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*Summary of Amnesty International's Concerns in the Region, July – December 2005*

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# Europe and Central Asia

## Summary of Amnesty International's Concerns in the Region

### July – December 2005

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#### FOREWORD

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This bulletin contains information about Amnesty International's main concerns in Europe and Central Asia between July and December 2005. Not every country in the region is reported on; only those where there were significant developments in the period covered by the bulletin, or where Amnesty International (AI) took specific action.

A number of individual country reports have been issued on the concerns featured in this bulletin. References to these are made under the relevant country entry. In addition, more detailed information about particular incidents or concerns may be found in Urgent Actions and News Service Items issued by AI.

This bulletin is published by AI every six months. References to previous bulletins in the text are:

AI Index EUR 01/01/98	Concerns in Europe: July - December 1997
AI Index EUR 01/02/98	Concerns in Europe: January - June 1998
AI Index EUR 01/01/99	Concerns in Europe: July - December 1998
AI Index EUR 01/02/99	Concerns in Europe: January - June 1999
AI Index EUR 01/01/00	Concerns in Europe: July - December 1999
AI Index EUR 01/03/00	Concerns in Europe: January - June 2000
AI Index EUR 01/001/2001	Concerns in Europe: July - December 2000
AI Index EUR 01/003/2001	Concerns in Europe: January-June 2001
AI Index EUR 01/002/2002	Concerns in Europe: July - December 2001
AI Index EUR 01/007/2002	Concerns in Europe: January – June 2002
AI Index EUR 01/002/2003	Concerns in Europe and Central Asia: July – December 2002
AI Index EUR 01/016/2003	Concerns in Europe and Central Asia: January – June 2003
AI Index EUR 01/001/2004	Concerns in Europe and Central Asia: July – December 2003
AI Index EUR 01/005/2004	Concerns in Europe and Central Asia: January – June 2004
AI Index EUR 01/002/2005	Concerns in Europe and Central Asia: July – December 2004

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## ALBANIA

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### Political developments

Following elections in July, the new government was sworn into office in September. The Democratic Party, led by Prime Minister Sali Berisha, held the majority of seats in the governing coalition.

### Police ill-treatment and torture

Reports of the ill-treatment and torture of detainees by law enforcement officers continued. The People's Advocate (Ombudsperson) reported that V.P. complained that on 9 November he had been punched and beaten with truncheons while being interrogated (in Tirana) by judicial police officers from Fier Police Station. A forensic medical examination certified that he had four bruises inflicted by a heavy instrument. The People's Advocate, after investigating this complaint, concluded that it was genuine and recommended that two or more police officers responsible for V.P.'s ill-treatment be prosecuted for committing "arbitrary acts".<sup>1</sup>

Novruz Hoxha reportedly alleged that police officers in Tirana had brutally beaten his son, Agron Hoxha after they arrested him in November (Agron Hoxha had earlier been sentenced *in absentia* to five and a half years' imprisonment and had taken on a false identity). Novruz Hoxha alleged that when he went to the police station to visit his son, he was given his son's clothes which were soaked in blood. He further alleged that

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<sup>1</sup> Annual Report of the People's Advocate for 2005; persons who send complaints to the People's Advocate are identified in its annual reports by initials only.

police had not permitted a lawyer to visit his son.

According to its Annual Report for 2005, the Office of the People's Advocate received many complaints from prisoners that they had been ill-treated by guards. After investigations, the People's Advocate concluded that guards had ill-treated prisoners at prison 302 on 6 November, and at Peqin prison on 24 December; however, many other such complaints were not substantiated.

On 16 November the People's Advocate recommended to the government that Article 86 of the Criminal Code, dealing with torture and other inhuman or degrading acts, be amended, so that its definition of torture would accord with the definition given in the Convention against Torture.

### Conditions of detention

Conditions of detention were generally harsh and characterized by overcrowding, poor hygiene, sanitation and diet, and inadequate medical care. In September the People's Advocate wrote to the authorities to urge that funds be assigned to provide food for people held in police custody. He emphasised that if their families did not bring them food, they could be held for up to three days without meals, apart from the left-overs from police officers' meals.

Conditions were especially poor in remand cells in police stations. In August police sources in Durrës expressed concern about overcrowding and lack of ventilation in cells, where detainees were sleeping on the floor for lack of room. The Albanian Helsinki Committee stated in December that during 2005 it had received 263 complaints from remand prisoners about their conditions of detention and treatment. It described conditions in Vlora remand centre as particularly harsh, with severe over-

crowding as a result of which some convicted prisoners continued to be held together with remand prisoners and sometimes children (between 14 and 17 years old), shared cells with adult detainees, in violation of domestic law. Conditions in prisons, though somewhat better, were also crowded. In December some prisoners in Peqin prison were reportedly sleeping on the floor for lack of sufficient beds. These conditions led to frequent protests by detainees.

### **Trafficking**

The Ministry of the Interior estimated that between 250 and 300 women and children were trafficked during 2005, while conceding that the figure might be somewhat higher; it stated that child victims of trafficking amounted to less than 10 per cent of the total. There were 332 prosecutions on charges of people trafficking, trafficking for prostitution and related crimes.

The Serious Crimes Court in July sentenced Xhevair Lusha (*in absentia*) to 18 years' imprisonment and Baftjar Gjana to 15 years, on a charge of trafficking two young women to Italy and Belgium where they were forced into prostitution. In December the same court ordered the confiscation of the property of Baftjar Gjana.

In October trial proceedings started against Hymet Kreka, Nazmi Kreka and Ziko Lena (the latter *in absentia*) before the Serious Crimes Court on a charge of trafficking babies to Greece.

In November the UN Special Rapporteur on the sale of children, child prostitution and child pornography, following a visit to Albania called on the authorities to "develop a national child protection system aimed at combating the poverty that drives exploitation".

### **Domestic violence against women**

Violence against women in the family was widespread; the Institute of Forensic Medicine in Tirana, which covers Tirana district, reportedly examined on average two cases involving domestic violence a day. However, most incidents of domestic violence went unreported. The victims, generally women, often did not make complaints against their partners, because of shame, fear of reprisal, a desire to maintain family unity, or lack of confidence in the efficacy of the courts, which rarely took into account a history of repeated domestic violence. In July Ildir Limani stabbed several times and seriously wounded his wife, who had returned to her parents because he frequently was violent to her. In November he was sentenced to three years and four months' imprisonment. His wife's parents wrote to the authorities, protesting that his sentence was too low.

There were signs of greater public awareness of this issue. In November a group of domestic non-governmental organizations began to collect signatures for a petition to parliament to pass a law which they had drafted "On measures against violence in family relations", aiming both to prevent such violence and to introduce procedures to give victims of domestic violence effective protection, as envisaged in the 2003 Family Code.

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## **BELARUS**

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### **International concern about human rights**

The international community continued to respond to human rights violations in Belarus. On 7 July, the European Parliament passed a non-binding resolution condemning human rights violations in Belarus, and calling on the European Union to consider extending

sanctions against Belarus' government in response to violations of media freedoms. On 16 September, the Committee on Legal Affairs and Human Rights of the Council of Europe Parliamentary Assembly (PACE) adopted a declaration condemning "the systematic and worsening campaign of intimidation and persecution of independent journalists and civil society activists in the Republic of Belarus".

**Freedom of expression, association and assembly (Update to AI Index: EUR01/012/2005)**

Human rights organizations, already severely hampered in their work by bureaucratic registration requirements and controversial guidelines, faced further obstructions. In July, a presidential decree limited the financial support such groups could receive from Belarusian organizations and donors. In August, international financial support for any activities that "aimed to change the constitutional order in Belarus, overthrow state power, interfere in internal affairs of the Republic of Belarus, or encourage the carrying out of such activities" was prohibited by amendment of a presidential decree of 22 October 2003. On 25 November, a set of amendments to the Criminal Code and the Criminal Procedural Code further limited freedom of expression and of association and assembly. For example, one amendment to article 193 of the Criminal Code introduced a penalty of up to three years' imprisonment for acting in the name of an unregistered organization. Another new article, on "discrediting the Republic of Belarus", allows criminal penalties for providing false information about the country to international organizations.

On 7 July police dispersed a demonstration to commemorate the anniversary of the "disappearance" of television camera operator Dmitry Zavadsky in 2000 (see AI Index: EUR

49/013/2002). Footage of the demonstration shows his wife, Svetlana Zavadskaya, being punched in the face by riot police officers. Svetlana Zavadskaya made a request to the district procuracy to start a criminal case against the police officer who had hit her, but the request was rejected on the grounds that Svetlana Zavadskaya had allegedly attacked the police officer first. An appeal to the Central District Court against the district procuracy decision was also rejected.

On 26 July, Andrei Pochebut, Yusef Pozhetsky and Mecheslav Yaskevits, three prominent members of the Union of Poles of Belarus, were detained by the authorities and later given 10 to 15-day sentences for protesting at government interference in the running of the Union. Police subsequently seized control of the Union headquarters. The three men were convicted of "participating in an illegal protest in Shchuchyn on July 3 and disobeying the orders of the police". The government had refused to acknowledge election results which removed government supporters from the leadership of the Union.

Two activists from the youth movement Khmara in Georgia, Luka Tsuladze and Giorgi Kandelaki, were detained on 24 August in Minsk, along with Uladzimir Kobets from Zubr, the Belarusian youth opposition movement. Uladzimir Kobets was released after two hours. Luka Tsuladze and Giorgi Kandelaki were held incommunicado without charge until 29 August when they were charged with "petty hooliganism" for allegedly swearing at a third inmate in their cell; they were given an administrative sentence of 15 days' imprisonment. Only on 30 August, six days after their detention, were they allowed access to a lawyer and to Georgian consular officials who travelled from Ukraine and Russia. AI believed that the two men were being held solely for their political activities, to

punish them for peacefully exercising their right to freedom of expression, and that the administrative charge against them had been fabricated. On 2 September, the Minsk city court overturned the earlier court decision and the two men were released (see AI Index: EUR 49/010/2005).

On 16 September, police attempted to disrupt a demonstration to observe the anniversary of the "disappearance" of opposition leaders Viktor Gonchar and Anatoly Krasovsky in 1999, and reportedly beat five Zubr protesters. One of them, Mikita Sasim, was treated in hospital for head injuries.

**Prisoners of conscience (updates to AI Index: EUR 01/001/2004 and AI Index: EUR 49/017/2004)**

On 5 August, Yury Bandazhevsky was conditionally released under an amnesty declared by President Alyaksandr Lukashenka to commemorate the end of the Second World War, after serving four years of an eight-year sentence. A former rector of Gomel State Medical Institute, he had been convicted in June 2001 of bribe-taking, although AI believes that the real reason for the prosecution was his criticism of official responses to the Chernobyl nuclear reactor catastrophe of 1986. He remained subject to restrictive conditions, among them reporting regularly to the police and being barred from any managerial or political functions. In addition he was required to pay a fine of 35 million Belarusian roubles (US\$17,000), the amount he was alleged to have taken in bribes, before being allowed to travel abroad.

Alexander Vasiliev was released from prison on 7 July under the same May amnesty. Alexander Vasiliev, the deputy president of the national strike committee of market traders, and Valery Levonevsky were sentenced to two years

in prison on 7 September 2004 for publicly insulting the president in a satirical leaflet. Valery Levonevsky remains in prison.

**Death penalty (update to AI Index: EUR 01/001/2004)**

In July, the deputy head of the presidential administration said that abolition of the death penalty "could be considered" once social and economic preconditions were in place. Despite this statement from the government, there were no moves to end the use of the death penalty, and there was no information about the number of executions carried out in 2005.

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## **BOSNIA-HERZEGOVINA**

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**General and political developments**

Bosnia and Herzegovina (BiH) remained divided in two semi-autonomous entities, the Republika Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH), with a special status granted to the Brčko District. The international community continued to exert significant influence over the political process in BiH, as part of the civilian implementation of the Dayton Peace Agreement, led by a High Representative whose nomination is proposed by the Peace Implementation Council and then endorsed by the UN Security Council (UNSC). Approximately 6,500 troops of the European Union (EU)-led peacekeeping force EUFOR remained in BiH to ensure the implementation of the Dayton Peace Agreement and to contribute to a safe and secure environment in BiH. In addition to EUFOR, about 150 North Atlantic Treaty Organisation (NATO) troops remained in the territory of BiH, reportedly to provide support to the International Criminal Tribunal for the former Yugoslavia (Tribunal) with regard to the detention of persons indicted for

war crimes, to combat terrorism and to assist the BiH authorities in defence reform. The European Union Police Mission, composed of approximately 400 police officers and other personnel, remained tasked with monitoring and supervising the activities of the local police.

Following an agreement reached in July by members of a defence reform commission, in October the BiH House of Peoples adopted a new Law on Defence of BiH and a Law on Service in the Armed Forces of BiH. The defence reform process envisages the abolition (from January 2006) of the entities' ministries of defence and the creation of a professional BiH army with unified command.

After delays, and under strong international pressure, the RS National Assembly voted in October to accept a proposed police reform envisaging the creation of a more integrated police force, with some police regions crossing the inter-entity boundary line. The failure to reach an agreement on police reform was the last remaining obstacle to the opening of negotiations for a Stabilisation and Association Agreement (SAA) between the EU and BiH; SAA negotiations began in November.

The special Human Rights Commission within the BiH Constitutional Court continued to deal with the backlog of cases registered with the BiH Human Rights Chamber before its closure in December 2003. Between July 2005 and December 2005 the Commission had resolved 1,657 applications while 2,696 remained pending.

### **War crimes and crimes against humanity (update to AI Index: EUR 01/012/2005)**

#### *International investigations and prosecutions*

The Tribunal continued to try alleged perpetrators of war crimes and crimes against humanity committed during the violent collapse of Yugoslavia. A total of six publicly indicted suspects remained at large at the end of December. Under the terms of the "completion strategy", laid down in UNSC Resolutions 1503 and 1534, the Tribunal had completed all investigations and indictments for war crimes, crimes against humanity and genocide at the end of 2004 and is expected to complete all trials including appeals, by 2010. Between July and December, the Tribunal decided the referral of cases involving seven accused to BiH in order to meet the tight deadline imposed by the "completion strategy". For six of the accused, an appeal on the decision to refer was still pending at the end of the period under review.

The trial continued of former president of the Federal Republic of Yugoslavia, Slobodan Milošević, who is accused of war crimes and crimes against humanity for his alleged involvement in the wars in Croatia, BiH and Kosovo. Slobodan Milošević is also accused of having planned, instigated, ordered, committed or otherwise aided and abetted genocide, in connection with his alleged role in the war in BiH.

In August Milan Lukić, a former member of a Bosnian Serb paramilitary group, indicted by the Tribunal for war crimes and crimes against humanity, including extermination, persecution, murder and inhumane acts, committed against the non-Serb population in the Višegrad area, was arrested in Argentina by the local police. The indictment *inter alia* alleges that the crime of persecution was

perpetrated, executed and carried out by and through the murder of Bosnian Muslims and other non-Serb civilians; the cruel and inhumane treatment of Bosnian Muslims and other non-Serb civilians including severe beatings over extended periods of time; the unlawful detention and confinement of Bosnian Muslims and other non-Serb civilians under inhumane conditions; the harassment, humiliation, terrorisation and psychological abuse of Bosnian Muslim and other non-Serb civilians; and the theft and destruction of personal property of Bosnian Muslims and other non-Serb civilians. Milan Lukić remained in detention in Argentina at the end of December.

Also in August, former sub-commander of the RS military police and paramilitary leader in Foča, Dragan Zelenović, jointly indicted with Gojko Janković on charges of torture and rape as war crimes and crimes against humanity committed against the non-Serb population in the city and municipality of Foča, was arrested in the Russian Federation, where he remained in detention at the end of the year.

In September Sredoje Lukić, jointly indicted with Milan Lukić for war crimes and crimes against humanity committed in the Višegrad area, voluntarily surrendered and was transferred to the Tribunal's custody.

In November Sefer Halilović, former Chief of the Main Staff of the Army of Bosnia and Herzegovina (Armija Bosne i Hercegovine, ABiH), suspected of murder as a war crime for the killing of non-Bosniaks (non-Muslims) in the villages of Uzdol and Grabovica, was acquitted on the grounds that it had not been established beyond reasonable doubt that he was either *de jure* or *de facto* commander during combat operations when the crimes were committed.

In December Miroslav Bralo, former member of the Croatian Defence Council, the Bosnian Croat armed forces (Hrvatsko vijeće obrane) was sentenced by the Tribunal to 20 years' imprisonment for crimes committed in 1993 in the Ahmići area against the non-Croat population. The Tribunal *inter alia* found that Miroslav Bralo and others participated in a surprise attack on the village of Ahmići, "with instructions to ethnically cleanse the village, to kill the Muslim men of military age, to burn all Muslim residences, and to expel all the Muslim residents from the village". In a plea agreement with the Prosecution Miroslav Bralo had pleaded guilty to charges of persecutions on political, racial and religious grounds, murder, torture, outrages upon personal dignity including rape, unlawful confinement, and inhuman treatment.

Cooperation between the RS authorities and the Tribunal remained inadequate. So far not a single person indicted by the Tribunal has been arrested by the RS police. In his address to the UNSC in December, the President of the Tribunal noted that despite encouraging signs, the cooperation of the RS with the Tribunal "remains insufficient" due to the failure to provide information that could lead to the arrest of Radovan Karadžić and Ratko Mladić. Radovan Karadžić and Ratko Mladić face charges, including of genocide, for their alleged role in crimes committed against the non-Serb population, including the mass executions of thousands of Bosniaks (Bosnian Muslims) in Srebrenica in 1995.

#### **Domestic investigations and prosecutions**

The domestic criminal justice system continued to fail to take steps to actively prosecute alleged perpetrators, despite the first convictions for war crimes in trials before RS courts. Victims and witnesses, particularly in proceedings

conducted at the entities' courts, remained without adequate protection from harassment, intimidation and threats. There continued to be concerns over the lack of financial and other resources needed to ensure the long-term sustainability of the War Crimes Chamber within the BiH State Court and to enable it to carry out its activities effectively. However, some trials for war crimes opened or continued before local courts.

In July Abduladhim Maktouf, a BiH citizen of Iraqi origin, was sentenced to five years' imprisonment for his role in the abduction, by foreign volunteers fighting on the side of Bosniak forces, of non-Bosniak civilians who were transferred and detained in a detention camp in Orašac. Detainees in the camp were beaten and ill-treated and one of them was beheaded. The sentence was quashed on appeal in November and a retrial was ordered.

In September the first trial before the War Crimes Chamber within the BiH State Court began. The accused, Boban Šimšić, is a former RS policeman suspected of having committed war crimes against the civilian population in the Višegrad area. Also in September, the BiH State Court confirmed the indictment against Dragoje Paunović, who is accused of crimes he allegedly committed in 1992 in the Rogatica area against the non-Serb population. In March Dragoje Paunović had voluntarily surrendered to the office of the Chief Prosecutor of the Sarajevo Canton and his case was subsequently transferred to the War Crimes Chamber.

In October Konstantin Simonović was found guilty by the Brčko Basic Court for war crimes against non-Serbs, including torture, detained in the Luka camp near Brčko.

In November, for the first time since the end of the war, a war crimes trial before a RS court against Bosnian Serb perpetrators ended with a conviction. The Banja Luka District Court sentenced former members of the RS police forces Drago Radaković, Draško Krndija and Radoslav Knežević to between 15 and 20 years' imprisonment for the murder of six Bosniak civilians in Prijedor in 1994.

In December Boro Krsmanović was sentenced by the Sarajevo Cantonal Court to four years' imprisonment for his role, as a member of Bosnian Serb forces, in attacks against villages in the Hadžići area and in crimes against the non-Serb population. The Banja Luka District Court sentenced former Bosnian Serb Army (Vojska Republike Srpske, VRS) member Nikola Dereta to 13 years' detention for the murder of one Bosniak civilian and the attempted murder of his father, in the village of Štrbine. Also in December, the Prosecution at the BiH State Court confirmed indictments against 11 Bosnian Serbs suspected of involvement in the Srebrenica massacre in 1995.

An investigation into the murder of Father Tomislav Matanović and his parents was reportedly still ongoing, led by the Banja Luka District Prosecutor. Father Tomislav Matanović, a Roman Catholic priest, and his parents had "disappeared" in 1995 and their bodies were found in 2001 near Prijedor, with close-range gunshot wounds. In February the Banja Luka District Court had acquitted 11 former police officers from Prijedor of charges of having illegally detained Father Tomislav Matanović and his parents in 1995. An appeal against the acquittal was pending at the end of the period under review.

**Unresolved 'disappearances' and Srebrenica commission (update to AI Index: EUR 01/012/2005)**

According to estimates of the International Commission on Missing Persons (ICMP), between 15,000 and 20,000 persons who went missing during the 1992-1995 war were still unaccounted for. Many of the missing were victims of "disappearances"; the perpetrators continued to enjoy impunity.

In a ceremony in July marking the tenth anniversary of the Srebrenica massacre, the remains of 610 victims were buried at the Potočari Memorial. At the end of the year the remains of approximately 5,000 victims had been recovered, and over 2,800 victims had been identified.

In August the BiH Council of Ministers became the co-founder, along with the ICMP, of a state-level Missing Persons Institute (MPI). The MPI is taking over the tasks of the two entity-level bodies tasked with conducting exhumation and identification procedures and determining the fate of those who went missing during the war.

In September a working group appointed by the RS to study documentation produced by the Srebrenica Commission presented a report to the High Representative which attempted to list all persons allegedly involved in crimes committed in Srebrenica in July 1995. The report was forwarded to the Office of the BiH Prosecutor. A first report of the working group, presented in March, was deemed unsatisfactory, for reasons including the failure of the RS Ministry of the Interior and Ministry of Defence to fully cooperate with the working group and to provide specific data on individuals deployed in military operations in Srebrenica in July 1995.

In September the Human Rights Commission within the BiH Constitutional Court concluded that a 2001 decision of the BiH Human Rights Chamber on the "disappearance" of Avdo Palić had not been implemented and ordered the RS to

ensure its implementation within three months. The Human Rights Chamber had ordered the RS to carry out a full investigation into the "disappearance" of Avdo Palić, with a view to bringing the perpetrators to justice, to securing the release of Avdo Palić, if still alive, or otherwise to making available his mortal remains to the family and to making all information and findings relating to his fate and whereabouts available to the family. ABiH Colonel Avdo Palić had "disappeared" after reportedly being forcibly taken by VRS soldiers from the UN Protection Force compound in Žepa on 27 July 1995. He had gone there to negotiate the evacuation of civilians from the town which had just surrendered to the VRS.

**Right to return in safety and with dignity (update to AI Index: EUR 01/012/2005)**

More than one million refugees and internally displaced persons (IDPs) have returned to their homes since the end of the 1992-95 war, from an estimated 2.2 million persons who had been displaced by the conflict. According to the UN High Commissioner for Refugees (UNHCR) field mission in BiH, in 2005 approximately 6,400 refugees and IDPs returned to their pre-war homes. Of these, approximately 5,800 were registered as minority returns.

Lack of access to employment continued to be a major factor in people's decision not to return to or remain in their pre-war community. Employment opportunities were scarce in general, reflecting the weak economic situation and difficulties of economic transition and post-war reconstruction. In addition, returnees faced discrimination on ethnic grounds when trying to find work and, in some cases, ethnically motivated harassment and attacks.

### UN Committee against Torture

In December the UN Committee against Torture (Committee) issued its concluding observations after considering BiH's initial report on measures to give effect to the rights enshrined in the Convention against Torture.

The Committee, with respect to acts of torture and ill-treatment committed during the war, expressed concern at: the reported failure by the BiH authorities to carry out prompt and impartial investigations, to prosecute the perpetrators and to provide fair and adequate compensation to victims; alleged discriminatory treatment in criminal proceedings whereby officials belonging to the ethnic majority often fail to prosecute alleged criminals belonging to the same ethnic group; reported harassment, intimidation and threats faced by witnesses and victims testifying in proceedings and the lack of adequate protection; the failure to recognize survivors of torture, including sexual violence, as victims of the conflict, a status which would enable them to obtain redress and exercise their right to fair and adequate compensation and rehabilitation; and the failure to cooperate adequately with the Tribunal, in particular on the part of the RS, by failing to arrest and transfer indicted persons.

