assurances are pending at this writing.

Following an August review of Germany, the United Nations Committee on the Elimination of Racial Discrimination noted an increase in reported racism-related incidents against members of the Jewish, Muslim, and Roma and Sinti communities, as well as German nationals of foreign origin and asylum seekers (in particular Africans), and called for “more resolute action” to prevent and punish the perpetrators. Germany is due to be reviewed under the Universal Periodic Review mechanism of the UN Human Rights Council in February 2009.

Greece

In April the UN High Commissioner for Refugees (UNHCR) leveled sharp criticism at Greek asylum and detention policies and recommended that other European states not return asylum seekers to Greece, a blow to EU rules that asylum claims should generally be heard in the first EU country entered, and that reception conditions and asylum procedures must meet common standards. UNHCR said that asylum seekers in Greece “often lack the most basic entitlements, such as interpreters and legal aid, to ensure that their claims receive adequate scrutiny from the asylum authorities.” Greece recognized only 1.2 percent of asylum claims at first instance in 2007.

Greek police systematically arrest migrants on Greek territory, including a large proportion of Iraqis, detain them for days without providing legally required registration, and in some cases beat or otherwise ill-treat them. Migrants are regularly forcibly and secretly expelled to Turkey without consideration of their protection needs.

Around 1,000 unaccompanied children entered Greece in 2008, the majority from Afghanistan. There were numerous examples of such children being beaten and kicked by Greek coastguard, police, and port police officers upon interception at the border or during arrest and detention. Children are often detained together with adults. Most fail to seek asylum, lack status, and are at risk of deportation. Many live outside sponsored care and are exploited in dangerous working conditions. Unaccompanied girls in particular are at high-risk of falling into the hands of trafficking networks.

Italy

Silvio Berlusconi was reelected prime minister in April, gaining a clear majority in both houses of parliament. His government in July declared a national state of emergency in relation to undocumented migration. As a result, undocumented status in Italy is now a crime punishable by up to four years in prison as well as being an aggravating factor for other crimes, increasing associated prison sentences.

In a memorandum in July, Council of Europe Commissioner for Human Rights Thomas Hammarberg criticized the rise of racist and xenophobic incidents in Italy as well as increased discrimination against Roma and Sinti in government policies.

Against a backdrop of vigilante incidents, including two attacks in which Roma camps were destroyed by petrol bombs in May, and public concern about several violent crimes allegedly perpetrated by Roma individuals, the government declared a state of emergency for “nomad communities” (code for Roma) in the Campania, Lazio, and Lombardy regions, giving local authorities special powers including to conduct censuses and to raid and dismantle Roma camps. In July a lawsuit was filed in Italy challenging the legality of these measures and the European Parliament adopted a resolution calling on Italy to stop fingerprinting Roma including children. The European Commission muted its criticism of the policy following assurances from the Italian government that it was not collecting ethnic data.

The trial of 26 US citizens and 7 Italian citizens for the abduction in Milan and rendition to Egypt of the Egyptian cleric Hassan Mustafa Osama Nasr, known as Abu Omar, resumed in March, amid allegations that the government had acted

“disloyally” in pursuing a claim before the Constitutional Court that the Milan prosecutors’ office violated state secrecy laws in the conduct of the investigation. In October the court agreed to hear arguments on the state secrets claims in a closed hearing scheduled for March 2009. Also in October the Court of Cassation confirmed the conviction of Rabei Osman for links to the March 2004 Madrid train bombings.

Despite the ruling in *Saadi v. Italy*, Italy expelled Essid Sami Ben Khemais to Tunisia in June, in breach of interim measures issued by the European Court of Human Rights requesting that Italy suspend the expulsion until the court had considered the case. This drew criticism from Commissioner Hammarberg. The Italian authorities justified the expulsion on the grounds that they had obtained diplomatic assurances from the Tunisian government guaranteeing that Ben Khemais would not be tortured and would receive a fair trial. At this writing, the case is pending before the European Court of Human Rights.

Migrants continue to die attempting to reach Italy by sea in unseaworthy boats. The trials of seven Tunisian fishermen for abetting illegal immigration after they rescued 44 migrants and brought them to safety on Lampedusa, an island off Sicily, were ongoing at this writing. There are fears that such prosecutions risk discouraging rescues at sea and exacerbate the dangers for migrants attempting the crossing.

Malta

Malta continued to be criticized for its failure to rescue migrants in distress at sea and unwillingness to allow ships carrying migrants rescued at sea to enter its ports. More than a thousand migrants reached Malta in 2008. In August, 71 migrants drowned in the Mediterranean Sea when their dinghy capsized; eight survivors were rescued by a fishing vessel. The Maltese government has been calling for “burden sharing” among EU states on irregular migration.

