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Europe: Treatment of refugees and asylum seekers

Everyone has the right to seek and enjoy in other countries asylum from persecution.

Article 14, Universal Declaration of Human Rights

The right to seek sanctuary from persecution is enshrined in international law. However on asylum provisions and the challenges of migration, governments continue to emphasize control and deterrence rather than protection. This document looks at new legislation and the treatment of refugees and asylum-seekers in a number of European countries.

Austria

On 15 October 2004, the Constitutional Court declared three articles of the 2004 Asylum Law unconstitutional. One article allowed asylum-seekers to be deported before a decision had been taken on their appeal. The second limited the possibility of presenting new evidence during a hearing, and the third allowed detention to be prolonged if an application was resubmitted. There were continuing concerns about asylum-seekers' lack of access to translators during medical examinations which failed to offer proper care. It was unclear who under the new asylum law had responsibility for the representation of unaccompanied minors seeking asylum.

There are reports of ill-treatment of asylum-seekers held in refugee camps. Amnesty International is concerned that mechanisms have not been put in place to ensure proper monitoring and accountability regarding facilities housing asylum-seekers; day-to-day responsibility for such facilities was outsourced to private companies in 2003. There is continuing concern at the lack of monitoring by the Austrian authorities to ensure that guarantees given prior to extradition are in fact adhered to by the receiving government. The willingness of the Austrian authorities to consider extradition requests before applications for asylum had been properly processed is also a cause of concern.

Cases

A Georgian asylum-seeker in the Traiskirchen Refugee Camp was allegedly ill-treated in February 2004 when he refused to leave the camp during asylum procedures. According to reports, he was wrestled to the ground by officials and had cigarettes stubbed out on his shoulder.

In February 2004, Akhmet A., a Russian citizen, was extradited to Russia, despite pending asylum determination procedures. There were concerns that the investigation by the Austrian authorities into the offences he allegedly committed in Russia -- which were the basis of the extradition request -- was inadequate. There were reports that Akhmet A. may have been ill-treated in pre-trial detention by Russian law enforcement officers following his return to Russia.

Belgium

Non-nationals are allegedly subjected to excessive force and cruel, inhuman and degrading treatment during deportation operations. In July 2004, the Human Rights Committee recommended that those responsible for carrying out deportations be better trained and monitored. The Committee also expressed concern about non-nationals being held in the transit zone "under questionable sanitary and social conditions". It considered such practices "akin to arbitrary detention which can lead to inhuman and degrading treatment" and said that Belgium should end them immediately.

In 2004, some non-nationals, who had been denied access to Belgian territory on arrival at the airport and then held in detention centres for aliens by administrative order awaiting deportation, were released on court orders. In some cases such people were transferred directly to the transit zone of the national airport under police escort, on the orders of the Aliens' Office attached to the Interior Ministry. They were then left for days or weeks, and occasionally months, effectively confined, without passports and access to legal advice, and without some of the basic means of survival such as food, fresh air and proper washing facilities. As a result, they were frequently forced to rely on the charity of passengers and airport staff.

Cases

A teenager from Guinea-Bissau who arrived at Brussels airport in November 2003 and made an immediate but unsuccessful asylum application, spent some eight months in detention centres for aliens. During this period he was subject to several deportation attempts. The courts twice ruled that he should be released, allowed to enter Belgian territory, and provided with a guardian and appropriate care in an institution where he would be protected as a minor. The Aliens' Office disputed that he was a minor, as he maintained, and eventually transferred him to the transit zone in the airport in July 2004, where he spent several days without food and sleeping facilities. Following interventions and publicity by domestic non-governmental organizations and the media, the Interior Minister ordered the boy's transfer to an open centre for asylum-seekers.

Finland

In June 2004, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published a report on its September 2003 visit to Finland. The CPT found that there was no coherent set of regulations on the use of force and means of restraint authorized during the deportation of non-nationals, and recommended that detailed instructions on the procedures to be followed be issued without delay.