The Committee called on BiH: to take effective measures to ensure prompt and impartial investigations into all allegations of torture and other cruel, inhuman or degrading treatment, the prosecution and punishment of the perpetrators, irrespective of their ethnic origin, and the provision of fair and adequate compensation for victims; to extend full cooperation to the Tribunal, *inter alia* by ensuring that all indicted persons are apprehended, arrested and transferred to the custody of the Tribunal, as well as by granting the Tribunal full

access to requested documents and potential witnesses; to provide information in connection with criminal proceedings, extending mutual judicial assistance to and cooperating with other relevant countries and the Tribunal; to enforce relevant legislation, including providing protection of witnesses and other participants in proceedings; to develop legal and other measures, enforceable throughout the State, including an official programme for the rehabilitation of victims of torture including sexual violence, providing them recognition as victims and the capacity to pursue redress and their right to fair and adequate compensation and rehabilitation.

Moreover, the Committee *inter alia* expressed concern at the lack of separate facilities for imprisoned men, women and children; and at reports of violence between prisoners and reported cases of sexual violence in prisons and places of detention. The Committee called on BiH to ensure that men, women and children are kept in separate facilities while in detention, to investigate promptly all allegations of violence within detention or prison establishments and to take measures to prevent such incidents.

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## CROATIA

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### General and political developments

In October, after the prosecutor of the International Criminal Tribunal for the former Yugoslavia (Tribunal) assessed that Croatia was fully cooperating with the Tribunal, the European Union (EU) Council decided to open membership talks with Croatia. The EU Council agreed that less than full cooperation with the Tribunal at any stage would affect the overall progress of the negotiations and could be grounds for their suspension. In March the EU Council had decided to delay accession negotiations with Croatia

due to the failure of the Croatian authorities to fully cooperate with the Tribunal.

**War crimes and crimes against humanity (update to AI Index: EUR 01/012/2005)**

*International prosecutions*

In November the case of Rahim Ademi and Mirko Norac was officially transferred by the Tribunal to Croatia. The Tribunal Prosecution had requested the transfer of the case to Croatia in 2004. Mirko Norac was already serving a prison sentence in Croatia after being convicted in 2003 by the Rijeka County Court of war crimes against non-Croat civilians. Both accused are former Croatian Army commanders and are charged of crimes against humanity and war crimes committed against Croatian Serbs during military operations in the so-called "Medak pocket" in 1993. The accused face charges of persecutions, plunder of property, wanton destruction of cities, towns and villages, and the murder of ethnic Serb civilians and captured and/or wounded soldiers.

In December Former Croatian Army General Ante Gotovina was arrested in Spain, apparently after the Croatian authorities had provided the Tribunal with information on his whereabouts. He was subsequently transferred to the custody of the Tribunal, where he remained in pre-trial detention. Ante Gotovina is indicted by the Tribunal on seven counts of persecutions, murder (including the murder of at least 150 Croatian Serbs by means of shooting, burning or stabbing), plunder of property, wanton destruction of cities, towns and villages, deportation and forced displacement and other inhumane acts allegedly committed in 1995 during Operation "Storm". The arrest of Ante Gotovina was followed by rallies and gatherings in support of him in various

Croatian cities, the largest of which saw the participation of an estimated 50,000 people in Split.

**Domestic prosecutions**

Trials for war crimes and crimes against humanity continued or started before local courts, often *in absentia*; the vast majority of such trials were against Croatian Serb defendants. There continued to be widespread impunity for crimes allegedly committed by members of the Croatian Army and police forces and reportedly no new prosecutions were initiated in such cases in the period under review, despite the opening, or reopening of investigations into cases of war-time murders of Croatian Serbs.

Proceedings continued against 27 Croatian Serbs, Roma and Ruthenians, 18 of whom are being tried *in absentia*, at the Vukovar County Court, in what is reportedly the biggest war crimes trial ever held in Croatia. The defendants, who face charges of genocide, are suspected of having committed in 1991 and 1992 crimes against the civilian population of the village of Mikluševci, near Vukovar. The trial had initially started in 2004 on the basis of an indictment issued in 1996 against 35 suspects and was suspended upon request of the prosecutor, after it was ascertained that eight of the accused named in the indictment had meanwhile died. The trial had restarted in April 2005.

In September the trial restarted at the Karlovac County Court of a former member of the Croatian special police on charges of having killed 13 disarmed Yugoslav People's Army reservists in 1991, by firing bursts from his machine gun. His earlier acquittal by the Karlovac County Court had been overturned by the Croatian Supreme Court in 2004. The retrial started at the Split County Court of eight former members of the Croatian Military Police, accused of having

tortured and murdered non-Croat detainees in Split's Lora military prison in 1992. Four of the accused are being tried *in absentia*. An initial trial held in 2002 ended with the acquittal verdict of all suspects, subsequently overturned by the Croatian Supreme Court

Also in September, five former members of a Croatian Ministry of the Interior reserve unit were convicted by the Zagreb County Court and sentenced to between three and 10 years of detention, for the murder of a man (whose identity remains unknown) and for having abducted and detained three Croatian Serbs resident in Zagreb who were later killed by unknown perpetrators in Pakračka poljana. Two of the accused went into hiding the day after the verdict was issued and remained at large at the end of the period under review.

In July an investigation was launched into murders and "disappearances" of Croatian Serb civilians in Osijek in 1991-92. In October two suspects, reportedly former members of the Croatian Army, were arrested on suspicion of involvement in the wartime murder of four Croatian Serbs. In December Anto Đapic, President of the Croatian Party of Rights and mayor of Osijek, disclosed to the media the names of 19 potential witnesses to crimes allegedly committed against Croatian Serbs in Osijek, leading to concerns about their safety and their willingness to testify in court. Also in December Drago Hedl, a journalist with the Croatian weekly *Feral Tribune* who has widely reported on war crimes committed against Croatian Serbs, including in Osijek, received an anonymous death threat and was reportedly offered protection by the Croatian police.

**Unresolved 'disappearances' (update to AI Index: EUR 01/012/2005)**

The Croatian Government Bureau for Detained and Missing Persons was still searching for approximately 1,100 missing persons, mostly from the first phase of the 1991-95 war. This figure did not include people, mostly Croatian Serbs, who went missing during military operations "Storm" and "Flash" in 1995 and who in many cases were victims of "disappearances" allegedly committed by members of the Croatian Army and police forces. The perpetrators of these crimes largely continued to enjoy impunity.

In August, after civil proceedings held at the Otočac Municipal Court, the family of Milan Škendžić, a "disappeared" Croatian Serb, was awarded 690,000 Kunas (approximately 95,000 Euros) in compensation for emotional distress. Milan Skendžić "disappeared" in 1991 after having been taken into the custody of the Croatian police; his fate and whereabouts remain unknown. The Otočac Municipal Court reportedly held that Milan Skendžić was arrested and detained because of his ethnicity and unsubstantiated allegations of involvement in "terrorist" activities.

**Right to return (update to AI Index: EUR 01/012/2005)**

Approximately 300,000 Croatian Serbs left Croatia during the 1991-95 war, of whom only approximately 120,000 are officially registered as having returned.

Croatian Serbs continued to be victims of discrimination in access to employment and in realising other economic and social rights. Many Croatian Serbs, especially those who formerly lived in urban areas, could not return because they had lost their tenancy rights to socially-owned apartments. During and after the war, the Croatian authorities discriminatorily applied against Croatian Serbs provisions ending the tenancy right, in those cases where the property had been vacated for six months. In applying

such provisions the Croatian authorities typically failed to take into consideration the circumstances of the war which may have forced Croatian Serbs to flee their homes or may have prevented them from remaining in their flat. These circumstances included violent attacks, harassment and discrimination and, in some cases, the forced eviction of Croatian Serbs by members of the Croatian Army and police forces.

Cases of violence and harassment by non-state actors against Croatian Serbs continued to be reported and appeared to have increased. These have included racist graffiti, assaults, threats, and other violent acts. The investigation into the murder in May of an elderly Croatian Serb man in Karin, near Zadar, was still ongoing at the end of the period under review. In August unknown perpetrators threw a bomb in the yard of a house owned by a Croatian Serb in the Imotski region, causing damage to the building. In October and November two Croatian Serb returnees were killed by explosive devices in a wood in the village of Jagma, in the Lipik municipality. The incidents raised particular concern since they occurred, under similar circumstances, in an area that was not considered affected by mines. The Croatian authorities were still investigating the incidents.

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## CYPRUS

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### **Detention and deportation of foreign nationals**

In July the Ombudsperson reported having received complaints from foreign nationals applying for asylum who said they had been detained in police stations, ill-treated and forced to sign declarations withdrawing their requests for asylum. The Ombudsperson cited one case, of an Iranian asylum-seeker who was arrested in February, detained for three months in Limassol police station and subsequently

expelled to Iran. In her report, the Ombudsperson said that his arrest and detention were arbitrary, and that the expulsion was in violation of the principle of *non-refoulement* – that those seeking asylum should not be forcibly returned to countries where they risked serious human rights abuses.

### **Excessive use of force**

On 18 July members of the special police Mobile Immediate Response Unit (known as MMAD) were alleged to have used excessive force against demonstrators and journalists at a picket by striking lorry drivers. In response to a complaint by the Union of Journalists, the Ombudsperson carried out an investigation. She concluded that the police had exhibited “unpardonable negligence” and that they failed to inform the strikers about their “intention to ensure, using any possible means, including violence, lorry access across the picket line”. The Ombudsperson also concluded that “the situation [which led to the beating and arrest of one cameraman in particular] was not of an intensity or gravity and did not bear a serious or direct danger such that would justify the involvement of the police officer in charge [as was the case]”. Her report recommended that the police reconsider their role in policing future demonstrations to ensure that the public’s rights to freedom of assembly and information were not compromised and that their actions during the policing of such demonstrations were not excessive.

### **Allegations of ill-treatment**

In the early morning of 20 December MP and YN, both aged 27, were arrested by MMAD officers in Nicosia after allegedly being suspected of drug dealing because they had been speaking through their car windows while the cars were stopped side by side in an empty street. The

officers, who were in plain clothes, reportedly dragged the two out of their cars after the men had refused to comply with search orders and had asked to examine the officers' identity cards. The two men were allegedly dragged onto the pavement, punched and kicked intermittently for about an hour by around five officers while being mocked by another eight officers from the special unit as well as from the special traffic unit (known as unit "Z") and the main police force. They were then taken to the Lycavitos police station and charged with resisting arrest and assaulting the police officers (the anti-drug squad which had been called to search the cars established that the suspicions of drug dealing were unfounded). MP was taken from the police station to hospital where he was diagnosed with cranial and arm fractures and kept in for treatment. YN, who also suffered a fractured arm, was taken to the detention area of the central prison and kept there until the next day.

### **Conscientious Objection**

On 1 July an amendment to the law on conscientious objection was placed before parliament for approval. The amendment reduced the length of alternative civilian service and recognized conscientious objection on ideological grounds (under the current law conscientious objector status is only granted on the basis of religious grounds). The law had not been approved by parliament by the end of 2005.

### **Visit of international experts**

Members of the Office of the Council of Europe's Commissioner for Human Rights, Alvaro Gil-Robles, visited Cyprus between 25 and 27 October in order to assess the authorities' progress in addressing the concerns raised by the Commissioner during a previous visit to the island in 2003. The expert members of his office

commended the authorities on the introduction of legislation to combat racial discrimination and human trafficking and to promote police accountability, but retained concerns about conditions of imprisonment, detention and deportation of migrants and asylum-seekers, the limitations of anti-trafficking policies, the lack of shelters for victims of domestic violence, the punitive length of alternative civilian service and the treatment of persons suffering from mental illness.

## **GEORGIA**

### **Torture and ill-treatment**

*UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*

In his September 2005 report covering his mission to Georgia in February 2005 the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concluded that "torture persists in Georgia, perpetuated primarily by a culture of impunity". He also noted certain positive steps taken by the authorities to combat torture and ill-treatment, but pointed out that "credible and reliable allegations of torture and ill-treatment continued to be received". Among other things, he recommended to the authorities of Georgia that "[j]udges and prosecutors [should] routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination"; that "[a]ny public official indicted for abuse or torture, including prosecutors and judges implicated in colluding in torture or ignoring evidence, be immediately suspended from duty pending trial, and prosecuted"; and that "[l]aw enforcement recruits undergo an extensive and thorough training curriculum that incorporates human

rights education throughout and that includes training in effective interrogation techniques and the proper use of police equipment, and that existing officers receive continuing education”.

**AI’s report Georgia: Torture and ill-treatment – still a concern after the “Rose Revolution”**

On 23 November AI published its report entitled *Georgia: Torture and ill-treatment – still a concern after the “Rose Revolution”* (AI Index: EUR 56/001/2005). The report highlighted a number of positive steps taken since the “Rose Revolution” in November 2003. These included the introduction of legal amendments, Georgia’s accession to the Optional Protocol to the UN Convention against Torture in August 2005, extensive monitoring activities of detention facilities under the jurisdiction of the Ministry of Internal Affairs, conducted in particular by the office of the Public Defender of Georgia (Ombudsman), and the fact that several perpetrators of crimes amounting to torture or ill-treatment were serving prison terms handed down since the “Rose Revolution”.

However, AI has continued to receive reports about torture and ill-treatment. According to information documented by AI in its report, many cases still do not come to light because police cover up their crimes and detainees are often afraid to complain or identify the perpetrators for fear of repercussions. Impunity for torture or other ill-treatment remains a problem, with procurators failing to open investigations into all potential torture and ill-treatment cases in a systematic manner. In dozens of cases where the procuracy had opened investigations, the perpetrators have not been brought to justice. Case examples featured in the report demonstrated that investigations into allegations of torture or ill-treatment were often not conducted

in a prompt, impartial and independent manner. In addition, there were severe shortcomings in the implementation of legal safeguards aimed at preventing torture and ill-treatment.

The report detailed how methods allegedly used to torture or ill-treat detainees since the “Rose Revolution” included electric shocks; putting plastic bags over the head of a detainee; suspending a detainee from a pole between two tables; cigarette and candle burns; placing the barrel of a gun in a detainee’s mouth threatening to shoot; threats to beat the detainee’s family; gagging the detainee with a piece of cloth to prevent them from shouting; beatings, including with truncheons and butts of guns, and kicking.

The report concluded with a range of recommendations by AI to the international community and the Georgian authorities in order to eradicate torture or other ill-treatment in the country. Key recommendations to the Georgian authorities included to oblige all police officers to wear visible and unique traceable identification numbers; to immediately suspend law enforcement officers who are placed under investigation for serious human rights violations pending the outcome of the disciplinary and judicial proceedings against them, and to pay special attention to ending torture and ill-treatment in the regions of Georgia outside the capital. AI also recommended that the authorities set up a body independent of the police, procuracy and the justice system to carry out a detailed review of investigations conducted by law enforcement officers into allegations of torture and ill-treatment and of judicial proceedings in such cases with the authority to present its findings, make recommendations to the relevant authorities, and have powers to issue a public report.

**Individual cases involving allegations of torture or other ill-treatment**

In the period under review AI received a number of cases in which torture or other ill-treatment were alleged.

For example, Malkhaz Talakvadze was detained on 2 September 2005 at about 5am after some 30 special unit police officers, some of whom were masked, broke into his house in Tskhantubo district near the town of Kutaisi. According to his lawyer Zurab Rostiashvili, police beat him, including with the butts of their guns, and he lost consciousness. According to Malkhaz Talakvadze, his wife, mother-in-law and little daughter were also beaten. Nugzar Topuridze, an independent forensic medical expert of the firm Veqtori, who examined Malkhaz Talakvadze's wife Irma Kanteladze on 7 September, found many bruises on both shoulders. She complained about headaches and dizziness. According to the expert, the time period when the bruises were sustained – as established in the medical examination – was consistent with the allegations made by Irma Kanteladze. According to Zurab Rostiashvili, the judge ignored the allegations of ill-treatment raised by the lawyer at the remand hearing at Tbilisi city court. As of November Malkhaz Talakvadze was held in the investigation-isolation prison no. 1 in Tbilisi awaiting trial on charges of "illegal possession of drugs in particularly large quantities" (Article 260, part 3) and "illegal production or sale of weapons" (Article 236).

**Concerns in the disputed region of Abkhazia**

*The death penalty (update to AI Index: EUR 04/002/2004)*

To AI's knowledge, Abkhazia continued to observe a *de facto* moratorium on

executions, but retained the death penalty and at the time of writing was believed to hold at least two people on death row.

In his September 2005 report on his visit to Georgia, including Abkhazia, in February 2005, the UN Special Rapporteur on torture called on the authorities of Abkhazia to abolish the death penalty. He also raised concern about the conditions on death row. According to the authorities, there were two prisoners on death row, both reportedly sentenced to death for premeditated, aggravated murder. On 20 February the Special Rapporteur visited them in the detention facility of the Ministry of Internal Affairs in Sukhum (referred to by the Georgians as Sukhumi).

According to the Special Rapporteur, one of the death row prisoners, Ms Voloshina, aged 50, who has been detained since 1994 and was sentenced to death in 1996, has been immobile due to illness for the last three years and has not received appropriate medical treatment for this condition. She was kept in a cell with 11 other women, who were either awaiting trial or had been sentenced to prison terms of between one month and 10 years. The cell was dark and poorly ventilated. There were allegations that it was at times overcrowded with up to 20 detainees in a cell designed for 12. The Special Rapporteur reported that the detainees had no access to a radio or telephone and no possibility of sending or receiving letters.

Mr Khaghba, the other death row prisoner, was in a cell on his own which the Special Rapporteur described as dimly lit and poorly ventilated. Although the Deputy Minister of Internal Affairs assured the Special Rapporteur that the prisoner could take physical exercise every day except on Sundays and have regular family visits, according to the

report "it was clear that the cell had not been opened for a very long time". The Special Rapporteur reported that "once the guard unlocked the padlock to the heavy black steel door, he did not know how to open it. It finally took at least three guards approximately five minutes to slide the security bolt across and pry the door open." The Special Rapporteur's report did not indicate how long Mr Khaghba had been on death row.

AI believes that Ms Voloshina – and possibly also Mr Khaghba – has been kept in a state of continued uncertainty as to her ultimate fate and in harsh prison conditions for many years. Such a situation amounts to cruel and inhuman treatment.

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## GREECE

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### Counter-terrorism

Reports appeared in the Greek and UK media in December alleging that a group of Pakistani migrants were abducted in July by Greek plain-clothed police officers, detained incommunicado and interrogated. The abductions appear to have taken place in the context of international investigations into the London bombings of 7 July. Following requests by the British secret service, known as MI6, for the Greek authorities' help in their investigations (through checking up on foreigners living in Greece who might have been connected with al-Qa'ida), 1,004 search teams were set up in July and August. Checks were carried out on 5,432 persons; 2,172 migrants were questioned, of whom 1,221 were arrested, and six of those were deported. Of those questioned, 283 were Pakistani nationals. It is not known if lawyers were present during these interrogations.

On 29 July, Javed Aslam, president of the Pakistani Community of Greece, a non-

governmental organization (NGO) based in Athens, made a complaint to the prosecutor on behalf of six of his co-nationals and one person originating from Indian-administered Kashmir. The seven complainants claimed that on the night of 15 July a number of persons unknown to them, who are alleged to have been Greek plain-clothed police officers, entered their house without permission and without presenting a search warrant, blind-folded them, searched the premises and then drove them to an unknown location. Five of the abductees were left near Omonia Square in Athens 48 hours later. They were blindfolded while being driven to the Square; upon release they were instructed not to remove the blindfolds for five minutes. The other two abductees were released in a similar way a week after their abduction. Throughout this period, friends and relatives of the abductees, as well as lawyers appointed by them, visited a number of police stations, the Athens Immigration Department, and the Department of Anti-Terrorism seeking information about their whereabouts. Officers in all of the stations and departments visited claimed that they had no information about them.

Following the complaints being made public, other foreign nationals residing in various parts of Greece came forward, claiming they had also been abducted in a similar way; reportedly, altogether 28 people had made such allegations public. Following a preliminary judicial investigation the Prosecutor for the Supreme Court of Areios Pagos, Dimitris Linos, announced on 19 December that there were grounds for proceeding with the investigation. On 27 December, another complaint was filed by the abductees, against named persons who appeared to be agents employed by the Greek security services (EYP).

### Denial of refugee protection

The government continued to fail to comply with its obligations under international law in relation to providing access to asylum procedures and the prohibition of *refoulement* (the principle that those seeking asylum should not be forcibly returned to countries where they risk serious human rights abuses). On several occasions groups of people arriving in Greece seeking asylum were forcibly expelled without being given access to asylum procedures. Cases were reported on Greece's coastline and some islands, and at the border area of Evros. AI expressed its concerns about such practices in a report released on 5 October (*Greece – Out of the Spotlight: The Rights of Foreigners and Minorities are Still a Grey Area*, AI Index: EUR 25/016/2005). AI delegates who presented the report to the Minister of Public Order were told that such practices would be stopped, but further cases were subsequently reported. For example, on 4 November a group of 141 people shipwrecked on Crete on 23 October were expelled to Egypt, reportedly without being given access to refugee protection or lawyers. In December, at least 14 people died while trying to cross the Greek-Turkish border – two bodies were discovered after explosions in the minefields in the region of Evros and 12 were recovered from the sea by Turkish coastguards off the town of Cesme.

On 23 August a new law was published in the Government Gazette, regulating the entry, stay and social integration of non-EU nationals in Greece. The law, which was to come into effect on 1 January 2006, stipulated the grounds on which foreigners may be granted leave to remain for educational, professional, and humanitarian reasons. There were, however, concerns that applicants for residence permits who had previously requested asylum were asked to retract their asylum applications before they were considered for regularization.

### **Police ill-treatment**

On 13 December, in the case of *Bekos and Koutropoulos v. Greece*, the European Court of Human Rights found that Greece had violated provisions of the European Convention on Human Rights (ECHR) which prohibit torture and other ill-treatment, and discrimination in the enjoyment of ECHR rights. The two applicants, Greek Roma who were arrested in 1998, were taken to the Mesolonghi police station where police officers beat them with a truncheon and iron bar, slapped and kicked them, threatened them with sexual assault, and verbally abused them. The police officers in question were cleared of ill-treatment by both the internal police inquiry and the trial that ensued. In its judgment, the European Court of Human Rights found that the two Roma had suffered inhuman and degrading treatment at the hands of the police, that the authorities failed to conduct an effective investigation into the incident, and that the authorities failed to investigate possible racist motives behind the incident.

### **Discrimination against Romani pupils**

In October, according to the Greek Helsinki Monitor, an NGO, parents of Romani children attending the elementary school of Psari, outside Athens, were pressured by local and education authorities to sign declarations asking for their children to be moved to segregated, all-Romani education facilities far from the Romani settlement. The reports followed racist protests by parents of non-Romani pupils demanding the removal of Romani children from the school.

### **Conscientious objection to military service**

In November parliament approved an amended law on military service, which revised the conditions of alternative

civilian service for conscientious objectors. The new law allowed people who had lost their claim to conscientious objection status to reapply. However, the length of alternative civilian service remained punitive and the law still fell short of international standards. In particular, the board responsible for granting conscientious objection status was not under a civilian authority; professional soldiers were not allowed to change their views and become conscientious objectors; conscientious objectors were not allowed to form unions; and the right to conscientious objection could be suspended during war.

In August the military court of Xanthi convicted conscientious objector Boris Sotiriadis to three-and a-half-years' imprisonment for disobedience. He was consequently imprisoned between 22 August and 20 September but was released pending appeal which had not been heard by the end of the year. On 9 November the military court of Ioannina found him not guilty of a further charge of disobedience.

#### **Violence against women**

Inter-ministerial efforts to combat trafficking in human beings continued. Several initiatives were started, including the establishment of shelters offering protection to victims of trafficking for forced prostitution. However, the shelters have remained empty, reportedly because of the difficulties experienced by victims of such trafficking in obtaining official designation as such, and thereby accessing shelter protection. In order for victims to access shelter protection, they need to have filed complaints against their traffickers and can only be designated "victims of trafficking" by the prosecutor to whom the complaint is addressed. It was reported that in the last two years, about 30 of the 100 women who sought protection were recognized as victims of trafficking.