Migrants, including children, who come to Malta are held in closed detention centers for up to 18 months while their claims are processed. Detention facilities for migrants in Malta were criticized in a PACE report in May. An investigation ordered by the Maltese government into allegations of ill-treatment against detainees involved in a

disturbance in the Safi detention center in March concluded that there had been excessive use of force by staff, but failed to identify those responsible.

The Netherlands

A bill on administrative measures for national security aimed at preventing acts of terrorism passed the House of Representatives in March 2007 and is pending before the Senate at this writing. It contains provisions severely limiting the freedom of movement and right to privacy of persons suspected of being “connected to” or supporting terrorist activities. The bill has been criticized by rights groups for its lack of clear definitions and the absence of judicial supervision over such measures.

In January 2008 the Hague Appeals Court refused to characterize the militant Hofstad network as a “terrorist group” when it cleared seven men, including Mohammed Bouyeri, the murderer of Dutch filmmaker Theo Van Gogh, of the charge of belonging to a terrorist group. In October the Amsterdam Appeals Court upheld the conviction of Samir Azzouz and four others on terrorism charges.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment in a February report expressed concern about the placement of terrorism suspects in special high-security “terrorist departments” in prisons, the conditions of which it considered so strict as to amount to de facto isolation.

There were successful court challenges to discriminatory law and policies restricting the ability of legal residents to bring family members into the Netherlands from non-Western countries. In July Amsterdam’s district court ruled that it is unlawful to require migrants from certain countries wishing to join relatives in the Netherlands to pass an integration test demonstrating knowledge of Dutch language and society before being allowed into the country, although it did not determine whether the policy violates human rights law. The test, which disproportionately affects Moroccan and Turkish Muslim migrants, has been criticized by Dutch MPs and NGOs. Earlier the same month, a court in Roermond overturned a related law requiring residents wishing to bring a non-Dutch spouse to the Netherlands to earn at least

120 percent of the minimum wage. The Ministry of Justice is appealing both rulings, and policies are the subject of an ongoing government review.

Poland

Government expressions of homophobia remain a problem. In March, in a nationally televised speech, President Lech Kaczynski threatened to block ratification of the Lisbon Treaty, claiming that the Charter of Fundamental Rights of the European Union would force Poland to legally recognize same-sex relationships.

Reproductive rights remain extremely limited, with lack of sex education and limited access to contraceptives. Access to safe and legal abortion is severely restricted by law, which criminalizes abortion in most circumstances. The law also protects a doctor's right to refuse to provide abortion services for reasons of "conscience." As a result, there is a high incidence of illegal and generally unsafe abortions, jeopardizing women's health and lives.

Spain

Following the reelection of Jose Luis Rodriguez Zapatero as prime minister in March, the Spanish cabinet contained equal numbers of men and women for the first time, including a female minister of defense.

In September the Supreme Court overturned the convictions of four of the 21 people found guilty in 2007 in relation to the Madrid train bombings of 2004. It also convicted one Spanish man who had previously been acquitted of providing the explosives for the attack. In October the same court acquitted 14 of 20 men convicted in February for plotting a bomb attack on the Audiencia Nacional, Spain's counterterrorism court.

In addition to ongoing cases involving international terrorism, there were a number of attacks by the Basque separatist group ETA and arrests of alleged ETA members throughout 2008, as well as ongoing prosecutions of individuals and groups allegedly connected to ETA.

In May the UN special rapporteur on the protection and promotion of human rights while countering terrorism, Martin Scheinin, issued a series of recommendations to the Spanish government, highlighting the need for the “complete eradication” of incommunicado detention and for a review of overly-broad terrorism offenses. These concerns were echoed by the Human Rights Committee in its Concluding Observations in October.

Scheinin also criticized the use of diplomatic assurances in an extradition case to Russia. In February the Audiencia Nacional had approved the extradition of Chechen Murat Ajmedovich Gasaev on the basis of diplomatic assurances from Russia that he would be treated humanely. At this writing Gasaev is still in detention pending a decision from the Council of Ministers on whether to go ahead with the extradition.

In May an Audiencia Nacional judge ordered the government to provide detailed information about stopovers of US military planes in Spain on their way to or from Guantanamo Bay between 2002 and 2007. The Ministry of Defense responded in September that US military flights to Guantanamo had passed through Spain but asserted that none carried passengers or cargo that could be “controversial.” The judge requested further information.