Cases

In 2002, a Ukrainian married couple and their two children aged 11 and 12, were deported back to Ukraine after an operation lasting three days. Before being deported, they were held in a custody unit for aliens in Helsinki where sedative drugs were administered without proper examination by a doctor and without proper records being kept. The CPT described the approach taken in this case as unacceptable.

France

Conditions in reception centres or holding areas for non-nationals were reported to have fallen below international standards in many areas. In 2004, the Ombudsperson for Children expressed "extreme concern" about the situation of unaccompanied children placed in waiting zones before they were deported. Associations that assist refugees and asylum-seekers in border areas noted that the entry of such children was often systematically blocked. In a number of cases, children had been prevented from rejoining parents already in the country. In December, in a landmark decision, the Court of Appeal of Paris stated that holding areas should, for legal purposes, be considered as part of French territory and therefore that judges had competence to examine cases.

Cases

Four passengers on board a flight at Roissy-Charles-de-Gaulle airport in Paris in August 2004 faced

charges of interfering with air traffic and disturbing the peace after protesting about police brutality. They reported seeing French officers hitting a national of Mali who was being forcibly deported. In September 2004, the Court of Appeal of Paris ordered that there was no case to answer in the death of Ricardo Barrientos, an Argentinian national, who died while being forcibly deported in December 2002. On an aircraft destined for Buenos Aires, he had reportedly been bent double, his hands cuffed behind his back, and his torso, thighs and ankles bound with Velcro tape, while two police officers and three gendarmes applied continuous pressure to his shoulder blades. He had a mask over his face and was covered with a blanket, which hid him from other passengers and prevented him appealing for help. He collapsed before the aircraft's doors were closed. The court decided that Ricardo Barrientos had not been subjected to "acts of violence leading unintentionally to death", as the charge maintained, because the officers had only been obeying orders to keep him under restraint. The court found that his death was attributable exclusively to natural causes arising from a heart condition. The judgment did not alleviate concerns that the methods of restraint used during the deportation failed to comply with international standards.

Germany

Under regulations of the Immigration Act 2004, victims of human rights abuses committed by non-state actors and victims of gender-based human rights violations would be eligible for recognition as refugees. However, many of the new provisions appear to undermine the rights of asylum-seekers and of people without residence permits.

Greece

Coastguards and police, including border police, are allegedly trying to discourage undocumented migrants from entering Greek territory, thus violating international standards. Such practices include interception on the Turkish border and immediate expulsion, refusal to accept applications for asylum, and failure to make available such applications to migrants. In August 2004, migrants who had been detained for three months on the island of Samos reported conditions of detention that contravened international standards. Concerns were also raised by the UN High Commissioner for Refugees (UNHCR) following a visit to the detention centre. In September 2004, 10 migrants were reportedly ill-treated by members of commando forces on Farmakonisi. On 15 October the same year, five coastguards were found guilty of torturing a group of immigrants on the island of Crete in June 2001, and received suspended prison sentences.

Cases

A Sudanese national was at risk of forcible return to the conflict-torn Darfur region of Sudan from where he had fled in 2003 because the Ministry of Public Order refused to re-examine his case. He had been detained on his arrival in Greece in June 2003 and released three months later. He lived without welfare support in Greece until October 2003, when he travelled to the UK and claimed asylum. The UK authorities determined that Greece was responsible for deciding on his asylum claim and he was returned to Greece in June 2004. His new asylum application was rejected on the grounds that he had left Greece. A decision to deport him was issued. A new application based on fresh information about the situation in Darfur was declared inadmissible. It is not known whether he has been deported.

Last November, 502 children, the majority from Albania, were reported to have gone missing between 1998 and 2002 from a state-run children's home in Athens, where they were being sheltered after being taken off the streets by police. Many of the children were apparently victims of traffickers who forced them to sell trinkets or beg. The children had reportedly not been adequately protected at the home and little, or no effort, was made by the Greek authorities to find them. Despite the intervention of several non-governmental organizations and the Albanian Ombudsman, the Greek authorities had not undertaken a thorough and impartial judicial investigation into the case, although a preliminary police inquiry was launched in May 2004.