In December the government presented NGOs with a draft law on domestic violence, expected to pass through parliament in 2006. Successive governments had worked on domestic violence legislation for the last three years. While Article 8 of the law is commendable for criminalizing marital rape, the proposed law failed to define 'violence between family members' and to recognize it as a form of discrimination against women; to provide for the establishment and organization of institutions for the protection of victims of domestic violence (including shelters and medical care); to make training on domestic violence compulsory for police and judicial personnel; or to allow NGOs to file suits in domestic violence cases. The law also failed to allocate funding for activities aiming to combat and prevent domestic violence.

#### **Failure to conduct prompt investigation**

In September, AI received reports raising concerns about the promptness, thoroughness and impartiality of an investigation into the death of a 24-year-old. Nikos Gallegos died on 10 April from injuries sustained when his motorbike collided with a police vehicle. Following his death, Nikos Gallegos' family filed a complaint with the Prosecutor in Athens on 5 May against police officers involved in the incident. Although the preliminary investigation recommended a full judicial investigation into the incident, by the end of the year the authorities had failed to initiate this. AI wrote to the authorities requesting information about the investigation being carried out, but had received no reply by the end of the year.

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## **IRELAND**

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#### **Treatment of people with mental disabilities**

The first annual report of the Inspector of Mental Health Services was published in July. The Inspectorate found unacceptable levels of care in some services. It found a serious lack of development of the necessary range of specialist mental health services nationally and that no area had the full complement of services in sufficient quantity to provide comprehensive mental health care. It highlighted a number of issues relating to the interface between the criminal justice system and the mental health service, including the lack of a systematic referral scheme from the former to the latter. It expressed concern that, during inspections, it encountered cases where people presumed to have committed serious offences against the person were not charged, but committed to their local psychiatric hospital. By not being charged, it concluded, these people were denied the right to due process, and effectively barred from accessing specialist forensic mental health services.

The Inspector of Mental Health Services pointed to the urgent need to address the lack of mental health services for children, and its concern that children continue to be treated within adult inpatient settings. In September, the Irish College of Psychiatrists published a report, *A Better Future Now*, showing that there has been little advance in implementing recommendations made by the Government Working Group on Child and Adolescent Psychiatric Services in its 2001 and 2003 reports.

Provisions for automatic, independent review of decisions to detain people in mental health facilities, under the Mental Health Act 2001, had not come into force as planned, due to protracted negotiations with consultant psychiatrists' representative bodies.

## **Policing**

An Garda Síochána (Irish police service) launched a recruitment advertising drive in September aimed at a higher representation of minority ethnic groups, refugee and migrants among new recruits, and amended the Irish language proficiency entry criterion to this end.

The Government's announced its nominees for the three-member Garda Ombudsman Commission in December, although there was some concern that an independent selection and appointment process was not adopted. The Ombudsman Commission was expected to begin receiving complaints in about a year.

Terms of reference were published in September for the statutory inquiry to be conducted into the circumstances in which 14-year-old Brian Rossiter was arrested and detained by the Garda Síochána in September 2002. Having been detained overnight, he was found the next morning to be in a coma; he was taken to hospital where he subsequently died.

## **Places of Detention**

New Prison Rules were to have come into operation in November, updating the 1947 Rules, but this did not happen by year's end.

The Annual Report of the Inspector of Prisons and Places of Detention for the Year 2004 – 2005 published in July, observed prison conditions that do not comply with international standards on humane detention with overcrowding, lack of adequate sanitation facilities, insufficient education and employment programmes, mentally ill prisoners held in padded cells in prisons rather than in specialized mental health facilities, and the continuing unnecessary incarceration of people with mental illnesses.

The annual report of the Irish Prison Chaplains published in November raised particular concern about the lack of vocational activities and positive interventions for juvenile offenders. It also criticized the high level of incarceration of people experiencing mental illness, homelessness and addiction; the lack of treatment for mentally ill prisoners and the shortage of counsellors for other prisoners; and the practice of detaining persons awaiting deportation in prisons.

In September, the Irish Penal Reform Trust (IPRT) was granted permission by the High Court to represent two prisoners with mental illness in legal proceedings against the State seeking damages for breaches of their constitutional rights, and constitutional remedies for systematic deficiencies in the way prisoners with mental illness were treated in Mountjoy. The Court said that many prisoners were ignorant of their rights and might fear retribution if they challenged the authorities and their claims could be more effectively litigated by the IPRT, which was in a position to identify and analyze systematic failings in the system.

#### **Asylum-seekers and migrants**

In July, the High Court ruled that the refusal of the Refugee Appeals Tribunal to allow legal representatives of asylum applicants' access to its prior relevant decisions was "unfair" and a breach of their constitutional rights. It noted that the tribunal's practice was "unique in the common law jurisdictions", and "cannot accord with the principles of natural and constitutional justice, fairness of procedure or equality of arms". The Court upheld challenges by eight applicants, including five children, to the tribunal's refusal to allow them to access previous decisions of the tribunal to assist them in making their claims for refugee status. The Court found that the

constitutional right to fair procedures in a decision-making process affecting a person's rights extended to a requirement that relevant information, documents and matters of evidence should be disclosed. The Government appealed to the Supreme Court against this ruling.

A report entitled Immigration-related Detention in Ireland and published in November by three non-governmental organizations (NGOs), the Immigrant Council of Ireland, Irish Refugee Council, and IPRT found that Irish law and practice do not adequately protect the rights of people refused permission to land and people detained pending deportation. Such persons, it said, are not being informed in writing, in a language they understand, of their right to challenge the legality of their detention and/or the validity of a decision to remove them from the State. Moreover, it concluded, the law does not formally recognise their rights to inform a person of their choice of their situation, to have access to a lawyer and to have access to medical care. Nor are such people being systematically provided with written information in a language they understand about the legal procedures that apply to them and their rights. The report found that, in 2004, some two-thirds of those detained in prison for immigration-related reasons were imprisoned for periods of longer than 51 days.

The report concluded that neither Cloverhill Prison (male detainees) nor the Dóchas Centre at Mountjoy Prison (female detainees), where over 90 per cent of persons detained for immigration-related reasons are held, provided an appropriate environment in which to hold immigration detainees. It found that Cloverhill Prison accommodated immigration detainees in overcrowded conditions – three to an 11m<sup>2</sup> cell – together with people suspected of

criminal offences; and immigration detainees are locked in their cells for more than 17 hours a day and significant restrictions – including closed visiting arrangements – are placed on their contacts with the outside world.

### **Women**

In July, the UN Committee on the Elimination of Discrimination against Women was critical of the persistence of traditional stereotypical views of the social roles and responsibilities of women, reflected in Article 41.2 of the Constitution, in women's educational choices and employment patterns, and in women's low participation in political and public life. It expressed its concern at the prevalence of violence against women and girls in Ireland, low prosecution and conviction rates of perpetrators, high withdrawal rates of complaints, and inadequate funding for organizations that provide support services to victims. It also criticized the state's failure to address trafficking of women and children into the state. The Committee additionally raised concerns and made recommendations in respect of: the need for a comprehensive strategic view and framework for the achievement of gender equality; the under-representation of women in political structures and higher levels in the civil service; the barriers faced by vulnerable groups in accessing education, employment, health care and other social services; and the need to facilitate a national dialogue on the issue of abortion.

A report, *Women and Men in Ireland, 2005*, published by the Central Statistics Office in December found that women represent just over 13 per cent of members of Dáil Eireann (the Lower House of Parliament), and around 30 per cent of members of State Boards and under 20 per cent of members of regional and local authorities. It found that women were not well represented at

senior level positions in the education and health sectors, which employed the highest proportion of women - around 80 per cent of employees. Women's income in 2003 was around two-thirds of men's income, it found, and after adjusting for differences in hours worked, women's hourly earnings were around 85 per cent of men's.

### **Renditions**

In a statement to the Dáil on 14 December, the Minister for Foreign Affairs said that "[t]he Government has not and will not permit any flight engaged in extraordinary rendition to pass through an Irish airport or through Irish or Irish-controlled airspace", and "the United States has given Ireland repeated, clear and explicit assurances that no prisoners have been transferred through Irish airports, nor would they be, without our permission". Concerns mounted that, despite US assurances, Ireland was, in fact, being used as a transit point in US renditions. On 1 December, when asked about CIA planes using Shannon airport, the Minister was reported in the media to have said: "If anyone has any evidence of any of these flights please give me a call and I will have it immediately investigated." In response, AI brought to the Irish Government's attention flight logs showing that six planes used by the CIA for renditions have made some 800 flights in or out of European airspace including 50 landings at Shannon airport.

According to the US Federal Aviation Administration, these planes landed 50 times in Shannon but departed again just 35 times, suggesting that some flights were kept secret. AI called on the Irish Government, as a matter of urgency and the highest political priority, to launch a prompt and thorough investigation into allegations before it that Irish territory and airspace has been used to assist US rendition flights. Pending the results of

such an investigation, AI urged the government to ensure that its territory and airspace not be used to assist rendition flights, and take the necessary measures to exercise strict and effective control over state flights through its airspace and territory. The Minister responded that evidence was not sufficient to justify further monitoring or enforcement of US assurances.

In its *Resolution in relation to claims of US aircraft carrying detainees* published on 23 December, the Irish Human Rights Commission expressed its serious concern about reports that US aircraft landing at Shannon airport may be involved in the transport of persons to secret locations where they may be at risk of being subjected to torture, cruel or inhuman treatment. The Commission stated that it was not sufficient for the government to rely on assurances from the US authorities in this regard, and called on the government to seek the agreement of the US authorities to the inspection of aircraft suspected of involvement in this traffic.

### **Racism**

In its six-monthly *Reported Incidents Relating to Racism in Ireland January 2005 - June 2005*, the National Consultative Committee on Racism and Interculturalism (NCCRI) highlighted a number of incidents of racist treatment of Muslims by members of the public and in relation to the delivery of public and private services, including by the Garda Síochána and airport immigration officials. It also received reports of incidents of anti-Semitism. It called for increased vigilance against racism at times of international tension when racist incidents can increase; the strengthening of legislation prohibiting incitement to hatred and other relevant criminal legislation; and an annual public awareness campaign aimed at making potential victims and existing victims of

racist crime and discrimination aware of their rights and encouraging reporting of incidents.

The NCCRI and the Irish Human Rights Commission were in discussion with the Department of Justice Equality and Law Reform over a proposed follow-up visit by the UN Committee on the Elimination of Racial Discrimination (CERD) in 2006 pursuant to its concluding comments on Ireland's First and Second Report to it in March. The proposed visit of a CERD Rapporteur to Ireland would pilot this new approach.

### **Children**

In October, the report on clerical sex abuse in the diocese of Ferns (the Ferns Inquiry) identified more than 100 allegations of child sexual abuse made between 1962 and 2002, against 21 priests in the Catholic church, and was critical of church authorities, the Garda Síochána and the then Health Board in relation to the handling complaints of sex abuse. It highlighted ongoing gaps in child protection, and the need to place government on mandatory reporting of child abuse on a legislative basis. In response, the Ombudsman for Children said that changes in policy and practice were required; to include interagency working, professional codes of conduct and care in the appointment of staff with unsupervised access to children.

In November, the Ombudsman for Children called for the Constitution to be amended to include express rights for children.

### **Irish Human Rights Commission**

In its Annual Report for 2004, published in October, the Commission announced its serious concern about its ability to fully exercise its statutory functions and powers given its limited staff and resources. It was critical of the

"democratic deficit" in parliamentary procedures for the scrutinizing of legislation with human rights implications. It also issued its concerns regarding its ability to effectively examine legislative proposals, often with serious human rights implications, due to the late introduction of amendments, often of a substantive nature, leaving little opportunity for the Commission to give its considered comments; and that legislation was often too quickly passed through the Oireachtas without detailed committee stage debate. It also noted its particular concern with legislation emerging from the European Union: by the time it was referred to the Commission, the principles and much of the detail had been settled and there was little if any scope for change.

#### **Human rights based approach to development**

In September, Amnesty International published a report commissioned from the International Human Rights Network (IHRN), *Our Rights, Our Future. Human Rights Based Approaches in Ireland: Principles, Policies and Practice*, outlining the internationally agreed principles of Human Rights Based Approaches to Development; examining the Irish State's successes and failures in applying a human rights based approach in its policies, practice and institutional structures; and providing a framework for how international human rights standards might be used in Ireland to combat inequality and social exclusion.

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## **ITALY**

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#### **Counter-terrorist legislation**

An anti-terror urgent decree (Decree Law no.144 of 27 July 2005) was enacted in July and immediately converted into Law (no. 155 of 31 July 2005). It doubled to 24 hours the previous 12-hour period

provided for "provisional police arrest" aimed at the identification of people under investigation or having knowledge of facts which may be relevant to an investigation. The new provisions gave groups of law enforcement officials who did not previously have these powers the right to interview, for investigative purposes and without the presence of a lawyer, persons already in prison [*colloqui a fini investigativi*]. Previously, only staff from the anti-mafia investigative unit at the police (*Direzione Investigativa Antimafia, DIA*) and law enforcement officials who have explicitly had investigative powers designated to them by the *DIA* (these law enforcement officials are referred to as *polizia giudiziaria*) had these powers.

The law also amended and complemented legal provisions of the immigration law on expulsion of migrants "for reasons of public order and security". The new law allows expulsion orders of both regular and irregular migrants to be decided and implemented based on a *prima facie* evaluation of the threat posed by the migrant's presence in Italy. Thus, a migrant can be repatriated "when there are well-grounded reasons to believe that his/her stay in the territory could favour in any manner terrorist organization and activities". This kind of expulsion order is issued by the Minister of the Interior or, under delegation, by the competent Prefect (*Prefetto*). The law does not require the person deported to have been convicted or charged of a crime connected to terrorism and does not provide for judicial confirmation/authorization of the decision and of its implementation. The law provides for a judicial appeal before the administrative court. However, an appeal does not suspend the actual deportation. In addition, the appeals process itself can be suspended if, in order to make a determination in the case, the judge would have to review documents which

are confidential on the basis of national security or state secrecy grounds.

This legislation raises concerns relating to the lack of a judicial review of the deportation decisions. The expulsion procedure also seems to lack effective protection from *refoulement* of people who could be at risk of persecution or other serious human rights violation once in the country of origin.

On 2 December, the then Minister of Interior Giuseppe Pisanu reported back to parliament on the implementation of the law. The Minister declared that during the first three months of application of the decree, 18 "investigative interviews in prison" (*colloqui investigativi in carcere*) were carried out and the 24-hour provisional police arrest was applied in 10 cases. Regarding expulsions "for reasons of public order and security", the Minister declared that they function as an "effective preventive instrument" towards "dangerous Islamic fundamentalists" and are a "safety valve to compensate delays in the adaptation of legal systems of the western world to the threats arising from suicide terror". According to the Minister's statement, after the enactment of the new provisions 20 expulsion orders "for reasons of public order and security" were adopted.

On 10 December, Mohammed Daki, a Moroccan migrant who had been just acquitted of "international terrorism" by the Court of Appeals of Milan, was expelled by an order from the Minister of Interior "for reasons of public order and security". According to the Minister's declarations, "grave probative elements and circumstantial evidence were gathered which were not sufficient for the judiciary to convict Mohammed Daki but are abundantly sufficient to the Minister of Interior to affirm that Mohammed Daki is dangerous". The Minister based this expulsion on provisions in the new counter-terrorist legislation. At least one other person was

expelled in the same period on the same grounds and following a similar procedure.

#### **Asylum and immigration (update to AI Index: 01/012/2005)**

The practice of generalized detention continued to be applied to newly arrived irregular migrants and asylum-seekers during the second half of 2005, in particular to those who reached Italy by sea. Detention on arrival at maritime borders was not applied on a case-by-case basis but systematically, without considering the lawfulness, necessity and proportionality of the detention, and without providing for the right to a review of the lawfulness of the detention by a judicial or similar authority.

The detention in centres of various nature, name and structure, involved family units and accompanied and unaccompanied minors. Detention practices also involved many young people whose status as minors was not properly assessed by the authorities on the basis of an age assessment that was scientific, safe, child and gender-sensitive and fair. These individuals, who could be minors, therefore risked being subject to illegal detention and expulsion. In particular, several unaccompanied minors of north African origin arrived by sea on the southern coast of Sicily during summer and were initially detained in the Lampedusa centre. According to media reports, in a press conference held in Brussels during the European Union's Justice and Home Affairs Council in December, the Italian Minister of Interior declared that there were 500 unaccompanied minors among what he defined as 'the last arrivals' to Lampedusa.

Asylum provisions applicable since 21 April 2005 that allow generalized detention of asylum-seekers arriving

without a visa were implemented restrictively during the second half of 2005. A 20-day accelerated asylum procedure continued to be applied, even if not homogeneously throughout Italy. The inconsistencies in the application of this procedure were highlighted by the fact that the recognition rate of the seven territorial commissions set up in the cities of Milano, Gorizia, Roma, Foggia, Crotone, Trapani and Siracusa, and charged with overseeing the asylum procedure was considerably different.

According to public sources, at least 500 people were deported to Libya between July and October 2005.

On 7 October, the weekly magazine *Espresso* published a report by a journalist who spent a week in the Lampedusa detention centre pretending to be an Iraqi migrant. The report included allegations of extremely poor living conditions inside the centre and of several serious human rights violations towards some of the detainees, including ill-treatment by law enforcement officers. *Inter alia*, the journalist reported that some migrants were verbally insulted by law enforcement officers supervising the centre or otherwise ill-treated and that dozen of unaccompanied minors were detained in the facility. Shortly afterwards, the then Minister of Interior Giuseppe Pisanu visited the centre and ordered an administrative inquiry.

On 19 October the UN High Commissioner for Refugees (UNHCR) António Guterres, visited Italy and declared that an agreement was reached with the Minister of Interior for the establishment of a permanent presence of a UNHCR representative on Lampedusa.

#### **Decision by Cassazione Civile**

On 5 August 2005, the highest appellate court in Italy, the *Cassazione Civile*,

decided that while collective expulsions are not permissible, what it defines as 'plural expulsions' (*espulsioni plurime*) are permissible. The *Cassazione Civile* was reviewing a court decision taken in 2004 by a Milan court which stated that the expulsion of 15 Romanian citizens of Roma origin for not having applied for a residence permit (*permesso di soggiorno*) within eight days of their arrival in Italy was incorrect. The Milan court had stated that it was "forbidden to carry out plural expulsions adopted with identical motivations even if each foreigner's case has been evaluated on an individual basis".

The *Cassazione Civile* ruled that the Milan court had erred in the expulsions of 15 persons of identical ethnic origin, co-habiting in the same place at the same time and given almost identical expulsion orders, as collective expulsions. AI is worried that it is questionable whether each person expelled received a thorough, fair and individual assessment of his/her case and that the necessity and proportionality of the expulsion decisions were taken on an individual basis. In this respect, AI would like to remind Italy of the third of the Council of Europe's Twenty Guidelines on Forced Return which states that "a removal order shall only be issued on the basis of a reasonable and objective examination of the particular case of each individual person concerned."

#### **Ill-treatment of asylum-seekers**

In July, a Roman Catholic priest employed as the director of the "Regina Pacis" 'temporary stay and assistance centre' (*Centri di permanenza temporanea, CPTA*) in the Puglia region, two doctors, six members of the administrative personnel and seven *carabinieri* providing the centre's security service, who were on trial in connection with the physical assault and racial abuse of inmates in November 2002,

were found guilty on first instance by the Lecce Court (*Tribunale di Lecce*). The priest and two of the *carabinieri* were sentenced to one year and four months of imprisonment. A lighter sentence was imposed on the others. All sentences were suspended.

### **Italy-sponsored detention centres in Libya**

AI is concerned about Italy's decision to build three detention facilities in Libya. According to reliable information the first centre will be situated in Gharyan, close to Tripoli and a second centre will be in Sheba (in the Libyan desert). The third centre will be in Kufra, close to Libya's borders with Egypt, Sudan and Chad.

AI is concerned that the human rights of migrants held in these centres could be at serious risk. Libya has not ratified the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, nor has it established national asylum procedures. Moreover, Libya does not acknowledge the presence of refugees and asylum-seekers within its borders and does not recognise the UNHCR's presence in the country.

### **Prison conditions**

In September 2005, a domestic non-governmental organization (NGO) published a report on conditions in Italian prisons. According to the report, the Italian government had failed to implement certain prison regulations in force since 20 September 2000. The regulations had stipulated that the authorities should implement a list of criteria, which would guarantee a minimum living standard for inmates such as hot water in their cells and toilets separate from their living/sleeping area, within five years. To date, these criteria have not been implemented, and the

prisons are currently not operating in conformity with the law.

The following data were cited in the report to indicate the dubious state of Italian prisons: there was at the time of survey 59,649 persons in prison, although Italy's 207 prisons only have a capacity to host 42,959 persons; 69.31 per cent of inmates do not have hot water in their cell; 12.8 per cent of inmates live in a cells which do not have a separate toilet area; 7.68 per cent live in cells which do not have sufficient amounts of natural light; and 18.4 per cent live in cells which have intense artificial light during night time.

### **Alleged police ill-treatment**

From October 2005 onwards, there was an intensification in the demonstrations taking place in Val di Susa (an alpine valley in the Piedmont region in north western Italy), against a planned high speed railway line between Lyon and Turin. These demonstrations involved a sit-in occupying an area near the small town Venaus, where the contracted enterprises were supposed to initiate works on the high speed railway.

At approximately 3am during the night between the 5 and the 6 of December, several hundred law enforcement officials carried out an operation aimed at removing the demonstrators. There were around 100 demonstrators in the relevant area when the operation occurred, some of whom were sleeping. According to consistent allegations and information gathered by AI, law enforcement officers assaulted peaceful demonstrators who were keeping their hands up, heavily beating some of them and forcing dozens of them to enter into a small shed otherwise used as a shelter. Some policemen were also injured during the operation. Demonstrators sleeping in tents at the time of arrival of the police were allegedly dragged outside by police

officers and heavily beaten. At least 15 people were injured, including an elderly man, a woman with her neck in a neck brace and NGO representatives, photographers and journalists. Some of them were hospitalized. Some of these reports are supported by audio-visual material.

The general prosecutor of the State Auditors' Court initiated an investigation into the police operation in Venaus, regarding the possible "damage to the State's image" arising from the way the operation was carried out.

On 6 December, AI wrote to the then Minister of Interior Giuseppe Pisanu, asking the minister to ensure that Italian laws regulating the work of law enforcement officers were in line with international human rights standards, including those relating to freedom of expression, the right to assembly, and the use of force.

### **Concluding Observations of the Human Rights Committee**

On 28 October, the UN Human Rights Committee published an advanced unedited version of its Concluding Observations on Italy's fifth periodic report to the Committee. The Committee regretted that Italy had not withdrawn its reservations to articles 14(3) (regarding minimum guarantees during trials), 15(1) (regarding retroactive criminal charges) and 19(3) (regarding freedom of expression) of the International Covenant on Civil and Political Rights (ICCPR). The Committee further encouraged Italy to establish an independent national human rights institution in accordance with the Paris Principles.

The Committee encouraged Italy to increase efforts to "ensure prompt and impartial investigations wherever there are reasonable grounds to believe that an act of ill-treatment has been committed

by one of its agents". The Committee further urged Italy to increase its effort to eliminate domestic violence.

The Committee raised the issue of reports of persistent ill-treatment by police officers including abuses towards Roma people. The Committee recommended that Italy increase its efforts to ensure that prompt and impartial investigations are carried out on allegations of ill-treatments by police agents and to take immediate action in order to put an end to abusive police raids in Roma camps and to monitor, investigate and, when appropriate, prosecute other abuses by police against vulnerable groups. The Committee also asked to be kept informed about the trials of State officials in relation to the events in Naples and Genoa in 2001 (See AI Index: EUR 01/012/2005)

The Committee also raised concerns regarding the right to apply for asylum and told Italy to provide detailed information regarding re-admission agreements concluded with other countries, including Libya.

A further area of concern were allegations emerging from the CPTA on the southern Italian island of Lampedusa. Allegations included unsatisfactory detention conditions, difficult access to asylum procedure, risk of collective expulsion and the apparent lack of regular independent inspection. The Committee asked Italy to respect its international obligation under the ICCPR.

The Committee encouraged Italy to ensure the judiciary remains independent of the executive power and highlighted its concerns regarding overcrowded prisons.