An unrelated request by a different judge in the same court for the transfer of Jamil El-Banna and Omar Deghayes from the UK to stand trial in Spain for terrorism offenses following their release from Guantanamo was dropped in March.

There continued to be a marked drop in arrivals by sea of irregular migrants—down 8 percent in the first eight months of 2008 compared to the same period in 2007 and down 64 percent since 2006, according to Spain’s Interior Ministry. In September-October 2008, however, Spanish authorities intercepted two boats off the Canary Islands containing a total of 329 irregular migrants, including children.

The Spanish Ombudsman confirmed reports of ill-treatment and criticized inadequate care facilities for unaccompanied migrant children in the Canary Islands. The Spanish government continued to push for the return of unaccompanied children to Senegal and Morocco without adequate safeguards. More than two dozen

court decisions blocked children's repatriations because the repatriation decisions did not comply with Spanish or international law.

United Kingdom

Serious human rights concerns about the UK's counterterrorism law and practice were raised by international bodies during 2008, including the UN Human Rights Committee, the UN Human Rights Council under its Universal Periodic Review, and the Council of Europe.

Following a crushing defeat in the House of Lords, the government withdrew from a draft counterterrorism bill measures extending pre-charge detention for terrorism suspects from 28 to 42 days. It also removed a proposal to allow inquests in secret on national security grounds. The government has said that it may reintroduce both proposals, widely criticized as incompatible with human rights law, in future bills. At this writing, the bill includes the power to impose blanket lifelong notification requirements for individuals convicted of terrorism offenses in the UK or abroad, breach of which would be a criminal offense.

The Court of Appeal overturned a number of convictions for terrorism offenses. In February it quashed a 2007 conviction of five students under section 57 of the Terrorism Act 2000 for downloading and sharing material considered to be terrorism-related. The court ruled that the offense requires proof of intent that the material is for a terrorist purpose. In July the court reversed the November 2007 conviction of Samina Malik under section 58 of the Terrorism Act 2000 for possession of information useful to terrorists. The ruling followed a separate February 2008 Court of Appeal decision that section 58 does not apply to mere propaganda.

In May a staff member and a graduate student at Nottingham University, Hicham Yezza and Rizwaan Sabir, were arrested for possessing a document ("the Al Qaida Manual") freely available on the internet. They were detained for six days before being released without charge. The case raises concerns about the impact of terrorism legislation on academic freedom.

In September the inquest opened into the killing of Jean Charles de Menezes, an innocent man, by police officers during a counterterrorism operation in July 2005.

UK courts continued to block attempts to deport terrorism suspects on the basis of diplomatic assurances. In April 2008 the Court of Appeal ruled that Omar Othman, (known as Abu Qatada) could not be deported to Jordan, on the grounds that torture evidence would be used against him at trial. He was subsequently released on bail from a high-security prison on strict security conditions including a 22-hour curfew. In October the Law Lords considered the appeal court's ruling in *Othman*, and a second appeal about removals to Algeria using assurances. It has yet to deliver a judgment in either case at this writing.

The Court of Appeal blocked the deportation of two Libyans to Libya in April, ruling that a memorandum of understanding with Libya was unreliable, and finding that the men would face a "complete" denial of fair trial if they were returned. The UK government is not appealing the ruling on Libya.

The use of the British Indian Ocean territory of Diego Garcia as part of the US renditions program was confirmed. In February CIA Director Michael Hayden admitted that the US had used Diego Garcia twice to refuel aircraft taking terrorism suspects to Guantanamo Bay and Morocco in 2002. The UK government maintains that it had not given consent for or been informed of this use of Diego Garcia.

In August 2008 the High Court ruled that the Foreign and Commonwealth Office should in principle disclose material in its possession that would assist the lawyers of Binyam Mohamed, a former UK resident facing trial before a military commission at Guantanamo Bay, in demonstrating that confessions used in evidence against him had been extracted through torture and were therefore inadmissible at trial. At this writing, a further hearing to consider national security arguments against disclosure has been adjourned pending the outcome of US proceedings in which the US government has been directed to hand over the materials. In October the home secretary asked the attorney general to investigate possible criminal wrongdoing by the UK Security Service and the CIA in Mohamed's treatment.

During a review by the UN Committee for the Rights of the Child in September, the UK government announced that it would withdraw its reservation to the Convention on the Rights of the Child in immigration cases. The committee welcomed the announcement but expressed regret that the best interests of the child are not given primary consideration in the areas of juvenile justice, immigration, freedom of movement, and peaceful assembly.