Last December police officers were reported to have tortured and ill-treated a group of around 60 asylum-seekers from Afghanistan, at least 17 of whom were under 18 years old. Police reportedly punched, kicked, sexually abused and threatened them with guns both in their homes and at the local

police station in Athens.

There were reports that 186 children aged between 13 and 16 were among the approximately 700 refugees held in the Reception and Temporary Accommodation Centre for illegal immigrants in the Pagani area of Lesbos in extremely overcrowded conditions. As many as 200 people were reportedly crowded into rooms meant to accommodate 80. Most of the refugee children were believed to come from Iraq and Afghanistan and had arrived in Greek territory unaccompanied.

Ireland

The Immigration Act 2004 is fundamentally flawed in its lack of respect for internationally recognized human rights. There is no independent human rights monitoring of immigration controls at ports of entry. Concern heightened throughout 2004 about the status and entitlement of migrant workers, including their rights to family reunion, and to be provided with a means of appeal against a deportation order. The 27th Amendment to the Constitution was passed in 2004, removing the constitutional guarantee of citizenship for people born in Ireland who do not have a parent with Irish citizenship. Family members of children with Irish citizenship, who were not themselves Irish nationals, faced the retrospective application of changed government policy to deny them automatic residency. Such families are not entitled to legal aid when applying to remain on humanitarian grounds. According to official figures, by October 2004, 32 parents of Irish children had been deported, and another 352 had been issued with deportation orders. Concern remained that the best interests of the child were not sufficiently being taken into account in deportation decisions. In October a decision by the European Court of Justice confirmed the rights of children, who are citizens of the European Union (EU), to the care and company of their parents in the EU. In December, the government announced revised arrangements for processing claims from the non-national parents of Irish children born before 1 January 2005.

Italy

There is still no specific and comprehensive law on asylum. A draft law still falls short of relevant international standards. The protection for asylum-seekers offered under certain provisions of immigration legislation does not guarantee access to a fair and impartial individual asylum determination procedure. Many people in need of protection are forced to return to countries where they are at risk of grave human rights violations. Because of excessive delays in the asylum determination process, combined with inadequate provision for the basic needs of asylum-seekers, many people are left destitute while awaiting the outcome of initial asylum applications.

Thousands of migrants and asylum-seekers continue to arrive on southern shores by boat and hundreds of others perish in the attempt. Many such boats set out from Libya. In 2005, Italy forcibly returned to Libya people arriving by boat on the Sicilian island of Lampedusa. Italy's actions are in breach of the country's obligations under the UN Refugee Convention by not allowing those who may have a valid asylum claim to be properly assessed. According to Protocol 4 to the European Convention on Human Rights, the Italian government is prohibited from expelling entire groups of people, without properly considering each individual's situation.

Thousands of non-nationals without a right of residence in Italy, or suspected of not having such a right, are detained in temporary holding centres where they can remain for up to a maximum of 60 days before expulsion from the country as illegal immigrants or release. Many inmates experience difficulties in gaining access to the expert advice necessary to challenge the legality of their detention and of expulsion orders. Tension in the centres is high, with frequent protests, including escape attempts, and high levels of self-harm. The holding centres are often overcrowded, with unsuitable infrastructures, unhygienic living conditions, unsatisfactory diets and inadequate medical care.

Cases

In 2004, 25 asylum-seekers were expelled to Ghana. They were among a group of 37 people who had been allowed, on humanitarian grounds and after considerable delay, to disembark from a boat belonging to a German non-governmental organization.

In January 2004, a Roman Catholic priest employed as the director of Regina Pacis temporary

holding centre in Puglia province, two doctors, five members of the administrative personnel, and 11 carabinieri providing the centre's security service, were ordered to stand trial in connection with the physical assault and racial abuse of inmates in November 2002.