### Report on Italy by the High Commissioner for Human Rights of the Council of Europe

On 14 December, the High Commissioner for Human Rights of the Council of Europe published a report on his June 2005 visit to Italy. The report highlighted, among other things:

- The lack of torture as a crime in the criminal code, as defined in international legal documents including the United Nations Convention against Torture. Several bills regarding prosecution of torture have been tabled in Parliament, however none of them have been adopted as laws. The Commissioner underlined the problems caused by the insertion of an amendment to the definition of torture in a draft Bill pending before Parliament. This Bill defines torture as the use by a "public official or person in charge of a public service" of "repeated violence or threats". This definition is not in line with international laws and standards. The High Commissioner urged the Italian authorities to insert the crime of torture in the Criminal Code as soon as possible.
- The need for reforms of the judicial system. The High Commissioner recommended a reduction in procedural delays and the backlog of cases, to increase the financial and human resources of the courts, to limit abuses and delaying tactics by modifying the system of time limits and to adopt legislation allowing the reopening of criminal proceedings when new evidence comes to light or when the European Court of Human Rights gives a relevant decision.
- The overcrowding, the high mortality rate and the difficult access to health services in prisons, together with the needs for investigation of the disproportionate high rate of Roma and migrant children held in juvenile prisons. The High Commissioner recommended that Italy reduce overcrowding in prisons by promotion of alternative measures, ensure a reasonable staff/prisoner ratio and provide funds for effective functioning of juvenile prisons.
- Extra-time detention, i.e. keeping inmates in detention for longer than foreseen by their sentence, of patients in Judicial psychiatric hospitals (*Ospedali psichiatrici giudiziari, OPG*) due to lack of ordinary structures and to other administrative problems. The High Commissioner recommended to increase places available for the care of chronic patients.
- The lack of a comprehensive asylum law and the worrying regulation and practices arising from the provisions of the so-called Bossi-Fini law. The High Commissioner raised concerns regarding effective access to asylum procedure, the systematic use of detention of asylum-seekers without a case-by-case consideration and to summary identification of migrants before deportation to Libya. The High Commissioner recommended that Italian authorities avoid detention of asylum-seekers except for when it is strictly necessary in consideration of each individual case, and improve conditions in the detention centres.
- The lack of judicial confirmation of deportation decisions adopted on the basis of the new counter-terrorist legislation (Law 155 of July 2005), the non-suspensive effect of "post facto" appeals and the preference given by this system to deportation instead that to prosecution of persons convicted of terrorism. The High Commissioner urged Italian authorities to review the law to

ensure that the rights enshrined in the European Convention on Human Rights and the principle of non-refoulement are fully respected.

**International Criminal Court: failure to enact implementing legislation**

*The Rome Statute of the International Criminal Court entered into force in July 2002. Italy played a major role in the drafting of the Rome Statute, and ratified it in 1999. AI is concerned that, despite this, and despite numerous promises, by the end of the period under review, Italy had still not enacted implementing legislation making it possible to investigate and prosecute such crimes under international law in its own courts or to co-operate with the International Criminal Court in its investigations.*

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## KAZAKSTAN

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**Freedom of expression – update to AI Index: EUR 01/002/2005**

In November, the Ministry of Justice announced that a recommendation for the early release of Galimzhan Zhakianov, one of the leaders of the opposition Democratic Choice of Kazakstan party, had been sent to court. In December, a local court in the Pavlodar region ruled that Galimzhan Zhakianov, who had already served half of his sentence, should be released on parole. However, by the end of the year, he was still being held at the colony settlement in Pavlodar. He had been sentenced to seven years' imprisonment in 2002 for "abuse of office" and financial crimes, but the real reason for his imprisonment appeared to be his peaceful opposition activities.

**Fear for safety**

Uzbekistani nationals, including refugees and asylum-seekers, were not effectively protected and risked being forcibly returned to Uzbekistan and subjected to

serious human rights violations there. Some had fled to Kazakstan after security forces fired indiscriminately on a crowd in Andizhan, Uzbekistan, on 13 May, killing hundreds of people. Others were suspected members of banned Islamic parties or movements who had fled to Kazakstan earlier. The Uzbekistani authorities have frequently targeted for repression suspected sympathizers of such organizations or independent Muslims, in the name of national security.

**Fear of forcible return**

Lutfullo Shamsuddinov, a prominent human rights defender, fled Uzbekistan with his wife and five children. His eyewitness testimony of the events in Andizhan, quoted by the international media, differed from the official account. Although recognized as a refugee by the office of the UN High Commissioner for Refugees (UNHCR) on 27 May, he was arrested by the Kazakstani police on 4 July, at the request of the Uzbekistani authorities, who said that he faced charges of "terrorism", a capital offence, and spreading information to cause panic. Despite pressure from Uzbekistan, the Kazakstani authorities eventually transferred him to the care of UNHCR, which flew him and his family to another country.

**Forcible return of Uzbekistani nationals**

On 24 and 27 November, 10 Uzbekistani nationals were allegedly arrested by officers of the National Security Committee, the security services, and detained incommunicado in the southern city of Shymkent. Nine of the men were forcibly returned from Kazakstan to Uzbekistan early in the morning of 29 November, in contravention of Kazakstan's obligations under international law. They were Ruhiddin Fahriddinov, Abdurahman Ibragimov, Tohir Abdusamatov, Sharofuddin Latipov,

Nozim Rahmanov, Alisher Mirzaholov, Abdurauf Holmuratov, Shoirmat Shorahmedov and Alizhon Mirganiev. Reportedly, four of them were holding asylum-seeker certificates issued by the UNHCR office in Kazakhstan. Farhod Islamov, who managed to escape arrest, was still in hiding in Kazakhstan at the end of the year. The Kazakstani authorities denied that they had detained the men and instead claimed that they had been detained by Uzbekistani law enforcement officers on Uzbekistani territory across the border during an operation conducted between 28 November and 2 December (see Uzbekistan entry for more details).

After the forcible return of the nine men, some 60 families who had fled Uzbekistan, and who were living in the south of Kazakhstan, applied to UNHCR for protection and asylum. At the end of the year, their applications were under consideration by UNHCR.

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## KYRGYZSTAN

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### Prison riots

More than 20 inmates were killed in widespread prison riots, which were reportedly in response to harsh prison conditions and collusion between prison authorities and jailed criminal leaders. Tynychbek Akmatbaev, a member of parliament (MP), two of his assistants, and Ikmatullo Polotov, a senior prisons official, were killed while visiting one of these prisons on 20 October. Demonstrators in Bishkek, led by the MP's brother, Ryspek Atmakbaev, who was awaiting trial on murder charges in a separate case, accused Prime Minister Feliks Kulov of complicity in the deaths but were called off a week later after President Kurmanbek Bakiev agreed to meet a delegation. On 1 November more violence erupted when government forces tried to regain control of prisons

left without guards and administrators following the October riots.

### Death penalty

On 29 December President Kurmanbek Bakiev signed a decree extending the moratorium on executions until the full abolition of the death penalty in law. The same decree instructed the government to prepare within two months legislative proposals aiming at Kyrgyzstan's accession to the Second Optional Protocol of the International Covenant on Civil and Political Rights, the complete abolition of the death penalty, the introduction of life imprisonment and the commutation of all existing death sentences to life or long-term imprisonment. The decree also asked the government to take measures to improve the conditions of detention on death row and invited the Ministry of Justice, the Ombudsman and the Presidential Human Rights Commission to conduct monitoring of conditions on death row together with representatives of non-governmental organizations.

Draft amendments to the Constitution proposed by the President in November also included the permanent and full abolition of the death penalty.

### Refugees from Uzbekistan at risk (update to AI Index: EUR 01/012/2005)

The authorities in Kyrgyzstan continued to be under great pressure from the Uzbekistani authorities to extradite a large number of the more than 500 refugees who had fled Andizhan on 13 May and had been given shelter in a camp in Besh-Kana. There was concern that the government was failing in its obligations adequately to ensure the rights of these refugees to international protection and safety.

On 29 July, the office of the UN High Commissioner for Refugees (UNHCR) secured the evacuation of 439 Uzbekistani refugees, who were airlifted out of Kyrgyzstan to a temporary centre in Romania. Some of these refugees were resettled to third countries while others were awaiting resettlement in countries that had offered them permanent protection.

#### **Extraditions and threat of forcible return**

On 9 June, the authorities in Kyrgyzstan had forcibly returned four of the refugees from the Besh-Kana camp to Uzbekistan. Despite concerted efforts by the UN, it was not possible to establish the whereabouts of Dilshod Gadzhiev, Tavakkal Gadzhiev, Muhammad Kadirov and Abdugais (Gasani) Shakirov. At least one of the men was reportedly severely tortured in Uzbekistan, and at least one, Tavakkal Gadzhiev, was sentenced to 17 years in prison in November following an unfair trial for his alleged participation in the Andizhan events.

There was particular concern about the threat of forcible return by the authorities of Kyrgyzstan of 29 refugees – including some of the entrepreneurs who had been on trial in Andizhan at the beginning of May – who were transferred from the camp into detention in June. Fourteen of the 29 were evacuated to Romania for resettlement in July and a further 11 were resettled in Belgium, Finland and the Netherlands in September, after the authorities in Kyrgyzstan determined that they were refugees.

The status of the remaining four men, Zhakhongir Maksudov, Odilzhon Rakhimov, Yakub Toshboev and Rasulzhon Pirmatov, in detention in Osh, remained disputed. The Uzbekistani authorities claimed that one of them had been convicted of narcotics offences and that the other three were sought in

connection with the violent death of the city prosecutor in Andizhan on 13 May, a charge they denied. UNHCR recognized one of the four as a refugee and started the process of determining the refugee status of the other three men, whom the refugee agency considered asylum-seekers. The authorities contested UNHCR's decision to recognize one as a refugee and initially excluded the other three men from seeking asylum. The men appealed against this decision. Their appeal was upheld in a court in Kyrgyzstan on 18 August, which referred the cases back for reconsideration. They were subsequently recognized by UNHCR and eventually the authorities as refugees. On 13 December the Bishkek City Court ruled that the men should be extradited back to Uzbekistan. The men's appeal against this decision was pending with the Supreme Court of Kyrgyzstan at the end of the year.

#### **Access to asylum procedures**

There was concern at the lack of access to asylum procedures for individuals or families who crossed the border in other places and/or at other times after 13-14 May in search of international protection. Local human rights activists estimated that hundreds of people who fled Andizhan were hiding in Kyrgyzstan, either staying with relatives or acquaintances or living under assumed names with no proper registration, thus increasing their vulnerability. Effective opportunities for asylum-seekers to legalize their presence in Kyrgyzstan did not exist. Little or no information was readily accessible to them to explain the rights of an asylum-seeker, or how to lodge an asylum claim. Although UNHCR was able to register asylum claims independently, they did not consider this to be "effective protection" for refugees.

According to reports, some of the Uzbekistani nationals seeking asylum and protection had been denied entry to

Kyrgyzstan or had been returned to Uzbekistan. There were fears that the authorities were effectively not in a position to provide refugees physical protection from the Uzbekistani government forces they were fleeing, including protection from forcible return to Uzbekistan (see AI Index: EUR 58/016/2005).

#### **Failure to act to protect nationals of Kyrgyzstan**

As many as 50 Kyrgyzstani men, in Andizhan for professional or private reasons, fled with the refugees after 13 May. However, in Kyrgyzstan they were put in the Teshik Tosh refugee camp; no notification was sent to their families, and there was no record of their arrival in search of protection or of their protection needs. The camp authorities transferred them directly to a temporary detention centre, where they were held for up to 15 days on administrative charges.

Families reported that law enforcement officers systematically extorted large sums of money from them to visit their relatives in the camp or to have them released from the camp or from detention. The details of 37 out of the 50 men were included in the list of wanted criminal suspects published by the Uzbekistan authorities in June. AI learned in July from a source in the Osh City Department of Internal Affairs that the Andizhan prosecutor's office had extended its warrant to a further five men, totalling 42 in all. To avoid being seized and forcibly transferred to Uzbekistan, those on the list went into hiding.

On 26 July the Prosecutor of Osh told the newspaper *Vecherny Bishkek* (Evening Bishkek) that no Kyrgyzstani citizens on the "wanted list" would be handed over to Uzbekistan and that any prosecutions of them arising from the events in Andizhan would take place in Kyrgyzstan.

The relatives of four young men from Kyrgyzstan who went missing after the Andizhan events on 13 May told AI that they had asked the local authorities in Osh for information about their whereabouts. Two days later a car with Uzbekistani number plates drove up to their house after dark and well-built men who presented no identification papers, or legal warrant, asked them questions about every member of their household. The family concluded they were being interviewed by members of the Uzbekistani National Security Service (SNB).

On 13 July the Governor of Osh Region, Anvar Artikov, told international news agencies that he was unaware of any activity by Uzbekistani law enforcement officials on the territory of Kyrgyzstan. However, an unofficial report given to AI by a usually reliable source suggested that the Uzbekistani SNB were occupying premises at the time within the building of the Osh regional prosecutor's office.

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## **LATVIA**

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#### **Respect for LGBT rights**

On 20 July, the executive director of the Riga City Council, Ēriks Škapars, withdrew permission for the gay and lesbian community to hold a Gay Pride march on 23 July. Ēriks Škapars' decision came after a statement in a television interview by Latvia's prime minister, Aigars Kalvītis, that he could not "accept that a parade of sexual minorities takes place in the middle of our capital city next to the Dom Cathedral. This is not acceptable. Latvia is a state based on Christian values. We cannot advertise things which are not acceptable to the majority of our society."

The organisers of the march subsequently made an official complaint

to the Riga administrative court regarding the decision to ban the march. On 22 July 2005, the administrative court decided to annul Ēriks Škapars' decision to withdraw the permission for the march. On 23 July 2005, the march went ahead as originally planned.

Organisers and news media covering the event estimate that approximately 300 people participated in the march. Meanwhile, over a thousand persons had gathered to stage a protest against the march. Some of the protesters tried to block the march, while others used teargas and threw eggs at the marchers.

On 7 July 2005, the European Commission's Employment and Social Affairs and Equal Opportunities unit published its 2005 Annual Report on Equality and Discrimination. According to the Report, Latvia is the only country which has not fully transposed the requirement of the Employment Equality Directive and did not explicitly ban sexual orientation discrimination. Sexual orientation discrimination in employment was banned in all other 24 EU member states.

#### **Visit by Monitoring Committee Chair of the Councils of Europe Parliamentary Assembly**

In October 2005, the Chair of the Council of Europe's Monitoring Committee, György Frunda, visited the country. During a press conference in the Latvian parliament, György Frunda summarized his recommendations to Latvia, including the abolishment of reservations to the Framework Convention for the Protection of National Minorities (Latvia's two reservations stipulate that only the Latvian language may be used for street signs and in communications between residents and local government authorities), granting non-citizens the right to vote on municipal elections, granting automatic citizenship to children

born in Latvia after 21 August 1991, easing naturalisation requirements for persons over 60 years old, and not including the loyalty principle for acquiring citizenship. In a meeting with György Frunda, the President of Latvia Vaira Vike-Freiberga stressed that the question on the Latvian language as the only state language is not disputable, and social integration is the state priority.

On 23 November, having considered György Frunda's memorandum following his visit to Latvia, the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe recommended the closure of the post-monitoring dialogue with Latvia. The post-monitoring dialogue was commenced in January 2001, when the monitoring procedure of the Council of Europe or monitoring of the commitments of Latvia as a member state was closed. On 15 December 2005, the Parliamentary Assembly of the Council of Europe, rejected a proposal by the representative of Russian delegation to the Parliamentary Assembly of the Council of Europe Valeriy Grebenshikov to re-start the post-monitoring dialogue with Latvia.

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## **MACEDONIA**

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### **General and political background**

On 9 November Macedonia received a positive "avis" (opinion) on the country's March 2004 application to join the European Union (EU), and although no date was set for the commencement of talks at the London summit on 15 December, the country's candidacy for membership was accepted. In November Macedonia published a strategy on the reform of the judicial system, and following amendments to the constitution in December began a process of judicial reform required by the EU. PROXIMA, the EU police force tasked with advising the

country's police force, left Macedonia on 15 December, and was replaced by EUPAT (EU Police Advisory Team).

Unemployment and poverty levels remained high. According to government figures, some 18 per cent of the population were unemployed, and according to a November World Bank report, some 22 per cent of the population lived in "absolute poverty".

### **Indictments for war crimes**

By the end of the year no progress had been made in the transfer from the International Criminal Tribunal for the former Yugoslavia (Tribunal) of four cases of violations of the laws and customs of war which had earlier in the year been returned to Macedonia for prosecution. In November, members of the government expressed concerns at the continued lack of progress.

### **"Terrorism" trial**

On 23 September, the Supreme Court annulled the decision of the Skopje District Court made in May, in which a journalist from Albania, Rajmonda Malecka, and her father, Bujar Malecka, were convicted of terrorism at Skopje District Court and each sentenced to five years' imprisonment following *in camera* proceedings. Despite the ruling by the Supreme Court that the verdict was "unclear and incomprehensible" and that there was no link established between the activities and the offences for which the persons were indicted, on 8 November the Skopje Court confirmed the original verdict.

Raymonda Malecka and her father were arrested in May after they had visited Kondovo to interview Agim Krasniqi, leader of an armed group known as the Albanian National Army (ANA); video tapes allegedly showing the ANA

conducting exercises were subsequently found in their possession.

### **Armed opposition groups**

In August two ethnic Albanians, Faruk Reka and Ferit Hajrullahi, were arrested on suspicion of planting an explosive device outside a police station in Bit Pazar in July. A third suspect was arrested in December on separate charges. Former ANA leader Agim Krasniqi, indicted for seven criminal charges, voluntarily surrendered to the Macedonian authorities in August, and proceedings opened in October.

### **The "disappeared" and abducted**

There was little progress in discovering the fate of the missing persons – 13 ethnic Macedonians, six ethnic Albanians, and one Bulgarian citizen – who "disappeared" or were abducted during the 2001 conflict.

Former ANA commander Daut Rexhepi (also known as "Leka") was arrested in September, and proceedings against him in connection with the abduction of the 13 ethnic Macedonians opened in October; proceedings had not been completed by the end of the year.

No indictments in connection with the "disappeared" ethnic Albanians had been issued by the end of 2005.

### **Torture and ill-treatment**

Non-governmental organizations (NGOs) continued to report incidents of ill-treatment, particularly during arrest, disproportionately affecting members of the Albanian and Roma communities. Disciplinary actions against law enforcement officers were reported, and in September the Ombudsperson announced that he had referred five cases of ill-treatment by law enforcement officers for prosecution, although by the

end of the year proceedings had only started in one case.

Concerns were expressed by the Helsinki Committee about the number of deaths, including suicides, in Macedonian prisons. The Council of Europe Committee for the Prevention of Torture carried out a visit to Macedonia in July; the report had not been published by the end of the year.

### **"War on Terror"**

The German state prosecutor continued investigations into allegations that Lebanese-born German citizen Khaled el-Masri had been detained by Macedonian police officers on 31 December 2003 and held in a hotel, where he was repeatedly questioned about Islamic organizations, until 24 January, when he was allegedly handed over to the USA's Central Intelligence Agency (CIA) who – outside of any judicial process – flew him to an airbase, reportedly in Afghanistan, where he was subject to further interrogation. He was returned to Albania in May 2004, and investigations were opened in Munich in June 2004.

### **Prisoner of conscience Jovan Vranishkovski (update to AI Index: EUR 65/001/2004)**

On 26 July Jovan Vranishkovski, the Serbian bishop of the autocephalous Ohrid Archbishopric, was arrested and began an 18-month term of imprisonment, following the confirmation of his sentence on 23 June by the Bitola Court of Appeal. He was convicted of allegedly inciting religious and ethnic hatred, due to his support for the ecclesiastical control of the Serbian Orthodox Church over the Macedonian Orthodox Church. He was held in Idrizovo prison in Skopje at the end of the year. AI considered him to be a prisoner of conscience.

### **Violence against women, and discrimination against women**

On 1 November, a national referral mechanism was launched, including procedures for identification, assistance and protection in cases of human trafficking. Police raids on suspected brothels during the year resulted in 35 people being charged in connection with trafficking and forced prostitution, and proceedings were initiated in 32 cases. A report from "All for Fair Trials", a coalition of NGOs supported by the Organization for Security and Co-operation in Europe recommended improvements in national victim protection measures and stricter adherence to sentencing guidelines in cases related to human trafficking.

Domestic violence against women remained widespread but prosecutions were rare; of 100 incidents reported to the Tetovo police by August, criminal proceedings were brought in 10 cases, only one of which resulted in a conviction.

In July, the pre-sessional meeting of the UN Committee on the Elimination of Discrimination against Women received reports of human rights violations against Romani women, including denial of the right to education, employment and health care, often based on their lack of Macedonian citizenship.

### **Discrimination against minorities**

Despite some progress towards implementation of the Ohrid agreement (negotiated in August 2001 following the conflict earlier in that year), including an increased representation of the Albanian minority in the police force and municipal authorities, representation at ministry level proceeded slowly, and official documents were not readily available in all official languages. An increased number of students received education in their own language, although ethnic

Albanians complained that discrimination continued. Similar concerns were expressed by the Turkish minority. Romani people were disproportionately the subject of ill-treatment by the police; they also faced discrimination including in the right to employment and social benefits; many Romani children were denied the right to education and made up the majority of the country's street children.

### **Refugees and internally displaced persons**

By the end of the year, some 831 registered internally displaced persons (IDPs) remained after the 2001 conflict; IDP status was reportedly withdrawn from some 160 IDPs unable to return to their homes.

An estimated 2,114 refugees from Kosovo, predominantly Roma, Ashkali or "Egyptiani", remained "under temporary protection" renewable on an annual basis. Few were granted asylum, and some were reportedly threatened with being returned to Kosovo. The government continued discussions with the Kosovo authorities on protocols for their voluntary return.

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## **MALTA**

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### **Asylum and immigration**

The Maltese government explored options for returning irregular migrants to Libya, whose government claimed to have stopped more than 40,000 people from migrating from Libya in 2005. In July, Malta hosted a meeting between officials from Malta, Libya and the European Union (EU) which discussed co-operation on migration issues. In December, Libya's Deputy Foreign Minister, Mohammed Tahar Sila, confirmed his country's intention to sign

an agreement with Malta on what he defined as "illegal immigration".

During the reporting period, several dozen people drowned while trying to reach Malta by sea.

In December, the Maltese Commissioner for Refugees Charles Buttigieg announced that only 34 of the 1,238 applications for refugee status which Refugee Commissioner's Office had processed in 2005 were successful, indicating a 2.7 per cent recognition rate.

Several immigration detention centres remained inaccessible to journalists despite explicit calls from the EU Commissioner for Justice, Security and Freedom to change this policy as long as journalists respected the privacy of the asylum-seekers.

In November, the government enacted an amendment to Article 10 of the Refugees Act which would allow Malta to deport asylum-seekers while their appeal against the rejection of their application for asylum was still pending.

On 12 December, the Maltese Board of Inquiry published the results of its investigation into a protest by migrants held at the Hal-Safi detention centre in January 2005 which erupted into violence resulting in 26 people being injured (See AI Index: EUR 01/012/2005). The inquiry found, among other things, the army officers assigned to guard the Hal-Safi detention centre did not have sufficient training for this type of work. It also found there was an overall lack of coordination between soldiers in the execution of their plan to subdue the protesters. These factors led to members of the armed forces applying excessive force "exaggerated and out of proportion in the circumstances" in their attempts to force the protesters back into the detention centre. Reports of such force included reports of members of the

armed forces beating migrants after they had been subdued and were lying on the ground.

### **Women's rights**

According to the most recent statistics reported by the National Council of Women of Malta, one out of every seven reported cases of rape took place within marriage, while 62 per cent of rapists were known to the victim. In 90 per cent of cases of domestic violence in the family, children were nearby when the attacks occurred, often in the same room. Ninety per cent of women seeking mental health care had experienced abuse.

In 2005, the government introduced a draft bill, the Domestic Violence Act (2005), which defines domestic violence as "any act of violence, even if only verbal, perpetrated by a household member upon another household member." The draft bill contains some important protective measures, such as the inclusion of harassment, both physical and verbal, as a crime and terms providing for restraining orders physically restricting the perpetrator from the areas where the victim lives and works.

However the bill excludes stalking as a crime and allows an abuser to plead the "reasonableness" of his or her actions as a defence for harassment. Under the provisions of the new bill, charges may be filed by anyone – not just the victim – but the victim may ask the court to dismiss the proceedings, leaving the door open for the abuser to put pressure the victim to drop the charges.

The draft bill contains provisions for Treatment Orders requiring perpetrators of violence to undergo treatment for their behaviour. On average, less than 5 per cent of men alleged to be abusers have sought help to correct their behaviour voluntarily. The draft bill also calls for the

establishment of a Commission on Domestic Violence to advise and educate the government about domestic violence issues.

According to a Eurostat report published in the second half of 2005, Malta has the lowest rate of female employment in Europe. Eurostat based its conclusion on the results of its 2004 Labour Force Survey. In Malta, 32.8 per cent of women between 15 and 64 years of age are in employment.

The report also showed that Malta recorded the greatest difference between male and female employment rates, with a gap of 42 percentage points. The rate of male employment was registered at 75.2 per cent.

### **Freedom of association**

In July, a draft Voluntary Organisations Act was presented. According to the draft act, a Commissioner responsible for non-governmental organizations (NGOs) would be appointed by the Minister for the Family and Social Solidarity. This commissioner for NGOs would be able to prevent organizations from being recognised by the state "on moral grounds".

### **Prohibition on Torture**

On 25 August, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published a report on Malta following a visit to the country in January 2004. During its visit, the CPT delegation visited the Police Headquarters in Floriana, the Ta'Kandja Police Complex in Siggiewi, the Malta International Airport Custody Centre in Luqa, the Immigration Reception Centre in Hal Far, the Lyster Barracks, 1<sup>st</sup> Regiment, of the Armed Forces in Hal Far and the Safi Barracks, 3<sup>rd</sup> Regiment of the Armed Forces in Safi.

The delegation was particularly concerned about certain physical conditions in immigration detention facilities such as the lack of appropriate heating and clothing for the people detained at the centres. The CPT also stated that "it is inappropriate to hold foreign nationals who are neither convicted nor suspected of a criminal offence in a prison-like environment."

The CPT delegation reported allegations of deliberate physical ill-treatment of foreign nationals, including kicks, punches and blows with batons. The report noted that cases of self-mutilation, suicide attempts, hunger strikes, vandalism and violence were relatively common in the immigration detention facilities. The delegation also noted that none of the detention facilities visited had its own health care staff. Medical members of the CPT's delegation observed the situation had a detrimental impact on the physical and psychological state of health of the detainees.

The CPT commented that the conditions in which people in immigration detention were held were not adequate as the "cold weather posed a particular problem, as none of the establishments had a proper heating system, no winter clothing or footwear was provided and the blankets available were too thin." The CPT further stated regarding the Immigration Reception Centre at Hal Far that "the sanitary facilities were in a deplorable state of repair and cleanliness, and some parts of the sewage system were broken. Moreover, apart from a few exceptions, the rooms were not heated and almost all windows lacked panes. As a result, detainees had covered the windows with carton boards, thereby severely limiting their access to natural light."

In the Maltese government's response to the CPT, it states that "the Maltese Government reiterates its view that the recommendations contained in this

paragraph regarding alternative measures to detention are outside the remit of the CPT". The government further denied the CPT's accusations of deliberate ill-treatment of detained immigrants and stated that the automatic detention policy was necessary for public security considering how small Malta is.

### **International/Regional News**

On 27 July, Malta signed and ratified the Council of Europe's European Social Charter.

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## **MOLDOVA**

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### **Torture and ill-treatment in police custody**

In a resolution adopted on 4 October, the Parliamentary Assembly of the Council of Europe called on Moldova to continue the reform of law enforcement agencies and to considerably improve conditions of detention.

*Case of Mikhail Kaldarar, Vasilii Kodrian, Anna Kodrian and Vyacheslav Pleshko (see AI Index: EUR 59/001/2005, EUR 59/004/2005, and EUR 59/005/2005)*

All four people named above were detained without charge or trial in the weeks following an armed police raid in the town of Yedintsy on 18 July as part of an investigation into a multiple murder in the capital, Chişinău. More than 30 Romani men and boys were allegedly arrested and beaten to force them to confess and to incriminate others. Mikhail Kaldarar was arrested on 18 July and detained for more than six weeks despite an order for his release by an appeal court in Beltsy on 25 July. Vasilii Kodrian was arrested on 5 August and detained without charge for over a month. His son was a suspect in the case and Vasilii Kodrian was effectively held as a hostage to force his son to give himself up to the

police. Vasili Kodrian's wife, Anna, was arrested on 18 August and briefly detained. Vyacheslav Pleshko was arrested in Ukraine by Ukrainian and Moldovan police in late July or early August, forcibly returned to Moldova without any extradition proceedings, and detained at a temporary holding facility in Yedintsy until 4 September. All four were released without charge.

*Case of Sergei Gurgurov (see AI Index: EUR 59/006/2005, and EUR 59/007/2005)*

Sergei Gurgurov was detained by police from the Ryshkan district in Chişinău, on 25 October, accused of stealing a mobile phone. Later that day, he was transferred to a temporary holding facility at the Chişinău police headquarters. On 3 November, he was brought before the District Court in Ryshkan after the District Procurator requested he be detained for questioning for a further 30 days.

At the court hearing, Sergei Gurgurov was assisted to the fourth floor of the building by police officials as he was unable to walk. A video tape recording showed Sergei Gurgurov being brought into the court building by two officers, his feet dragging as they pull him, and clearly unable to walk or stand without support. Sergei Gurgurov told his lawyer that he had been tortured while in detention, including by being beaten and subjected to electric shocks, in order to force him to confess to the theft. Despite a court order that he should be released under house arrest Sergei Gurgurov remained in detention and police justified his continuing detention referring to another order for his arrest dating back to September 2001.

On 9 December, following an urgent intervention by AI, Sergei Gurgurov was released on bail. The Prosecutor General has stated that there are no grounds to suspect that ill-treatment or torture were

used in this case and has asked AI to stop taking action on the case because the publicity has caused an "image crisis" for Moldova. AI remains concerned that to date the Prosecutor General's office has taken no action to investigate and prosecute the police officers allegedly involved in the torture or other ill-treatment.

*Case of Vasili Lisinkov (update to AI Index: EUR 01/012/2005)*

In June AI wrote to the Prosecutor General's office concerning the case of Vasili Lisinkov who was allegedly beaten and subjected to other humiliating treatment by police officers from Buyukan district in Chişinău to force him to "confess" to a number of thefts. AI was concerned that the conditions of Vasili Lisinkov's detention may have had a serious impact on his psychological state. Vasili Lisinkov has a learning disability and had threatened to commit suicide while in detention. The response from the Prosecutor General's office to AI in August defended the reasons for Vasili Lisinkov's arrest and detention, and dismissed AI's concerns regarding his ill-treatment and poor psychological state, but conceded that the original charge of theft was under review. AI continued to monitor the situation.

**Opposition politicians prosecuted (see AI Index: EUR 59/003/2005)**

Gheorghe Straisteanu, a former Member of Parliament, founder of the first private television company in Moldova, and a well-known critic of government attacks on media freedom, was detained with an employee on 22 July. He was charged with repeatedly stealing valuable items from cars, a crime potentially punishable by up to 25 years' imprisonment (Article 195, Criminal Code). One of his employees testified for the prosecution after allegedly being tortured. Released on bail on 18 August by the Central

District Court of Chişinău, Gheorghe Straisteanu was reported to have been immediately re-detained by police officers in defiance of a further court order on 19 August for his release. He remained in pre-trial detention until 17 November when he was released on bail on condition that he remains at his place of residence. At the end of 2005, the car thefts trial was still pending.

In its 4 October resolution, the Parliamentary Assembly of the Council of Europe called for an investigation into the high number of court cases against leading opposition figures.

#### **Death penalty**

Moldova took further steps towards complete abolition of the death penalty in law. In September the Constitutional Court approved two amendments to the provision in the Constitution that allowed for the death penalty in certain cases. The amendments are expected to be passed by parliament in 2006.

#### **Self-proclaimed Dnestr Moldavian Republic (update to AI Index: EUR 01/03/00)**

The status of the Dnestr Moldavian Republic (DMR), an internationally unrecognized breakaway region, remained unresolved.

Tudor Petrov-Popa and Andrei Ivanțoc were still in detention in Tiraspol at the end of 2005, despite a July 2004 judgment by the European Court of Human Rights, which did not recognize their conviction by a court of the DMR and which found their detention to be arbitrary and in breach of the European Convention on Human Rights. They were members of the "Tiraspol Six", who were sentenced to prison terms in 1993 for "terrorist acts", including the murder of two DMR officials. The four men convicted with them were released in

1994, 2001 and 2004. The Criminal Code of the DMR retained the death penalty for six offences, but a moratorium on its use continued.

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## **RUSSIAN FEDERATION**

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#### **Violence against women**

AI launched a report on violence against women in the family in December. The report, *Russian Federation: Nowhere to turn to - violence against women in the family* (AI Index: EUR 46/056/2005) highlighted the high incidence of violence and the lack of an adequate state response to the issue. According to a November article in the Russian governmental newspaper *Rossiiskaia Gazeta*, up to 80 per cent of all violent crimes in Russia are committed in the private sphere. Non-governmental organizations (NGOs) remained concerned that women were the main victims of such violence. While no official statistics were available, independent research showed that about 70 per cent of married women had been subjected to some form of violence from their husbands. There were no measures under Russian law which specifically addressed violence against women in the family. The Ministry for Health and Social Development stated that there were 23 state-run crisis centres for women in the Russian Federation; however, women's human rights organizations were concerned that government support for crisis centres and hotlines was on the decline. According to these organizations, there was only one shelter place for every 9 million women in Russia.

AI delegates presented the report to Ella Pamfilova, Chair of the Presidential Council of the Russian Federation for Cooperation of the Development of Civil Society Institutes and Human Rights, and distributed it to other governmental representatives. The report called on the

Russian authorities to: ensure protection through legislative reform by adopting specific legislation on domestic violence, providing for full protection of victims, unhindered access to medical, social and legal services, and for perpetrators to be held accountable; establish shelters and crisis centres to assist women victims of violence and assist NGO initiatives; and to promote changes in gender-sensitive attitudes and behaviours by providing training to police, prosecutors, judges, medical personnel and others having contact with women victims of violence on proper handling of such cases, while ensuring full respect for women's human rights.

#### **Arbitrary detention, torture and ill-treatment**

*Police brutality in the Republic of Bashkortostan (update to AI Index: EUR 01/001/2005 and EUR 01/012/2005)*

Court hearings began against eight police officers charged in connection with a police operation in Blagoveshchensk, Republic of Bashkortostan, in December 2004 that resulted in the arbitrary detention, beating and torture of over 1,000 people. The first hearing was on 16 October but was postponed for procedural reasons and the hearings were ongoing at the end of the year. Due to a reported campaign organized by the Bashkortostan authorities to intimidate victims and discredit human rights groups working on behalf of the victims, only 20 or 30 of the 347 individuals originally officially registered as "victims" of the events by the procuracy were continuing with their complaints. ("Victim" status is formal recognition that an individual has suffered physical, financial and/or mental loss as a result of a crime, and entitles the individual to certain rights, including compensation.)

The lawyer representing many of these victims received an official refusal in July

from the procuracy in Bashkortostan to open a criminal investigation into the legality of basing the policing operation on provisions set out in an unpublished directive of the Ministry of Internal Affairs. The unpublished directive appeared to violate principles of Russian and international law, and gave rise to serious human rights concerns (see AI Index: EUR 01/012/2005).

*Lgov prison colony protest (update to AI Index: EUR 01/012/2005)*

On 4 July, the prison director of the Lgov prison colony and two deputies were reportedly fired, following public outcry and an investigation by the Kursk regional procuracy into alleged ill-treatment at the colony. However, only one prisoner was recognized by the procuracy as a "victim" (under Article 42 of the Criminal Procedure Code) in the criminal investigation that was opened into the ill-treatment. Three hundred other prisoners who had complained of being beaten were each given the status of "witness". The 300 were subsequently reassigned to various prison colonies and pre-trial detention centres around the country, purportedly for their protection.

However, according to a lawyer for one of the men, their relatives were not informed of the transfer and some of those moved to pre-trial detention were not given adequate medical treatment despite having sustained serious injuries during the "self-harm" protest. According to their lawyer at least two of these men submitted complaints to the Russian authorities about the ill-treatment, and had submitted an application to the European Court of Human Rights. They were reportedly placed in a pre-trial detention facility (SIZO) and subjected to intimidation and the threat of torture with the aim of pressuring them to withdraw their complaints.

*Conviction of two police officers for torturing Alexei Mikheev (update to AI Index: EUR 46/027/2002)*

On 30 November two Russian police officers were convicted of crimes relating to the torture of Aleksei Mikheev in detention in September 1998. A court in Nizhnii Novgorod found that Igor Somov and Nikolai Kosterin had driven Aleksei Mikheev to attempt suicide, due to their carrying out torture that included electric shocks and beatings, to make him confess to a crime that he did not commit. The court sentenced the two police officers to four years' imprisonment. However, according to the Committee Against Torture, a Nizhnii Novgorod-based NGO, Igor Somov and Nikolai Kosterin were not the only officers responsible for the torture and other police and procuracy officials who were responsible have yet to be prosecuted.

*Arbitrary detention of Airat Vakhitov and Rustam Akhmiarov (see AI Index: EUR 46/034/2005)*

Airat Vakhitov and Rustam Akhmiarov, both former Guantánamo prisoners, were arbitrarily detained in Moscow on 27 August by Moscow and Tatarstan law enforcement officials, transferred to Tatarstan and held in detention with access only to a state-appointed lawyer until their release six days later on 2 September. A court in Tatarstan ruled on the legality of the two men's detention in their absence, in violation of Russian and international law, which require detainees to be present for such hearings. Rustam Akhmiarov and Airat Vakhitov were simply handed a copy of the court decision to detain them further. The two men told AI that while in detention, they only had contact with state-appointed lawyers, who did not communicate the detainees' whereabouts to their families until the eve of their release five days later, and that during their time in detention, the authorities in Tatarstan

had refused to confirm their whereabouts to their families.

*Denial of medical treatment to prisoner Mikhail Trepashkin (see AI Index: EUR 46/063/2005)*

Mikhail Trepashkin was denied urgently-needed health care while in detention in prison colony IK-13 in Sverdlovsk oblast. On 20 October he was medically examined and the doctor diagnosed a moderate form of bronchial asthma with periods of increased severity as well as itching dermatosis. The doctor recommended that Mikhail Trepashkin be admitted to a hospital for constant monitoring and treatment. However, according to his lawyers, the prison administration refused to allow him to be transferred to hospital and failed to provide adequate medical care.

*Threat of deportation to Uzbekistan (see AI Index: EUR 46/027/2005 and EUR 46/040/2005)*

Thirteen men, one Kyrgyzstani national and 12 Uzbekistani nationals, were in detention in the town of Ivanovo at the end of the year, facing possible extradition to Uzbekistan. The men had been detained by Russian law enforcement officers on 18 June, according to the Moscow-based human rights group Memorial, in the city of Ivanovo. During the period under review it emerged that the Uzbekistani authorities had based their request for the men's extradition on accusations that they had been involved in the events in the eastern Uzbekistani city of Andizhan on 13 May, when hundreds of people were reportedly killed when the security forces opened fire on mainly unarmed demonstrators in the city. They also accused the 13 of involvement in a religious extremist group which they call Akramia, and of financing "terrorist" activities. All 13 men reportedly deny these accusations. All 13 applied for

asylum in August and their asylum claims were pending at the end of the year.

A fourteenth man, Russian citizen Khatam Khadzhimatov (who is of Uzbek origin), was released on 11 October when the Ivanovo regional court overturned a lower court's 15 September decision that, despite being a Russian citizen, he could be detained "to secure the possibility of his transfer to Uzbekistan". Fearing that his Russian citizenship could be revoked he left Russia and applied for refugee status in Ukraine.

*Marsel Isaev (see AI Index: EUR 62/030/2005)*

Marsel Isaev, a student, was forcibly deported from the Russian Republic of Tatarstan to Uzbekistan on 12 October, despite the fact that his application for asylum was under consideration by the Russian authorities. In his asylum application he had stated that he feared that in Uzbekistan he could face torture as a suspected member of the banned organization Hizb-ut-Tahrir. Law enforcement officers stopped him on the street on 6 September during a routine document check; although his documents were in order, he was detained and reportedly pressured to testify against an acquaintance on trial in Kazan accused of membership of Hizb-ut-Tahrir. He was threatened that unless he testified that this acquaintance had recruited him to Hizb-ut-Tahrir, his residence permit, due to expire on 19 September, would not be renewed and he would be deported to Uzbekistan as a suspected member of a "terrorist" organization. Marsel Isaev refused to comply with the demands and was re-detained on 23 September, and the procedure for deportation was started. He applied for asylum on 6 October with the Tatarstan Migration Department, fearing that if returned to Uzbekistan he would be investigated as a suspected Hizb-ut-Tahrir member, and

tortured. Marsel Isaev has denied having any connection at all to Hizb-ut-Tahrir.

### **Human rights defenders**

#### *The killing of Liudmila Zhorovlia*

Lawyer Liudmila Zhorovlia was shot dead at home in what appeared to be a contract killing on 21 July. Her son who was at home at the time was also killed. The Komi human rights commission Memorial issued a statement that it was convinced the murder was directly connected with her work on behalf of residents of the town of Vorkuta, in the Republic of Komi. Liudmila Zhorovlia had successfully won a case against the mayor's office of Vorkuta in which the court had overturned as illegal a decree by the mayor requiring payments by residents of certain charges for services. Liudmila Zhorovlia had recouped her money and was assisting residents to submit claims themselves, including one large collective claim, and had also lodged an appeal with the procuracy to open criminal proceedings against the authorities. Reportedly she had been threatened more than once to stop her work and she had told friends and relatives that she could be killed. By the end of the year, no one had been identified as involved in the murder.

*Stanislav Dmitrievskii and the Russian-Chechen Friendship Society (update to AI Index: EUR 46/059/2004, EUR 01/002/2005 and EUR 01/012/2005, see also AI Index: EUR 46/053/2005)*

In November Stanislav Dmitrievskii, Executive Director of the human rights organization Russian Chechen Friendship Society (RCFS) and editor-in-chief of the *Pravo-zashchita* (Rights Defence) newspaper, went on trial on charges of incitement to racial hatred, for his decision to publish articles written by a former Chechen separatist leader and his envoy. However, both articles were

critical of Russian government policy rather than expressing any criticism of ethnic Russians, and contained calls for a peaceful resolution to the Chechen conflict. The charges were punishable by up to five years' imprisonment. AI stated that it would consider Stanislav Dmitrievskii a prisoner of conscience if imprisoned on these charges. The trial was ongoing at the end of the year.

The apparent campaign of administrative harassment of the RCFS by the authorities continued. On 15 August the tax authorities for Nizhegorodskii region submitted a demand to the organization for over one million roubles in what they viewed as unpaid profit tax from money received by the organization from foreign funders. Money started to be seized from the RCFS rouble accounts on 26 August, and their hard currency accounts were frozen. The RCFS appealed the tax authorities' claim. The arbitration court ruled on interim measures on 13 September to protect the interests of RCFS pending the court's final decision on the tax claim. The hearings relating to the tax claim were ongoing at the end of the year.

A new criminal case was opened on 2 September, under Article 199 of the Criminal Code ("large-scale evasion of tax and / or other dues from an organization"), although no one was charged in relation to this investigation during the period under review. On 14 November the Nizhegorodskii regional court turned down the application of the main registration department of the Ministry of Justice for Nizhegorodskii region to close down the RCFS.

*New NGO law: a threat to freedom of association*

A draft law on civil society organizations was placed before the State Duma (parliament) in November which raised serious concerns about freedom of

association and questions around Russia's commitment to a genuinely free and independent civil society. The draft law provided for much greater official scrutiny of the work of Russian and foreign civil society organizations, and threatened to open the door to arbitrary decisions by the authorities to restrict or ban financing and activities on vague grounds. The draft law was entitled "On Introducing Amendments to Certain Legislative Acts of the Russian Federation" and included amendments to three main laws – the law on closed administrative-territorial entities, the law on public organizations, and the law on non-commercial organizations.

At the draft law's first reading at the State Duma on 23 November the text contained alarming provisions which it was feared would at best hamper NGO work, at worst seriously compromise NGOs' independence, by making them vulnerable to excessive and arbitrary scrutiny by the authorities, and possibly result in the closure of some organizations. It passed its first reading on 23 November. The Council of Europe conducted an analysis of the law and concluded that, while the stated aims of the law might be legitimate, many of the provisions were not in line with European standards on freedom of association, being disproportionate and too restrictive.

President Vladimir Putin ordered amendments to the bill which were incorporated into a second version of the law which passed its second and third readings without much challenge and the Federation Council – the Duma's upper house – passed the law with one vote against and one abstention on 27 December. The law was pending presidential signature at the end of the year.

**Racist attacks**

Reports of racially-motivated attacks continued throughout Russia. The non-governmental Sova analytical centre reported that there were at least 28 murders and 365 assaults that were racially motivated in 2005.

*Murder of Peruvian student in Voronezh*

A group of people beat and stabbed Peruvian student Enrique Arturo Angelis Urtado to death on 9 October in the city of Voronezh. Two other students were badly injured during the attack, which was believed by many to have been racially-motivated. According to the office of the regional Procurator, by the end of the year 13 Voronezh students had been identified during the investigation. One of the 13 was charged under Article 105 part 2 d, e and l ("murder" carried out with special cruelty, by a generally dangerous means, and for reasons of national, racial or religious hatred or enmity or blood vengeance). The other individuals were charged under Article 161.2 ("robbery" with aggravating circumstances) and Article 213 part 2 ("hooliganism" premeditated, carried out by a group or other aggravating circumstance).

*Alleged racially-motivated killings – the case of Khursheda Sultonova (update to AI Index: EUR 01/005/2004)*

In October a jury in St Petersburg started to hear evidence in the case of Khursheda Sultonova (previously reported as Sultanova), a nine-year-old Tajik girl who was killed in February 2004. Seven people, aged between 14 and 21 when the crime was committed, faced charges of hooliganism, punishable by seven years' imprisonment, and one youth, aged 14 when the crime was committed, faced charges of murder of a person in a helpless state, motivated by racial hatred, as well as hooliganism and robbery.

**Chechnya and the North Caucasus**

Chechen parliamentary elections were held in November in which the pro-Kremlin United Russia party gained over 60 per cent of the vote. A Council of Europe representative stated that the elections took place in an "atmosphere of fear" and Russian and international human rights groups declared that free and fair elections had not been possible given the security situation and the climate of impunity in Chechnya.

AI delegates undertook a field mission to Ingushetia in September. During the mission the delegation met with relatives and lawyers of detained and "disappeared" people from Chechnya, Ingushetia and other North Caucasus regions, and visited camps for internally displaced people. A short briefing paper *Russian Federation: Torture, "disappearances" and alleged unfair trials in Russia's North Caucasus* (AI Index: EUR 46/039/2005) was released following the visit.

*Arbitrary detention and torture in Novie Atagi*

During the mission, AI collected information relating to alleged arbitrary and incommunicado detention and torture in the village of Novie Atagi, Chechnya. According to reports, security forces had conducted a number of raids on the village of Novie Atagi since January 2005, during which they checked identity documents and detained men who were then taken to detention facilities where they were tortured and beaten to make them "confess" to crimes they had not committed. There were allegations that security services, under the jurisdiction of the then first deputy Prime Minister of Chechnya, Ramzan Kadyrov, were responsible for the raids.

One such raid took place after a policeman was reportedly killed in the

village on 22 August. On 5 September, security forces conducted a document check in the village. Then, over the course of three nights from 12 to 14 September large numbers of armed men wearing camouflage uniform came to the village and detained at least eight men. According to one media report, the men introduced themselves as being law enforcement officers. However, according to relatives, the men did not produce any arrest warrants or any form of identification to indicate which official body they were from.