Last year, the Bologna Public Prosecutor concluded a criminal investigation into allegations that some 11 police officers, one carabinieri and a member of the Red Cross administration running the via Mattei holding centre were involved in a physical assault on inmates in March 2003. The Prosecutor indicated that he would be requesting the committal for trial of at least four police officers.

On 17 March 2005, the Italian authorities forcibly returned 180 people to Libya, where they may be at risk of torture. Despite strong protests by various organizations including the UNHCR, Italy is reportedly planning further deportations. The authorities appear to be rushing to deport people from Lampedusa, and are doing so without proper scrutiny of the individual cases.

Lithuania

In May 2004, the UN Human Rights Committee expressed concern at information that asylum-seekers from certain countries were prevented from requesting asylum at the border; that the criteria for detaining asylum-seekers in "exceptional circumstances" remained unclear; and at the low percentage of applicants granted asylum in recent years. The Committee recommended that Lithuania ensure access to the domestic asylum procedure for all asylum-seekers, irrespective of their country of origin, and provide information on the criteria for detention.

Malta

Hundreds of asylum-seekers and migrants arrive by boat and an unknown number have died in the seas around Malta while attempting to reach Europe. By the end of 2004, over 800 people, including women and children, were held in detention centres run by the police and armed forces. Many were held on grounds beyond those permissible under international norms. In February 2004, the Council of Europe's Commissioner for Human Rights issued a report on his 2003 visit. He expressed concern about the policy of automatic detention until the conclusion of refugee determination proceedings or return to country of origin. In January 2005, Amnesty International called for a prompt, thorough and impartial investigation into reports that members of the Maltese armed forces had subjected scores of asylum-seekers and unauthorized migrants to physical assault resulting in numerous injuries.

Amendments to the Refugee and Immigration Acts in August 2004 provided for an increase in the resources available to the decision-making bodies and for inmates of detention centres to submit a request for conditional release on grounds that continued detention would be "unreasonable as regards duration or because there is no reasonable prospect of deportation within a reasonable time." However, no criteria were given for assessing what would constitute an "unreasonable" length of detention.

Cases

On 13 January 2005, over 90 inmates of a detention facility for aliens at Safi army barracks conducted a peaceful protest, refusing to re-enter the centre at the end of an exercise period. The inmates, some of whom had apparently been detained for over 18 months, were protesting about the length of their detention; lack of information about the progress of their applications for refugee status or humanitarian protection and, in the case of those whose applications for asylum had already been rejected, lack of information concerning their future. Eyewitnesses have reported that after the protestors refused an order to re-enter the barracks, soldiers, dressed in riot gear and armed with batons and shields, charged the peaceful protestors and subjected them to deliberate and gratuitous violence.

Switzerland

Changes to the asylum law which came into force in April 2004 included reducing the period within which many asylum-seekers could appeal against the rejection of their initial asylum applications from 30 to five days. The amendment affected those whose initial applications were rejected automatically, without individual examination, on grounds that the authorities categorized their country of origin as safe for return. The amendment does not allow rejected asylum-seekers sufficient time to access appropriate legal advice and lodge an appeal.

In November 2004 the government presented, for public consultation, a draft federal law regulating the use of means of restraint by police during deportations and during the transport of detainees ordered by a federal authority. The draft aims to make a number of essential safeguards for deportees legally binding, and bans any police restraint methods restricting breathing. However, there is a provision allowing the use of electro-shock weapons, including tasers.

United Kingdom

In 2004 legislation further restricted the right to appeal against a refusal to grant asylum, replacing the two-tier immigration appeals system with a single tier. The authorities' initial decision-making on asylum claims was frequently inadequate. Restrictions on public funds for immigration and asylum work left many asylum applicants without expert legal advice and representation.

In May 2004, the Court of Appeal of England and Wales ruled that legislation allowing the authorities to deny any support to adult asylum-seekers could not be reconciled with the UK's international human rights obligations.

Public Document

For more information please call Amnesty International's press office in London, UK, on +44 20 7413 5566

Amnesty International, 1 Easton St., London WC1X 0DW. web: <http://www.amnesty.org>

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