On 15 September and for several days thereafter, villagers blocked the Kavkaz main road near Novie Atagi demanding to know where those detained had been taken, and for them to be released. During this period, some of the men who had been detained were set free. Allegedly some of them had been severely beaten while in detention, but did not dare to go to a hospital in Chechnya for treatment, travelling instead to neighbouring republics in the North Caucasus.

The picket lasted for several days until it was established that four of the detained men were being held in the police detention facility (known as IVS from its initials in Russian) in Shali district police station. One of the four, named as Ruslan Khalaev, aged 21, was detained at 3am on 14 September. The three others detained at some point during this period were Shakruddi or Sharudin Khalaev, aged 27, Magomed Elikhanov, aged 20, and Magomed-Emi Aguev, aged 18. A fifth man, Islam Bakalov, was reportedly subsequently also found to have been detained in the IVS. The five men were said to have been charged in connection with the murder of the policeman.

According to reports, at least one of the men in detention, Ruslan Khalaev, had been tortured, including through being

beaten with batons, having water poured over him and being tortured with electric shocks until he agreed to sign a "confession" of guilt. Witnesses were also said to have seen him being beaten by law enforcement officials who had subsequently accompanied him to the alleged scene of the August murder of the policeman.

*Trial into the killing of six civilians (update to AI Index: EUR 01/005/2004, EUR 46/027/2004, EUR 01/002/2005 and EUR 01/012/2005)*

In August the Military Collegiate of the Russian Supreme Court quashed the acquittal of four members of a special military unit for the murder of six unarmed civilians, and a third trial against them started in November. Said Alaskhanov, Abdul-Wakhab Satabaev, Shakhban Bakhaev, Khamzat Tuburov, Zainap Dzhavatkhanova and Dzhamlail Musaev, six civilians from Chechnya, died on 11 January 2002 after being shot by members of a special unit of the Russian Military Intelligence (GRU). In May 2005 Captain Eduard Ulman, Lieutenant Aleksander Kalaganskii, Sergeant Vladimir Voevodin and Major Aleksei Perelevskii had been found not guilty of any crime by a jury in a second trial in Rostov-on-Don, despite having admitted to killing the civilians. The defence of all four soldiers that they had been following orders was accepted by the jury.

*Two more under investigation in the Zelimkhan Murdalov case (update to AI Index: EUR 46/027/2002, EUR 01/005/2004, EUR 01/002/2005 and EUR 01/012/2005)*

On 18 November the department for investigating particularly important cases at the Office of the Procurator of the Chechen Republic overturned the decision to suspend the investigation into the "disappearance" of Zelimkhan Murdalov. On the same day this

department opened a criminal investigation (under Article 286 part 3 a, b and v "exceeding official authority" with aggravating circumstances, and Article 111 part 3 a "grievous bodily harm with aggravating circumstances") in relation to the commander of the Khanty-Manskiisk special police unit (OMON) and his deputy, suspected of involvement in Zelimkhan Murdalov's torture and "disappearance". Sergei Lapin, an OMON officer from the same unit, was convicted of torturing Zelimkhan Murdalov earlier in the year. The whereabouts and fate of Zelimkhan Murdalov remained unknown.

*Investigation into the raid on the village of Borozdinovskaia (update to AI Index: EUR 01/012/2005)*

One member of the Vostok (East) battalion of the Russian federal Ministry of Defence's 42nd Motorized Infantry Division was convicted of "exceeding official authority" (Article 286 of the Russian Criminal Code) in October. He was given a three-year suspended sentence. To AI's knowledge, no other state official has been charged in connection with the raid, in which 11 men "disappeared" and at least one other man was killed.

*Reported attacks by armed opposition groups in Ingushetia*

In the period under review, attacks on police officers and their homes, and bomb explosions apparently targeting other state officials and government buildings were reported on a regular basis in Ingushetia. In one of the bomb blasts, in Nazran on 25 August, the Ingush Prime Minister was targeted; he and two others were injured and his security guard was killed.

*Internally displaced population in Ingushetia*

Internally displaced persons in Ingushetia were living in cramped, unsuitable conditions and had little prospect for an improvement in their circumstances. AI delegates visited camps in Ingushetia in September where displaced people have been living for several years. The conditions at a camp on the site of a former dairy farm were particularly harsh. Families had partitioned off living quarters in a large draughty shed that formerly housed dairy cattle. However, again and again the people living in these conditions told the AI delegates that they were afraid to take their families back home to Chechnya while the violence and abuses were continuing, and while it remained impossible for them to rebuild their destroyed homes. In December the chief sanitary doctor of Ingushetia issued a statement that the camps did not meet hygiene requirements and should be closed before 1 January 2006. However, following an outcry by local human rights organizations and others, as the inhabitants of the camps had nowhere else to go, the camps remained open.

*Armed raid in Kabardino-Balkaria*

On 13 October a group of up to 300 gunmen launched attacks on government installations in and near Nalchik, capital of Kabardino-Balkaria, including the building of the Federal Security Service (FSB), police stations, the TV centre and the airport. There were reports that gunmen took at least two civilians hostage. More than 100 people, including at least 12 civilians, were reported to have been killed during the ensuing shooting between law enforcement officials and the gunmen; many were wounded. The attacks were reportedly in response to months of persecution of practising Muslims in the region, including arbitrary detention and torture by law enforcement officials, and wholesale closure of mosques. Following the attacks, law enforcement officials

detained dozens of people; many of the detainees were reportedly tortured.

**Journalist Orkhan Dzhemal detained and ill-treated**

Orkhan Dzhemal, a journalist for *Versiya* magazine who had travelled to Nalchik to cover the events, was detained by police in his hotel room in Nalchik at 11.40pm on 16 October. He was taken to the 6th police station (known as UBOP) in Nalchik and released at about 4.30pm on 17 October. Orkhan Dzhemal told AI that he was beaten in detention at the police station during the night. He had been researching a list of people killed during the 13 October armed attack, whom the authorities were alleging were fighters, although they were in fact, according to Orkhan Dzhemal, peaceful citizens.

**Torture of Rasul Kudaev and health concerns (see also AI Index: EUR 46/003/2006)**

Former Guantánamo prisoner Rasul Kudaev was detained on 23 October by law enforcement officials at his home in Kabardino-Balkaria and taken to the 6th police station in Nalchik, where he was reportedly tortured, before being transferred to a pre-trial detention centre. He remained in detention at the end of the year charged with terrorism-related offences. His mother was unable to visit her son or pass on to him sufficient medication for his serious health conditions, which according to the family had rendered him bed-ridden. A lawyer who had tried to complain about his treatment was suspended from the case and replaced with another state-appointed lawyer, a move thought to be against Rasul Kudaev's wishes.

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**SERBIA AND  
MONTENEGRO (INCLUDING  
KOSOVO)**

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On 3 October the European Union (EU) Council of Ministers authorized the European Council to open negotiation with Serbia and Montenegro (SCG) on a Stabilization and Association Agreement. Talks started on 7 November. In December, Montenegro's President Milo Đukanović announced that a referendum on the republic's independence would be held in April 2006.

In September, the Minister of Justice announced measures to address corruption in the judiciary, following the arrest of the deputy organized crime prosecutor and a Supreme Court judge on corruption charges.

In October a revised criminal code, a law on the police and on the Protector of Citizens (ombudsperson) were introduced.

**War crimes: International Criminal Tribunal for the former Yugoslavia (Tribunal)**

Despite Serbia's improved cooperation with the International Criminal Tribunal for the former Yugoslavia (Tribunal) in the first half of the year, and reports by the Chief Tribunal Prosecutor Carla Del Ponte, of "complete satisfaction with Belgrade's cooperation" in October, by December she had reported to the UN Security Council that cooperation had deteriorated. The authorities swiftly established mechanisms to ensure future cooperation, although former Bosnian Serb General Ratko Mladić, believed to be at large in Serbia, was not arrested by the authorities. The trial of former President Slobodan Milošević, accused of responsibility for war crimes in Croatia, Bosnia and Herzegovina (BiH) and Kosovo, continued. In November, Vojislav Šešelj refused to plead at the Tribunal to a charge of eight counts of crimes against humanity and six counts of violations of the laws or customs of

war between 1991 and 1993, in Croatia and BiH.

### **Domestic War Crimes Trials**

In a case investigated by the Tribunal and transferred to Serbia in 2004, nine men were indicted in August for the detention and torture of at least 174 Bosnian Muslim (Bosniak) civilians and the murder of at least 15 men at Čelopek in BiH, and the deportation to Hungary of 1,822 Bosniaks; three suspects remained at large.

In October the Office of the War Crimes prosecutor at the Belgrade District court published an indictment against five former members of the paramilitary unit known as the Scorpions, one of whom remained at large. The five men were charged, along with three others, with war crimes against the civilian population, for the killing of six Bosniak civilians on 16 or 17 July 1995 at Godinjske bare near Trnovo in BiH. The trial opened on 20 December.

On 18 November proceedings opened at the same court against Anton Lekaj, an ethnic Albanian accused of war crimes against the civilian population.

The trial continued before the special War Crimes Panel at the Belgrade District court of 16 members of the former Yugoslav People's Army (JNA) indicted in connection with executing Croatian prisoners at Ovčara near Vukovar in Croatia in November 1991. On 13 December 14 of them were convicted of war crimes against the civilian population and sentenced to between five and 20 years' imprisonment.

In Montenegro, complaints were filed in the Podgorica civil court against the Montenegrin authorities seeking reparations, including compensation, on behalf of some of the families of more than 80 Bosniak civilians. Having fled as

refugees to Montenegro during April and May 1992, they were subsequently arrested and handed over by the Montenegrin police to police and military forces in the *de facto* Republika Srpska. The Supreme Court ruled that these civil cases should not be allowed to proceed until the conclusion of criminal proceedings against six low-ranking police officers suspected of involvement in the deportation; by December, no investigations had been opened.

### **"Disappearances"**

No indictments were made public in connection with investigations, which had opened in January, into the alleged mass cremation of the bodies of ethnic Albanians at the Mačkatica factory in Surdulica in 1999; the non-governmental Humanitarian Law Centre (HLC) alleged that witnesses had been intimidated by local police officers.

By November, Serbia had handed over to the Kosovo authorities, the 836 bodies of ethnic Albanians killed in Kosovo, who had been transferred to Serbia in refrigerated trucks and buried in mass graves in Batajnica near Belgrade, Petrovo Selo and Bajina Bašta. Investigations had opened in 2000, but no indictments had been issued by the end of the year, although on 25 October six serving Serbian police officers and three former officers were indicted on suspicion of the murder of 48 ethnic Albanians in Suva Reka in Kosovo in March 1999. Some of the bodies identified at Batajnica had been identified as persons from Suva Reka.

### **Possible extrajudicial executions**

In Montenegro, Slavoljub Šćekić, Head of the General Criminal Division of the Montenegrin police, was murdered on 30 August; his family alleged official complicity and began their own investigation. The trial continued of

Damir Mandić, the sole suspect - despite allegations of official complicity - in the murder in May 2004 of Duško Jovanović, editor-in-chief of the Montenegrin daily *Dan*.

### **Army of SCG**

In September the Belgrade District Court prosecutor invited the German Weisbaden Criminological Institute to assist in investigations opened on 14 March into the deaths in October 2004 of two conscript sentries – Dražen Milovanović and Dragan Jakovljević – at a Belgrade military complex; on 30 December the prosecutor announced that the US Federal Bureau of Investigations had been invited to assist. A military commission of inquiry had in November 2004 claimed that they had shot each other after a quarrel, but a State Commission of Inquiry had concluded in December 2004 that a third party was involved. In October two suicides were reported in barracks at Pirot and Bagremar.

In October, the period of compulsory military service was reduced from nine to six months; alternative service was cut from 13 to nine months.

### **Past political murders**

The trial continued of Milorad "Legija" Ulemek-Luković, accused of involvement in the murder in March 2003 of Prime Minister Zoran Đinđić. In July, another suspect, Dejan "Bagsy" Malenković, was given witness-associate status by the court.

### **Police torture and ill-treatment**

The UN Committee against Torture (CAT) in November and again in December found SCG (as successor to the Federal Republic of Yugoslavia) in violation of the Convention against Torture and Other

Cruel, Inhuman or Degrading Treatment or Punishment.

In November, the CAT found that SCG had violated the convention in its failure to carry out a prompt and impartial investigation into the alleged suicide of Nikola Nikolić, even when requested to do so by the deceased's parents. Nikola Nikolić reportedly fell out of a window on 19 April 1994 while trying to escape arrest; however, the CAT stated that the nature of his injuries indicated that he had been tortured before his death, and found that there were grounds for the state to have conducted a prompt and impartial investigation.

In December, the CAT found that Danilo Dimitrijević had been subjected to acts of torture in contravention of Article 1 of the Convention after his arrest in November 1997. At a Novi Sad police station he had been ordered by an unidentified man in civilian clothes to take off his clothes. He was handcuffed to a metal bar against the wall, where he was beaten with a police truncheon for over an hour. He was then tied to the metal pole for the next three days and denied food and water. Despite having filed a criminal complaint to the authorities 10 days after his release, he received no reply from the authorities. The complaint had been filed on his behalf in August 2000.

In Montenegro, some 27 prisoners held at the Spuž prison in Podgorica were reportedly subjected to ill-treatment during a raid on 30 August by members of the Special Police, reportedly in connection with investigations into the death of Slavoljub Šćekić (see above). An inquiry conducted by the Montenegrin Clinical Centre and Ministry of Health found that 18 detainees had suffered light injuries; the prison director was subsequently dismissed.

### **Minorities**

Proceedings against those arrested for attacks in March 2004 on minorities were delayed, but on 26 July, eight men were sentenced to between three and five months' imprisonment for the burning of the Hadrović mosque in Niš during March 2004 when attacks on minorities in Serbia took place, in response to widespread attacks on Serb communities in Kosovo.

Attacks on members of ethnic minorities were regularly reported during the year, including in Vojvodina, where ethnic Hungarians were subjected to attacks. In December the Vojvodina regional assembly lodged an official request with the Serbian Government asking it to ban neo-Nazi and racist groups.

### **Attacks on human rights defenders**

In November AI expressed concerns at the apparently increasing incidence of threats and attacks on individual human rights defenders and human rights non-governmental organizations (NGOs), which took place in the period leading up to the anniversary of Srebrenica in July, and had continued in the following months (see *Serbia and Montenegro: The Writing on the Wall. Serbian Human Rights Defenders at Risk*, AI Index: EUR 70/016/2005, 29 November 2005).

These attacks were primarily directed at NGOs seeking to address impunity for war crimes. Attacks included repeated and apparently systematic intimidation, including public threats, in the form of graffiti, verbal and written threats, apparent "burglaries" and physical attacks against human rights defenders, lawyers and independent journalists. Few perpetrators were brought to justice in the period under review. Some organizations were subjected to threats of legal action or the opening of what appear to be malicious prosecutions.

There were increasing concerns about the independence of the media.

### **Violence against women**

In November, research conducted in 2003 by the Belgrade Autonomous Women's Centre, and published by the World Health Organization (WHO) in November, showed that intimate partner violence remained widespread. Some 24 per cent of the 1,456 respondents had experienced physical or sexual violence, some 36 per cent reported being injured in the past year, but only four per cent had reported such violence to the police, and some 78 per cent had never sought assistance from any agency. A Family Law introducing protective measures for victims of domestic violence came into force on 1 July.

SCG remained a source, transit and destination country for women and girls trafficked for forced prostitution. The government appointed an anti-trafficking council in November.

### **Kosovo**

The UN Interim Mission in Kosovo (UNMIK) continued to administer Kosovo, with the Special Representative of the UN Secretary-General (SRSG), Soren Jessen-Petersen, holding executive powers. In July, an Administrative Directive authorized the initiation of pilot projects on the decentralization of power, and at this stage involving only five local authorities. Some further competencies were transferred to the Provisional Institutions of Self-Government (PISG), including in December, when regulations were promulgated outlining measures towards the establishment of a Minister of Interior and a Ministry of Justice, which had previously been controlled by UNMIK.

The presence of uniformed opposition groups was reported, while the Self-

Determination Movement (Levizja Vetevendosje!) continued to organize non-violent demonstrations against UNMIK, and protest against the final status process.

On 31 October, following a less than positive report on Kosovo's progress by UN envoy Kai Eide, the UN Secretary General appointed former Finnish President Martti Ahtisaari as his Special Envoy to Kosovo, to conduct talks on the future status of the province. On 24 December Martti Ahtisaari announced that the first round of negotiations between Belgrade and Pristina would take place in January 2006. AI expressed concerns that members of minority communities and women were not represented in the delegations participating at the talks.

#### **War Crimes: Domestic Prosecutions**

Four former members of the Kosovo Liberation Army (KLA) known as the "Llap group", who had been convicted and sentenced for war crimes by an international panel of judges in 2003, were released on 22 July after the Supreme Court annulled the verdict and ordered a retrial. In September four Serb men were arrested in Gračanica/Ulpiana for war crimes. The trial of six former members of the KLA arrested in May 2004 finally opened in Gnjilane/Gnilanë after several procedural delays; they were charged with the killing of seven Albanian civilians in 1998.

#### **"Disappearances" and abductions**

No progress was made in bringing to justice those believed responsible for the abductions of members of minority communities during and after the 1999 conflict. (See Serbia for "disappearances").

#### **Ethnically and politically motivated crimes**

Attacks on the lives and property of Serbian communities in particular were regularly reported, including attacks involving explosive devices, arson, beatings and shootings. In August two Serb men were killed and two injured in drive-by shooting in the predominantly Serb enclave of Štrpci/Štrpcë; in September, an attempt was made on the life of Dejan Janković, a recently appointed senior Serb Kosovo Police Service (KPS) officer, and in November an explosion in the market-place in Štrpci/Štrpcë resulted in the injury of three Serbs and an Albanian.

Following the March 2004 violence in which 19 people died and 954 civilians and 184 police and security personnel were injured, as of 18 November, according to the OSCE, out of 426 persons charged with criminal offences, some 209 had been convicted while 12 were acquitted, 110 cases were still pending and 95 charges dropped. The Organization for Security and Cooperation in Europe (OSCE) reported in December that criminal investigations had been hindered by problems including witness intimidation and loss of material evidence, resulting in delays in many cases, and were aggravated by poor cooperation between the police and the prosecution; they also reported concerns regarding inappropriate charges and sentencing. Internal investigations into the role of 41 KPS officers suspected of participation or complicity in human rights violations did not result in any criminal prosecutions.

UNMIK and KPS officers were targeted in shootings, and explosive devices were placed under police vehicles.

#### **Discrimination against minorities**

Members of minority communities, and in particular Serbs, continued to report limitations on their freedom of movement and ability to access services, including those guaranteed under the International Covenant on Economic, Social and Cultural Rights.

The German Government continued with a programme of the forcible return of Ashkali and Egyptiani persons seeking protection in Germany, which AI considered to be *refoulement*. In one case, following an urgent intervention, the deportation of one such family was lifted by the German authorities. In August, the Kosovo Ombudsperson wrote to the German Minister of the Interior expressing particular concerns about the forcible return of individuals suffering from post-traumatic stress disorder, for whom the Ministry of Health were unable to provide appropriate services. Voluntary returns remained low.

On 31 December two gay men, G.P. and L.B, were assaulted in a village outside Pristina. Members of the KPS who attended the scene took the two men to hospital for treatment for their injuries and asked them to file a complaint, but on discovering their sexual orientation submitted them to insulting and degrading abuse, and incorrectly informed them that homosexuality was unlawful in Kosovo. (In early 2006, following a complaint to the KPS, the police officer responsible was apparently removed from his post, and officers given correct training on the applicable law).

**The right to health (Update to AI Index: EUR 70/012/2005)**

UNMIK failed to relocate the Roma, Ashkali and Egyptiani internally displaced persons living near the former Trepča Mines lead-smelting site in Zvečan/Zvečan municipality, who had been found by the WHO in 2004 to have dangerous levels of lead in their blood.

Despite international calls for their urgent relocation, UNMIK failed to adequately consult the community or find suitable alternative accommodation for the community by the end of the year.

**Trafficking of women and girls for forced prostitution**

Although arrests and convictions for trafficking continued to be reported, including in Prizren, where three Albanian men were convicted for trafficking two Albanian minors into Kosovo, the number of bars where trafficked women were believed to work remained almost the same as at the beginning of the period under review. Law enforcement officers reported an increasing trend in the numbers of internally trafficked women and girls, believed to have been forced into prostitution by their husband or partners.

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## SLOVENIA

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**The "erased" (update to AI Index: EUR 01/012/2005)**

The Slovenian authorities failed to resolve the status of the "erased" and to ensure that they have full access to economic and social rights, including their right to employment, pension, and health care. In 1992 at least 18,305 individuals were unlawfully removed from the Slovenian registry of permanent residents. They were mainly people from other former Yugoslav republics who had been living in Slovenia and had not acquired Slovenian citizenship after Slovenia became independent. Of those "erased" in 1992, some 12,000 had their permanent residence status restored, but only with effect from 1999 or later. Some 6,000 people remain without Slovenian citizenship or a permanent residence permit. Many of them live "illegally" as foreigners or stateless persons in

Slovenia; others were forced to leave the country as a result of the "erasure".

In 1999 and again in April 2003 the Slovenian Constitutional Court had recognized the unlawfulness of the removal from the registry of permanent residents of the individuals concerned and ordered the Slovenian authorities to retroactively restore their permanent resident status. The Slovenian Constitutional Court had recognized that this measure constituted a violation of the principle of equality and, in those cases where the individuals concerned had to leave Slovenia, it gave rise to a violation of their rights to a family life and to freedom of movement.

Following the 2003 Constitutional Court decision, the Slovenian Ministry of Interior had initially issued approximately 4,100 decrees retroactively restoring the status of permanent residents of the individuals concerned. However, the Slovenian authorities had stopped issuing such decrees in July 2004 and no new steps have been taken to implement the Constitutional Court decision and to restore the rights of the "erased". Moreover, those affected by the "erasure" continue to be denied access to full reparation, including compensation.

#### **UN Committee on Economic, Social and Cultural Rights**

In November the UN Committee on Economic, Social and Cultural Rights (Committee) issued its concluding observations after considering Slovenia's initial report on measures to give effect to the rights enshrined in the International Covenant on Economic, Social and Cultural Rights.

Prior to the examination of Slovenia's report, AI had submitted a written briefing to the Committee detailing its concerns with regard to human rights violations linked to the unresolved status of the "erased", including their lack of

access to full reparation for the violation of their human rights to which the "erasure" led. The document *Slovenia: The "erased" - Briefing to the UN Committee on Economic, Social and Cultural Rights* (AI Index: EUR 68/002/2005) was subsequently published after the Committee issued its concluding observations.

The Committee concluded that the situation of the "erased" entails violations of these persons' economic and social rights, including the rights to work, social security, health care and education. Moreover, the Committee expressed its regret at the "lack of information on the actual situation with regard to the enjoyment by those individuals of the rights set out in the Covenant".

The Committee urged Slovenia "to take the necessary legislative and other measures to remedy the situation of nationals of States of former Yugoslavia who have been 'erased' as their names were removed from the population registers in 1992". The Committee strongly recommended that Slovenia restore the status of permanent residents to all the individuals concerned, in accordance with the relevant decisions of the Slovenian Constitutional Court. Such measures "should allow these individuals to reclaim their rights and regain access to health services, social security, education and employment". The Committee also requested that Slovenia, in its next periodic report, report on progress in this regard.

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## **TAJIKISTAN**

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#### **UN Human Rights Committee**

In July the UN Human Rights Committee issued its concluding observations of Tajikistan's initial report on its observance of obligations under the International Covenant on Civil and

Political Rights (ICCPR). With respect to the death penalty, the Committee urged the authorities to "take urgent measures to inform families of the burial sites of those who were executed before the moratorium" on death sentences and executions, which took effect from 30 April 2004. According to domestic law, "[t]he body [of an executed prisoner] shall not be given out for burial, and the burial place shall not be disclosed." The Committee also raised concern about the "widespread use of ill-treatment and torture by investigation and other officials to obtain information, testimony or self-incriminating evidence from suspects, witnesses or arrested persons"; about "poor conditions and overcrowding" in places of detention; and about the "limited access" to penitentiary institutions by civil society and international bodies. The Committee was further concerned about the "apparent lack of independence of the judiciary", and about provisions in domestic law enabling the authorities to "refuse to register as candidates for election individuals against whom criminal proceedings are pending, notwithstanding the fact that their guilt has not been established". The Committee urged that Tajikistan "introduce a system that ensures that all detainees are as a matter of course brought promptly before a judge who will decide without delay on the lawfulness of the detention" and to "recognize the right of conscientious objectors to be exempted from military service". The Committee was also concerned about "persistent reports that journalists have been harassed by State officials in the exercise of their profession and that newspapers have been seized". In order to tackle the ongoing issue of trafficking the Committee urged the authorities to "redouble its efforts" and "rigorously review the activities of responsible governmental agencies to ensure that no State actors are involved".

### **Death penalty**

In the period under review the UN Human Rights Committee issued rulings on two cases of former death row prisoners which had been submitted to the Committee by the men's relatives. By acceding to the first Optional Protocol to the ICCPR in 1999 the authorities of Tajikistan recognized the competence of the UN Human Rights Committee to consider communications from individuals subject to Tajikistan's jurisdiction who claim to be victims of violations of rights set out in the Covenant. In both cases the Committee found serious violations of the Covenant and urged Tajikistan to provide appropriate compensation. For example, in the case of Valijon Aliboyev, sentenced to death by the Supreme Court of Tajikistan in November 2000 and executed in July 2001, the Committee concluded that he had been subjected to torture or other ill-treatment following his arrest and that his right to a fair trial had been violated. The Committee also pointed out that the initial failure to notify his wife of the execution and to inform her of his burial place amounted to inhuman treatment. It ruled that the authorities of Tajikistan were under an obligation to provide Valijon Aliboyev's wife "with an appropriate remedy, including appropriate compensation [and] to prevent similar violations in the future". (For further information about Valijon Aliboyev's case, see AI Index: EUR 60/003/2001).

### **UN Special Rapporteur on the independence of judges and lawyers**

During his visit to Tajikistan in September Leandro Despouy, the UN Special Rapporteur on the independence of judges and lawyers, raised concern about a number of issues undermining the independence of the judiciary. For example, he pointed out that cases had come to his attention where "judges were

not in a position to independently issue judgements for fear of possible repercussions" and that "the prosecutor remains in a superior situation in comparison to defence lawyers which contradicts the international standard of equality of arms in court proceedings".

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## TURKEY

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### Background

On 3 October, the Council of Ministers of the European Union formally opened negotiations for Turkey's membership of the EU, after a tense day of negotiations. The background to the formal opening of membership negotiations in October 2005 was laid in the previous year: the annual progress report on Turkey in 2004 commented favourably on the reforms undertaken by Turkey to satisfy the requirements of the so-called Copenhagen Criteria, and in December 2004 the Council of Ministers signalled a date of 3 October 2005 for the commencement of negotiations. However, the December 2004 decision also made explicit mention for the first time that negotiations could at any time be suspended "in the case of a serious and persistent breach in a candidate state of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law on which the Union is founded".

The accession process is expected to take between ten and fifteen years and Turkey's entry must be ratified by all EU member states. However, continued monitoring of Turkey's compliance with EU standards in all areas will continue and the EU describes the negotiations as "an open-ended process, the outcome of which cannot be guaranteed beforehand". In September 2005 a declaration issued by EU member states added the proviso that Turkey must recognize Cyprus before it becomes a member of the EU,

and called on Turkey to normalize relations with all EU member states (including by fully implementing its custom union with all member states, including Cyprus). The declaration indicated that the accession talks would proceed slowly were this not to happen soon.

In September, Turkey signed the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Future ratification of the protocol will signal the introduction of mechanisms to permit the regular visiting of places of detention by independent national and international bodies.

### **New legislation and continuing restrictions on freedom of expression**

After the introduction of the new Turkish Penal Code (TPC) on 1 June, it became evident that there was a worrying tendency among prosecutors to continue to apply revised versions of articles of the previous penal code to restrict freedom of expression. This demonstrated, firstly, that in the case of some articles the revisions had been insufficient and still left open a wide margin for criminalizing peaceful expressions of dissenting opinion across the political spectrum; and secondly, a punitive approach among some prosecutors and judges which indicated a lack of awareness of international human rights law and insufficient knowledge of the case law of the European Court of Human Rights.

On 16 December a case was opened against the novelist Orhan Pamuk at the Şişli Court of First Instance No.2 on charges of "denigrating Turkishness", under Article 301 of the TPC. The novelist was prosecuted for comments he had made in a Swiss magazine (*Tages Anzeiger*) in February in an interview in

which he stated, "30,000 Kurds and a million Armenians were murdered. Hardly anyone dares mention it, so I do. And that's why I'm hated".

On 7 October, Hrant Dink, a journalist and editor of the Armenian-language weekly newspaper *Agos*, was given a six-month suspended prison sentence by the Şişli Court of First Instance No.2 in Istanbul for "denigrating Turkishness" in an article he wrote on Armenian identity. Hrant Dink appealed the decision. He had an ongoing prosecution against him on separate charges under Article 301 for a speech he had made during a conference organized by the Urfa branch of the non-governmental organization Mazlum Der on 14 December 2002, entitled "Global Security, Terror and Human Rights, Multi-Culturalism, Minorities and Human Rights", in which he discussed his own relationship to official conceptions of Turkish identity.

A number of other cases were opened against human rights defenders, publishers and journalists under the same article. AI opposed the trials on the grounds that the wide and vague terms of Article 301 meant that it posed a direct threat to the right to freedom of expression (see AI Index: EUR 44/035/2005). If imprisoned, AI would consider them to be prisoners of conscience.

By the end of the year, AI became increasingly aware that other articles of the TPC, particularly Article 216 (inciting racial hatred) and Article 288 (influencing the judiciary) were at risk of being used in a way that constituted an unnecessary restriction on the right to freedom of expression. Other laws also continued to be used to restrict freedom of expression, including articles of the Press Law.

### **Torture and ill-treatment, and impunity**

Torture and ill-treatment continued to be reported. Although there was a decrease over the entire year in reports of torture or ill-treatment of individuals detained on suspicion of committing political offences, those detained for ordinary crimes (particularly theft and public order offences, and involvement in organized crime) continued to be at particular risk. In general, there were persistent reports of the failure of law enforcement officials to follow lawful detention and investigative procedures and of prosecutors failing to ascertain that law enforcement officials had complied with procedures. The continuing lack of effective and transparent monitoring of places of detention and the lack of scrutiny of the implementation of detention procedures signalled the potential reversibility of any decrease in reports of torture and ill-treatment of some detainees.

The persisting failure to bring law enforcement officials who commit human rights violations to justice also signals the lack of genuine advance in this area. Investigations continued to be marked by deeply flawed procedures and supported suggestions of an unwillingness on the part of the judiciary to bring perpetrators of human rights violations to justice. An overwhelming climate of impunity persisted.

In October, in the Black Sea town of Ordu, five teenagers aged between 15 and 18 were detained at the opening of a new shopping centre. The five reported being beaten, verbally abused, threatened and having their testicles squeezed both while being detained and while in custody at the Ordu Central Police Station. They were later released. Two reported that they were stripped and threatened with rape. Three were not recorded as having been in police detention. One was subsequently charged with violently resisting arrest. Beyond the alleged ill-treatment, injuries

consistent with which were documented in medical reports and photographs, other irregularities in the handling of the detained teenagers by the police and prosecutor demonstrated a failure to follow legal procedures from the moment of detention onwards. It is worth observing here that this was not a case which went unnoticed: the Human Rights Association prepared a detailed report on the case and Human Rights Watch wrote an open letter to the Turkish government about it. Lawyers for the teenagers lodged a formal complaint of torture. At the end of the year, in the face of all the evidence, the prosecutor issued a decision not to pursue an investigation into the allegations against the police. The lawyers appealed against this decision.

#### **Imprisonment of conscientious objector**

On 10 August conscientious objector Mehmet Tarhan returned to Sivas military prison, from where he had previously been released, to continue serving a four-year sentence on two charges of insubordination. AI considered him to be a prisoner of conscience. On 30 September a prison officer accompanied by at least three guards allegedly forcibly cut Mehmet Tarhan's hair and shaved his beard, against his will, while he was held down by at least seven people. The incident reportedly left Mehmet Tarhan in severe pain and observers noted bruises on his limbs. A medical examination carried out the next day by two military doctors reportedly concluded that there were no signs of beating on his body and he was sent back to the military prison.

On 2 November the Military Court of Appeal overturned Mehmet Tarhan's sentence on the grounds that Mehmet Tarhan's homosexuality (the reason he may be regarded as unfit for military service") had not been established via "proper physical examination procedures".

The case was returned to the Military Court of Sivas, which on 15 December chose to ignore the recommendation that Mehmet Tarhan undergo a physical examination. The case returned again to the Military Court of Appeal (see AI Index: EUR 44/036/2005).

#### **Deterioration of human rights in the south-east and eastern provinces**

There continued to be a rising number of armed clashes between the Turkish Armed Forces and the armed oppositionist group, the Kurdistan Workers' Party (PKK), resulting in a rising number of deaths of soldiers and armed oppositionists. In this context, the second half of 2005 saw a further deterioration in human rights in the mainly Kurdish-populated south-east and eastern provinces of the country.

However, on 12 August Prime Minister Recep Tayyip Erdoğan visited Diyarbakır and made some comments which acknowledged the 'Kurdish problem' in a manner which was welcomed among Kurdish opinion formers and human rights defenders. He reportedly said: "The Kurdish problem is everyone's problem, firstly my problem. Discounting the mistakes made in the past does not benefit mighty states. The solution lies in more democracy, more citizenship law, more welfare." (*Radikal*, 13 August 2005). In the National Security Council meeting of 23 August Prime Minister Erdoğan was reportedly warned by the military members of the council not to use the term 'Kurdish problem' and criticized for his approach. The public press release about the National Security Council meeting focused on the need to preserve the principles spelled out in the constitution, including the 'indivisibility of the country', the need to increase efforts to address economic, cultural and social inequalities among different provinces, and the importance of continuing the 'war on terror' within the framework of the constitution and laws.

A few of the most serious incidents are mentioned here to demonstrate the adverse impact on human rights of the rising conflict between the armed forces and the PKK in the south-east and eastern provinces:

On 3 August, Hasan Şahin (68) was found dead in the Meytan hamlet of Aktuluk village in Tunceli. According to the autopsy report issued in late August, he had been shot dead. Hasan Şahin had reportedly been living in Germany for many years and had returned to Tunceli for a summer holiday. Human rights defenders raised concerns that his killing by unknown perpetrators bore the signs of having been perpetrated by the security services, since it was known that Hasan Şahin was the father of a senior member of the PKK. Alleged retribution against family members for the oppositional activities of their next of kin and relatives is a matter of grave concern for AI. At the end of the year, no further information about the progress of the prosecutor's investigation into this killing had been received.

There were reports of a rising number of civilians shot dead by the security forces in disputed circumstances. 'Failure to obey a stop warning' was a common explanation provided by the security forces, but in the absence of thorough investigation of such incidents – particularly in the south-eastern provinces – the suspicion that many of those killed may have been victims of excessive use of force or extrajudicial killings by the security forces remains. For example, the full circumstances of the raid on a house in Van by members of the security forces on the night of 21 September, which left three people dead, were unclear. The father of Üzeyir Tasar (one of the dead, who was allegedly shot at some distance from the house being targeted) was reportedly later told by officials at the Van Security Headquarters

that the shooting of his son had been a mistake.

AI was concerned to hear reports from lawyers in Van that victims and their relatives who reported human rights violations (including killings) allegedly perpetrated by the security forces have failed to pursue such complaints or have withdrawn them out of fear of further reprisals from the security forces.

### **Killings of civilians by armed oppositionist groups**

On 6 July, former People's Democracy Party (HADEP) vice chair, Hikmet Fidan, was assassinated in Diyarbakır, allegedly by the PKK.

On 16 July a bomb explosion on a minibus killed five people (two of them tourists) and injured 13 others in the Aegean town of Kuşadası. The bombing was claimed by an organization calling itself the Kurdistan Freedom Falcons, whose precise relationship with the PKK is unclear. Other such bombings, causing injuries to civilians, mostly remained unexplained, but may have been carried out by armed opposition groups.

### **Şemdinli incidents of 9 November**

On 9 November in the south-eastern town of Şemdinli, a bookshop was bombed, killing one man, Mehmet Zahir Korkmaz, and injuring others (AI Index: EUR 44/033/2005). The owner of the bookshop and others managed to apprehend the suspected bomber and two other men, after the former had got into a car nearby where the two other men were allegedly waiting for him. In the car were discovered weapons, lists of names of political oppositionists, information about individuals in Şemdinli, maps and other documents. The name of the bookshop owner (who had in the past served a prison sentence for membership of the PKK) allegedly appeared in one list

and among other such plans were ones of his home and workplace. After the apprehension of the three by the crowd, it was revealed that two men, Ali Kaya and Özcan İldeniz, were members of the security services, with identity cards indicating that they were plain-clothed gendarmerie intelligence (JİT) officers. The alleged bomber, Veysel Ateş, was subsequently revealed to be a PKK informant (a former PKK member who was now working for gendarmerie intelligence). The three men were escorted away from the scene by police, and the alleged bomber was detained in relation to the bombing and murder.

Subsequently, as the prosecutor carried out a crime-scene investigation, the assembled crowd was fired upon from a car, resulting in the death of one civilian, Ali Yılmaz, and injury of others. The prosecutor's crime-scene investigation was postponed. A gendarmerie special sergeant, Tanju Çavuş, was detained on charges of disproportionate use of force resulting in death.

The Turkish Prime Minister, Justice Minister and Interior Minister immediately expressed strong determination to uncover all dimensions of this incident and to expend every effort in bringing the perpetrators to justice, with Justice Minister Çiçek characterizing the current period in Turkey as being "a period in which incidents do not remain in the dark".

Given the serious allegations of direct official involvement in the events of 9 November in Şemdinli and the questions raised thereof, AI called upon the government of Turkey to establish an independent commission of inquiry, conducted in accordance with the UN Principles on the Effective Investigation of Extra-Legal, Arbitrary and Summary Executions. Particular attention was drawn to articles which emphasize "thorough, prompt and impartial

investigation" (Article 9), by an investigative authority with "the power to obtain all the information necessary to the inquiry", "the authority to oblige officials allegedly involved in any such executions to appear and testify" and entitlement "to issue summonses to witnesses, including the officials allegedly involved and to demand the production of evidence" (Article 10). A further article is of particular relevance in this situation was also cited:

"In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles." (Article 11).

AI called for the government to establish an independent commission of inquiry to examine: the motivation for an incident which bears the marks of an assassination and which was allegedly perpetrated by a PKK informant and two members of the gendarmerie intelligence services; the killing of a civilian bystander (and injury of others) allegedly perpetrated by a gendarmerie specialist sergeant; whether, on the basis of evidence found in the car allegedly used by the three implicated in the bombing of the bookshop, the incident constituted

part of a broader policy on the part of the state security services aimed at targeting political oppositionists in the region; suggestions of links to an earlier bombing in Şemdinli on 1 November 2005 which resulted in multiple injuries of civilians and damage to property, and the precise chain of command and level of involvement in the 9 November incidents in Şemdinli of gendarmerie and military personnel at senior levels.

AI also expressed grave concerns over the fatal shooting of four demonstrators by police during demonstrations in protest at the incidents in Şemdinli in other towns in the region (Yüksekova, Hakkari) and in Mersin, and alleged excessive use of force resulting in multiple injuries to demonstrators.

Following the incidents on 9 November, there were a number of striking developments. Notable was the Şemdinli prosecutor's initial delay in taking the statements of the two accused gendarmerie officers, Ali Kaya and Özcan İldeniz. After providing statements, they were also initially released by the Şemdinli prosecutor on the basis of insufficient evidence.

The case against the three suspects was referred on 22 November to the Chief Public Prosecutor at the Heavy Penal Court in Van (the former State Security Court whose remit is "terror" offences and organized crime). For the first time two military personnel, along with an informant, were investigated by the Van Prosecutor on suspicion of "undertaking activities aimed at destroying the unity of the state and the territorial integrity of the country" (TPC Articles 302/1 and 302/2) and "forming a gang to do this" (TPC Article 316/1). These articles fall under the remit of the Anti-Terror Law (3713) and the sentence is life imprisonment. The prosecutor's investigation continued and the

indictment had not appeared by the end of the year.

The case of the gendarmerie sergeant, Tanju Çavuş, who fired on the crowd during the prosecutor's crime-scene investigation and killed Ali Yılmaz, was separated out from the case against the other three accused. Treating it as a separate incident and failing to take statements of witnesses to establish whether there was evidence to connect this shooting with the earlier bombing, the Van prosecutor issued a decision that the case did not fall within the remit of the Heavy Penal Court authorized to deal with terrorist offences and organized crime and sent it to the relevant local penal court, in this case the Hakkari Heavy Penal Court. Tanju Çavuş was subsequently charged by the Hakkari prosecutor with disproportionate use of force resulting in death.

On 23 November, on the initiative of the Prime Minister, the Grand National Assembly of Turkey (the parliament) voted to establish a parliamentary investigative commission on the Şemdinli incidents. AI was concerned that the setting up of a parliamentary investigative commission could not be regarded as compliant with the UN Principles on the Effective Investigation of Extra-Legal, Arbitrary and Summary Executions because it did not have the necessary powers to summon all materials and witnesses.

The Parliamentary Human Rights Commission also took a decision to carry out its own investigation into the Şemdinli incidents of 9 November. At the end of the year the parliamentary investigative commission and some of the content of their statements were reported in the press.

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## TURKMENISTAN

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### **International scrutiny**

In August the UN Committee on the Elimination of Racial Discrimination (CERD) considered Turkmenistan's first report to a UN Committee on its observance of obligations under the Convention on Elimination of All Forms of Racial Discrimination. Among issues raised by the CERD were reports of hate speech, including by senior officials and public figures, against national and ethnic minorities and in favour of Turkmen "ethnic purity". The CERD expressed concern at reports that members of minorities were denied state employment or access to higher education, and that minority cultural institutions and numerous schools teaching in minority languages had been closed.

On 16 December the UN General Assembly expressed "grave concern at continuing and serious human rights violations" in Turkmenistan. It raised concern, among other things, at the repression of political opposition; severe restrictions of freedom of expression, conscience, religion, and movement; reports of torture and ill-treatment of detainees; poor prison conditions; discrimination against ethnic minorities, and the continued denial by the authorities of unaccompanied access to prisoners by the International Committee of the Red Cross (ICRC). A list of recommendations included a call on Turkmenistan to "cooperate with all the mechanisms of the Commission on Human Rights, particularly requests made by a number of special rapporteurs to visit the country". Many UN special mechanisms had requested to visit Turkmenistan in recent years. However, the authorities of Turkmenistan have not granted access to the country to any of them.

### **Continued clampdown on dissent and religious freedom (update to AI Index: EUR 61/003/2005)**

Civil society activists, political dissidents and members of religious minority groups continued to be subjected to harassment, arbitrary detention, imprisonment and torture and ill-treatment.

Jehovah's Witnesses Durdygul Ereshova and Annajemal Tuylieva were detained by police on 7 October and taken to Niyazov district police station in Ashgabat. A senior officer allegedly insulted both women, beat and kicked Annajemal Tuylieva, and threatened to rape them. Police were said to have accused them of "illegal religious activity" and "vagrancy", and to have confiscated the passport of Durdygul Ereshova's husband and threatened her with forcible resettlement to the Lebap region in the east.

Hare Krishna devotee Cheper Annaniyazova was sentenced to seven years' imprisonment on 17 November by Ashgabat city court. There were allegations that she was targeted to punish her for peacefully exercising her right to freedom of religion and belief. Two of reportedly three charges brought against her related to illegal border crossing. The third charge is not known to AI and was reportedly not announced at the court hearing. Cheper Annaniyazova reportedly admitted to having crossed the border into Uzbekistan illegally three years ago. However, she said she had applied for permission to leave the country, which was refused to her. AI knows of many cases where dissidents, members of religious minority groups or members of their families have been denied permission to leave the country. In addition, there were allegations that while scores of people have crossed the border with Uzbekistan illegally, few have been prosecuted for the offence and that

Cheper Annaniyazova was targeted to punish her for peacefully exercising her right to freedom of belief. AI also received reports that Cheper Annaniyazova had been forcibly confined in a psychiatric hospital in Ashgabat for a month from early August. No details are known about the circumstances of her confinement but there were again allegations that she was targeted because of her religious beliefs.

Dozens of prisoners sentenced following unfair trials in connection with the November 2002 alleged assassination attempt on President Niyazov continued to be held incommunicado. Many had allegedly been tortured and ill-treated following their arrests. They continued to be denied access to families, lawyers and independent bodies including the ICRC. In this period under review the authorities again failed to adequately respond to allegations that some of those imprisoned in connection with the November 2002 events died in custody as a result of torture and poor prison conditions.

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## UKRAINE

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### **International concern about human rights**

On 17 October, the Parliamentary Assembly of the Council of Europe adopted a monitoring report on Ukraine which called on the government to pay particular attention to the fight against corruption, to strengthening the rule of law and to the organization of free and fair elections in March 2006. During a briefing ahead of the European Union-Ukraine summit which took place in Kyiv on 1 December, Mrs Hilde Hardeman, Head of Ukraine Desk in the European Commission, said that human rights were still an area of great concern and that "the whole process is very slow and unfortunately not promising".

### **Torture and ill-treatment**

In September, AI launched a report on torture and ill-treatment in police detention in Ukraine (*Time for Action: Torture and ill-treatment in police detention*, AI Index: EUR 50/004/2005).

While in Ukraine to launch the report AI delegates met with the Chair of the Supreme Court, Vasiliy Malarienko; a deputy Minister of Justice, Inna Emilianova; the General Prosecutor, Sviatoslav Piskun; the Minister of Internal Affairs, Yuriy Lutsenko; the Human Rights Ombudsperson, Nina Karpacheva, and the Chair of the Parliamentary Standing Committee on Human Rights, National Minorities and Inter-ethnic Relations, Hennadiy Udovenko. During these meetings almost all government representatives readily agreed that torture and ill-treatment in police detention was a problem, showing openness and stating a willingness to cooperate with AI. For example, the General Prosecutor arranged for two of AI's delegates to spend a morning in the department for supervision of investigations, to go through the files on the cases that featured in the report.

A number of steps were taken during the period under review to reduce torture or other ill-treatment. During 2005, a pilot project was launched jointly by the Ministry of Internal Affairs, the National University of the Ministry of Internal Affairs and the Kharkiv Human Rights Group to monitor places of detention under the control of the Ministry of Internal Affairs. In July, it was decided to expand this project to cover the whole of Ukraine. The Ministry of Internal Affairs also took steps to increase the use of bail measures and thereby cut down on overcrowding in pre-trial detention centres. However, despite these measures AI continued to receive reports of torture and ill-treatment and, in a letter to AI in November, the Ministry of

Internal Affairs admitted that the practice of torture and ill-treatment had still not been eliminated.

### **Impunity**

The General Prosecutor stated in September that 226 cases had been opened against police officers for torture and ill-treatment and that there had been more than 1,000 complaints during the past year. Of the six cases that featured in the AI report only one case has resulted in the prosecution of the police officers concerned. In December, AI wrote to the General Prosecutor, with a copy to the Ministry of the Interior, to raise four further cases that the organization had received. AI was continuing to monitor the cases. At the end of the year four cases were ongoing against police officers under Article 127 of the criminal code which specifically prohibits torture.

### **Signing of Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture)**

In September, Ukraine signed the Optional Protocol to the Convention against Torture. On 24 November the Organization for Security and Co-operation in Europe hosted a seminar in the capital, Kyiv, to promote effective implementation of the Optional Protocol's requirements. The seminar was attended by non-governmental organizations, representatives of the General Prosecutor's office, the Ministry of Internal Affairs and the Supreme Court. Delegates from AI and the international organization the Association for the Prevention of Torture addressed the seminar.

### **Conditions in detention**

In a letter to AI of 3 October, the Ministry of the Interior admitted that conditions in pre-trial detention centres were not in line with international standards: 13 per cent of pre-trial detention centres were not equipped with water and sanitation facilities within the cell blocks, while 47 per cent of pre-trial detention centres lacked medical facilities intended for compulsory health check-ups of new arrivals. One in four had insufficient natural lighting and lacked individual sleeping places, only one in five had an exercise yard and each detainee was allocated only 2.5 square metres of accommodation space. A programme of reconstruction has begun and the government has allocated 30 million Hryvnya (4.66 million euros) to refurbish existing, and build new, pre-trial detention centres.

### **Racist attacks**

There were continuing reports of antisemitic and racist attacks across the country. On 28 August, Mordechai Molozhenov, a 32-year-old student of Judaism, and another student were attacked by "skinheads" in an underground passage in Kyiv. The "skinheads" allegedly shouted antisemitic abuse during the attack. Mordechai Molozhenov was left in a coma and required brain surgery. He was later treated in hospital in Israel. Three suspects were detained and charged with "hooliganism". The Deputy Minister of Internal Affairs told the Israeli ambassador that the attack had not been motivated by antisemitism. However, President Yushchenko, in a written statement, condemned all forms of racism and xenophobia, and called the incident shameful.

### **'Disappearance' of Georgiy Gongadze (Update to AI Index: EUR 01/012/2005)**

On 20 September, parliament heard the long-delayed report of the parliamentary investigating committee, which concluded that Georgiy Gongadze had been murdered, that the crime had been organized by former President Leonid Kuchma and former Minister of Justice, Yuryi Kravchenko, and that other high ranking officials had been involved. On 8 November, the European Court of Human Rights ruled that Ukraine had violated three articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms in the case of Georgiy Gongadze. The court ruled that the Ukrainian authorities had violated Article 2 (the right to life), Article 3 (prohibition of inhuman or degrading treatment) and Article 13 (right to an effective remedy). On 19 December the trial began of three police officers accused of the murder.

The investigative journalist Georgiy Gongadze "disappeared" late in the evening of 16 September 2000. In early November 2000 a decapitated corpse was found in a shallow grave in the forest district of Tarashcha in the outskirts of the capital, Kyiv. A forensic examination conducted by an independent team of experts from the Institute of Criminal Medicine in Lausanne, Switzerland, identified the body as that of Georgiy Gongadze. The release of recordings allegedly of conversations between former President Kuchma and his close aides discussing how to "silence" the journalist led to a political scandal and numerous demonstrations.

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## UNITED KINGDOM

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### London bombings

Fifty-two people were killed and hundreds of others wounded as a result of four bomb attacks on London's transport system on 7 July. Four other

people, thought to be suicide bombers, also died. Another series of serious security incidents took place on 21 July. At least four people were subsequently charged with offences in connection with the 21 July events.

AI unconditionally and unreservedly condemned the attacks, and called for those suspected of involvement to be brought to justice. AI also recognized that it was incumbent on the UK authorities to review legislative and other measures with a view to preventing further attacks. However, the organization stressed that it was equally incumbent on the authorities to ensure that measures taken to bring people to justice, as well as measures taken to protect people from such crimes, respected fundamental human rights.

AI also stated that the UK authorities had a further duty in the aftermath of the attacks: to ensure that victims and their families received prompt and adequate reparation. Concern was expressed by some of those whose lives had been shattered by the July bombings about the lack of prompt and adequate reparation.

### "Counter-terrorism" measures

AI continued to express concern about human rights violations as a result of the introduction and application of counter-terrorism measures in the UK.

AI was concerned that the measures enacted by the government involved punishment of people whom the authorities had decided were a threat but against whom the authorities had stated there was insufficient evidence to present to a court. In this context, AI remained concerned, in particular, about the effective persecution of men labelled by the government as "suspected international terrorists", mostly on the basis of secret intelligence. These were the same individuals who had been

interned without charge or trial under the lapsed Part 4 of the Anti-terrorism, Crime and Security Act 2001 (ATCSA); who had then been subjected to severe restrictions of their rights under "control orders" imposed under the Prevention of Terrorism Act 2005 (PTA); and who, by the end of the year, were awaiting deportation on national security grounds, which the government began pursuing after announcing that it had concluded, or was about to conclude, a number of Memorandums of Understandings with the governments of the countries to which it was seeking to deport these men (see below).

The Prime Minister proposed new measures with the stated view of countering terrorism. Most of them were inconsistent with the UK's obligations under domestic and international human rights law and many targeted non-UK citizens. On 5 August the Prime Minister announced a 12-point plan concerning a "comprehensive framework for action in dealing with the terrorist threat in Britain". He declared: "Let no one be in any doubt. The rules of the game are changing." His proposed changes to legislation and policy included a suggestion that the government was prepared to amend domestic human rights law (i.e. the Human Rights Act 1998) to make deportations of people who were deemed to threaten national security easier. He said his proposals were "necessary" and that administrative measures that did not need primary legislation would be put in place with immediate effect. The statement, taken as a whole and combined with the answers he provided subsequently, amounted to a serious attack on human rights protection, the rule of law and the independence of the judiciary.<sup>2</sup>

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<sup>2</sup> "Prime Minister's Press Conference", 10 Downing Street, 5 August 2005.

The Prime Minister's plan included: deporting people to countries where torture or other ill-treatment are known to be practised (on the basis of "diplomatic assurances"); new grounds for deportation and exclusion; new offences criminalizing "indirect incitement of terrorism"; automatic refusal of asylum to persons deemed to be associated with terrorism; and significantly extending the maximum time limit of pre-charge detention of persons held under anti-terrorism legislation.

On 11 August AI issued a detailed response to the Prime Minister's statement of 5 August expressing concern that some of the announced proposals would threaten the independence of the judiciary, and undermine the rule of law and fundamental human rights in the UK. The organization was also concerned that the Prime Minister criticized the decisions of domestic courts to strike down deportation orders in cases where the individuals concerned faced expulsion to a country where there would be a real risk of torture or other ill-treatment.

In late August, a few weeks after the Prime Minister announced the 12-point plan, the then Home Secretary Charles Clarke proposed new measures to target non-nationals considered to be threatening public order and national security. The Home Secretary ordered an immediate review of his powers to exclude and deport non-British citizens suspected of "justifying or glorifying terrorism, seeking to provoke terrorist acts, fomenting other serious criminal activity, [and] fostering hatred that might lead to inter-community violence". The Home Secretary proposed setting up a global database listing foreigners who engage in different forms of "unacceptable behaviour", such as radical preaching or publishing websites and articles intended to foment "terrorism",

to be vetted automatically before entering the UK.

In response to the Home Secretary's proposals, AI expressed concern that the procedure to be used to process deportations or exclude people who may be deemed to "threaten public order and national security" may once again include the use of secret intelligence at closed hearings (see AI Index: EUR 45/033/2005). AI considered that some of the measures put forth by the Home Secretary would violate basic human rights and the UK's international obligations.

Also on 24 August, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, expressed concern over the Home Secretary's plan to deport alleged terrorist suspects. He criticized the government's intention to return people to their countries of origin even if those countries had a track record of human rights abuses. The Special Rapporteur said that this "reflects a tendency in Europe to circumvent the international obligation not to deport anybody if there is a serious risk that he or she might be subjected to torture". Peter Kessler, spokesperson for the UN High Commissioner for Refugees (UNHCR) also expressed concern about the proposals, saying that if the UK deported individuals back to countries where they risked persecution, then it would be in violation of its obligations under the 1951 Convention (*The Guardian*, 25 August 2005).

#### *Memorandums of Understanding (MoUs)*

As part and parcel of the new "counter-terrorism" measures, the UK government pursued the deportation of individuals it believed were a threat to national security, notwithstanding the fact that there would be a real risk of serious human rights abuses upon deportation.

With the aim of facilitating deportations, the UK government began negotiating bilateral agreements known as Memorandums of Understanding (MoUs) with the governments of the countries to which it planned to deport such people. The UK government asserted that a MoU, a bilateral agreement between government officials, would guarantee that people deported by the UK would not be tortured or otherwise ill-treated in the country to which they would be sent. It claimed that diplomatic assurances featured in these MoUs would be enough to relieve it of its domestic and international obligations not to send anyone to a country where they would be at risk of torture or other ill-treatment.

In August, October and December the government concluded MoUs with Jordan, Libya and Lebanon, respectively. AI expressed concern that the MoUs which the government had negotiated and continued to negotiate seriously undermined the prohibition of torture and other ill-treatment.

AI considered that MoUs would not provide sufficient protection to individuals from torture or ill-treatment. By definition, such assurances would only be needed from countries where torture or other ill-treatment was widely known to be practised. Moreover, these agreements were being sought with countries which lacked the legal safeguards to ensure that systems were in place to protect the rights of people in detention. The organization considers that diplomatic assurances are both evasive and erosive of the absolute legal prohibition of torture or other ill-treatment in general, and of the prohibition of returning or transferring anyone to a country where s/he would be at a substantial risk of such a treatment or being subjected to other serious human rights violations in particular, in addition to being inherently unreliable,

morally questionable and in practice ineffective.

*Prevention of Terrorism Act 2005 and "control orders" (update to AI Index: EUR 01/012/2005)*

AI continued to express concern about the powers granted to the executive under the PTA. Throughout 2005, 18 people had been subjected to "control orders"; however, by the end of 2005, only nine orders were still in force, including one that had been imposed on a UK national. The reduction from 18 to nine "control orders" had occurred because nine men were served on 11 August with deportation orders. At least eight were formerly detained under the previously lapsed Part 4 of the ATCSA. Their "control orders" were revoked at the end of August following their detention under immigration powers, which the government contended was necessary to enforce their deportation on national security grounds.

As of November, 29 people were detained awaiting deportation as a "threat to national security". In the cases of these individuals the government stated that it was relying on MoUs already concluded, as well as on the "successful" conclusion of further MoUs with other countries in North Africa and the Middle East, including, in particular, Algeria.

*Treatment of "suspected international terrorists"*

In August the UK executive re-arrested people formerly detained without charge under the ATCSA. These individuals were re-imprisoned under immigration powers, purportedly pending their deportation on national security grounds. Among those arrested were former detainees previously held at Belmarsh high security prison.

Other foreign nationals were also subsequently served with deportation orders on national security grounds, and held under immigration powers pending deportation, including seven Algerians who were arrested and detained in September 2005. Among them were four men who had been acquitted in a UK court of planning an attack using ricin. Jurors involved in the case told the London-based newspaper *The Guardian* that they were angry that their verdicts had been ignored and were concerned that the men would face torture or death if deported to Algeria. One juror said, "If anyone has grounds for asylum in this country, it is these men."

The UK executive maintained that these persons were a "threat to national security". It made such an assertion notwithstanding the fact that it had stated before the courts that in respect of all the former internees there was insufficient evidence to support a criminal charge, and despite the fact that, throughout their ordeal over the years, the police, the security services or the Crown Prosecution Service had still not questioned them since their initial arrest under the ATCSA.

The UK government claimed that there was now a reasonable prospect of effecting the forcible removal of the former detainees from the UK within a reasonable time relying on the "successful" conclusion of MoUs with certain foreign governments.

*Cases of "A", "G" and "H" and Mahmoud Abu Rideh (Mahmoud Abu Rideh: update to AI Index: EUR 01/012/2005)*

Upon being re-arrested on 11 August 2005, "A", "G" and "H", together with others, were detained in Long Lartin prison in Worcestershire, a prison with security features and systems which enable it to operate as a dispersal prison, and Full Sutton prison near York, a

maximum security prison, very far away from their families, their lawyers and, crucially, their doctors. Mahmoud Abu Rideh was not rearrested but remained under a "control order".

AI expressed deep concern at what appeared to be the UK authorities' continued disregard of the recent serious psychiatric history of these individuals and the reasons for that history, including the circumstances of their previous detention, and at the consequences which their renewed detention would almost inevitably have on their mental and physical health.

In October 2005, "A", "G" and "H" were granted "release" on bail on very strict conditions amounting to house arrest. Their bail conditions were stricter than those that had been imposed on them through "control orders". Others were released later.

In November AI representatives met with "A", "G", "H", Mahmoud Abu Rideh and their families, who had effectively been persecuted by the UK authorities for nearly four years.

In December, AI urged the UK authorities to desist from persecuting these men and their families. AI called specifically on the government to discharge all "control orders"; to stop the deportation proceedings against "A", "G" and "H"; and, if reasonable suspicion existed that any of the men had committed a recognizable criminal offence, to charge them promptly and bring them to justice in fair proceedings (see AI's report: *United Kingdom: 'I want justice'*, AI Index: EUR 45/056/2005).

#### *The Terrorism Bill*

In October, the fourth piece of "counter-terrorism" legislation in five years was introduced before Parliament. AI considered the Terrorism Bill draconian

and ill-conceived, containing sweeping and vague provisions that, if enacted, would undermine the rights to freedom of expression, association, liberty and fair trial. In November the Bill's proposal to extend the maximum period of police detention without charge from 14 to 90 days was rejected in parliament; a provision of 28 days was agreed. The Bill underwent further parliamentary scrutiny.

In October and November, AI produced three different documents that included extensive comments on the various drafts of the Terrorism Bill (see AI Index: EUR 45/038/2005, AI Index: EUR 45/047/2005 and AI Index: EUR 45/055/2005). The organization continued to be concerned that the implementation of many provisions of the Bill could violate the human rights of people prosecuted under them, and would have a chilling effect for society at large on its exercise of the rights to freedom of expression and association.

As initially introduced, the Bill included provisions to:

- create a new offence of publishing, processing or disseminating publications that indirectly incite terrorist acts or are likely to be useful to a person committing or preparing a terrorist act;
- extend pre-charge detention of people held under anti-terrorism legislation from 14 days to 90 days. This was later cut in a parliamentary vote to 28 days;
- create a new offence of indirectly inciting terrorism and glorifying terrorist acts;
- proscribe groups that "systematically" glorify terrorism; and
- create a new criminal offence of attending a "terrorist training camp".

In addition to the continued reliance on a vague definition of "terrorism" AI was particularly concerned about the new offences based on the notion of "indirect incitement" of terrorism; the proposed new grounds for proscription; and the proposal to extend the time limit for

which people suspected of involvement in terrorism can be detained without charge.

Concern about these provisions was widespread. Among others, in November, Louise Arbour, the UN High Commissioner for Human Rights, wrote to the UK government expressing concern about various aspects of the Terrorism Bill. Her concerns included: the absence of a precise definition of terrorism upon which the new offences would be based and the broad and sweeping nature of some of these offences, raising questions as to how the principle of legality would be respected; the lack of the actual intent requirement in some offences; their questionable scope in light of Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and Article 10 of the European Convention on Human Rights (ECHR) (both relating to freedom of expression), resulting in a failure to strike a balance between national security interests and the fundamental right to freedom of expression; and the overbroad reach of the provision concerning new grounds for proscription. Finally, in commenting on the period of pre-charge detention of up to 28 days for those held under anti-terrorism legislation, the High Commissioner said "I remain gravely concerned about how the rights guaranteed by Articles 9 of the ICCPR and 5 of the ECHR [the rights to liberty and freedom from arbitrary detention respectively] will be protected."

**The Ramzy case: the UK's government's latest attempt at undermining the prohibition of torture**

In October the UK was given permission to intervene in a case already lodged against the Netherlands at the European Court of Human Rights by Mohammed Ramzy, a 22-year-old Algerian challenging deportation. His asylum application was rejected and he

challenged a decision to deport him, arguing that he would face a real risk of torture or other ill-treatment in Algeria.

The European Court of Human Rights' jurisprudence makes it clear that there is no balance to be struck between the right of the individual not to be exposed to such risks and the national security interests of the sending state (see the European Court of Human Rights judgment in the case of *Chahal v United Kingdom*).

The Dutch government was not seeking to reverse the *Chahal* precedent; it was instead arguing that Mohammed Ramzy's return to Algeria would not expose him to a real risk of torture. However, the UK government – and three others – decided to intervene in this case.

AI expressed concern that with this intervention the UK and the other three governments were attempting, in the context of this case, to persuade the European Court of Human Rights to abandon its jurisprudence in *Chahal v the United Kingdom* in favour of a position that the risk to the individual should be balanced against the national security interests of the state. In addition, in November AI together a group of seven international non-governmental organizations (consisting of the Association for the Prevention of Torture, Human Rights Watch, INTERIGHTS, the International Commission of Jurists, Open Society Justice Initiative and REDRESS) submitted a third party intervention to the European Court of Human Rights in the case.

**Torture 'evidence' (update to AI Index: EUR 01/002/2005)**

In December 2005, the UK government lost its legal battle to reverse the total ban on the admissibility in judicial proceedings, as "evidence", of information obtained through torture. In

the case *A and others (Appellants) (FC) and others v. Secretary of State for the Home Department (Respondent) (Conjoined Appeals)*,<sup>3</sup> seven Law Lords unanimously confirmed that such evidence was inadmissible. They also ruled that there was a duty to investigate whether torture had taken place, and to exclude any evidence if the conclusion was that it was more likely than not that it had been obtained through torture. As a result of the judgment, the cases of the 10 internees were to be referred back to Special Immigration Appeals Commission (SIAC) for its reconsideration of the "evidence".

In the leading opinion in the case, Lord Bingham of Cornhill, the Senior Law Lord, stated:

The issue is one of constitutional principle whether evidence obtained by torturing another human being may lawfully be admitted against a party to proceedings in a British court, irrespective of where, or by whom, or on whose authority the torture was inflicted. To that question I would give a very clear negative answer... The principles of the common law, standing alone, in my opinion compel the exclusion of third party torture evidence as unreliable, unfair, offensive to ordinary standards of humanity and decency and incompatible with the principles which should animate a tribunal seeking to administer justice. But the principles of the common law do not stand alone. Effect must be given to the European Convention, which itself takes account of the all but universal consensus embodied in the Torture Convention.

AI noted that, in a number of respects, the Law Lords' judgment gave cause for concern. In particular, the majority of four of the seven Law Lords ruled that

such evidence should be excluded if the SIAC considers that it is more likely than not that the evidence was obtained by torture. As Lord Bingham stated in his minority opinion: "This is a test which, in the real world, can never be satisfied. The foreign torturer does not boast of his trade."

AI had coordinated a coalition of 14 international and domestic organizations in making a joint intervention in the case by making written and oral submissions to the Law Lords, asking them to overturn the Court of Appeal's judgment (see *United Kingdom: Case for the Interveners on Appeal*, AI Index: EUR 45/041/2005). Other domestic and international organizations intervened separately. In the intervention to the UK's highest court, the lawyers representing the coalition put forcefully the argument that under international law torture is absolutely prohibited in all circumstances, and that no statement obtained through torture or other ill-treatment should ever be admitted as evidence except in proceedings against torturers.

The case had been brought by 10 foreign nationals, including "A", "G", "H" and Mahmoud Abu Rideh, against being labelled as "suspected international terrorists" by the UK authorities. As a result of the judgment, their cases should be referred back to the court of first instance for its reconsideration of the "evidence".

### **Renditions**

In December the government faced mounting accusations that it had allowed the US to use UK territory in the context of secret transfers of individuals without any judicial process ("renditions") to countries where they were reportedly tortured and to various US detention centres around the world (see *United*

<sup>3</sup> [2005] UKHL 71, 8 December 2005.

*Kingdom – Human rights are not a game, AI Index: EUR 45/043/2005).*

### **Police Shootings**

*The killing of Jean Charles de Menezes (see United Kingdom: Full circumstances into fatal shooting must be investigated, AI Index: EUR 45/027/2005; and United Kingdom: The killing of Jean Charles de Menezes, AI Index: EUR 45/032/2005).*

On 22 July, the day after a series of serious security incidents occurred in London, plainclothes police officers shot dead Jean Charles de Menezes, an unarmed young Brazilian man, after he was restrained on board a London underground train on his way to work. The killing left many Londoners, particularly those from ethnic minorities, fearful not only of being bombed, but also of being shot by police.

Initial police statements claimed that Jean Charles de Menezes was a suspect linked to the incidents of the previous day. It was also reported that he had tried to evade arrest and that, though it was summer, he had been wearing a thick jacket thought to conceal explosives. However, two days later the Chief Commissioner of the Metropolitan Police (Met) stated categorically that Jean Charles de Menezes had not been involved in any suspicious activities, and that he had been shot dead as a result of a mistake. The police later acknowledged that Jean Charles de Menezes was wearing a jeans jacket and had not acted in any way to arouse suspicion.

The Met later confirmed that it had sought to block the Independent Police Complaints Commission (IPCC) from conducting the investigation from the outset into the killing of Jean Charles de Menezes on the grounds that it was linked to the ongoing "anti-terrorist" investigation. This attempt resulted in a

crucial delay in the IPCC assuming charge of the investigation. The fact that the Met retained control over the investigation at the crucial initial stage ran counter to the need for it to be carried out independently of those responsible for the killing. This, together with the initial police statements about the circumstances of the killing, gave rise to allegations of a cover-up.

On 19 September, in the wake of the killing, the former Met Commissioner Sir John Stevens said that Prime Minister Tony Blair and former Home Secretary David Blunkett had been told of a shift to a "shoot to kill" policy three years earlier.

At the end of the year the IPCC investigation was pending.

### *The killing of Harry Stanley*

In October the prosecuting authorities declined to bring charges against the police officers involved in shooting dead an unarmed man, Harry Stanley, as he was walking down a street in London in 1999.

### **UK armed forces in Iraq**

On 21 December, the Court of Appeal of England and Wales ruled in the case of *R (Al-Skeini) v. Secretary of State for Defence* related to the death in custody of Baha Mousa and the deaths of five other Iraqis killed in separate incidents involving the use of armed force by members of the UK military. The families of the six victims challenged the UK government's decision not to hold an independent inquiry into the deaths. They said that the Ministry of Defence (MoD) had refused to carry out independent and thorough investigations as required by Articles 2 and 3 of the ECHR and by the Human Rights Act 1998 (HRA). The MoD claimed that neither the ECHR nor the HRA was applicable to the conduct of its military in Iraq at the time

of the deaths, because Iraq was outside Europe and was not a party to the ECHR.

The following is a short account of the facts surrounding the treatment and death in UK custody of Baha Mousa set out in the leading judgment in the case given by Lord Justice Brooke:

Baha Mousa was 26 years old. He worked as a receptionist at a hotel in Basrah City. In the early morning of 14th September 2003 a unit from 1 QLR [Queen's Lancashire Regiment] raided the hotel... The troops were particularly concerned to ascertain the whereabouts of one of the partners who ran the hotel. Brig Moore himself took part in this operation and was up on the roof of the hotel when the troops were effecting arrests.

It was in these circumstances that they rounded up a number of the men they found there, including Baha Mousa. Baha Mousa's father, Daoud Mousa, had been a police officer for 24 years and was by then a colonel in the Basrah police. He had called at the hotel that morning to pick up his son at the end of his shift, and he told the 1 QLR lieutenant in charge of the unit that he had seen three of his soldiers pocketing money from the safe. During this visit he also saw his son lying on the floor of the hotel lobby with six other hotel employees with their hands behind their heads. The lieutenant assured him that this was a routine investigation that would be over in a couple of hours. Colonel Mousa never saw his son alive again. Four days later he was invited by a military police unit to identify his son's dead body. It was covered in blood and bruises. The nose was badly broken, there was blood coming from the nose and mouth, and there were severe patches of bruising all over the body. The claimants' witnesses tell of a sustained campaign of ill-treatment of the men who were taken into custody, one of whom was very badly injured, and they suggest that

Baha Mousa was picked out for particularly savage treatment because of the complaints his father had made. The men who were arrested had been taken from the hotel to a British military base in Basrah City called Darul Dhyafa.

Court-martial proceedings remained pending at the end of the year against seven military personnel, including the commanding officer who had been charged with negligent performance of duty. Three of the seven military personnel were charged with "inhuman treatment" of Baha Mousa.

The Court of Appeal ruled that the ECHR and the HRA applied to the case of Baha Mousa and thus the authorities were required to ensure an independent, impartial investigation into this death. However, the Court held that the notion of jurisdiction was not broad enough to apply to those persons who were at liberty and not yet in the control of UK forces, including the other five named persons who were shot dead by UK soldiers. The Court also found that the system for investigating deaths at the hands of UK armed forces personnel was seriously deficient, including in its lack of independence from the commanding officer, and that it needed to be scrutinized. It was anticipated that the Court of Appeal's judgment would be appealed against, and this appeal would probably be heard by the Law Lords before the end of 2006.

In another case, Lord Goldsmith QC, the UK Attorney General, announced in July that four UK armed forces personnel would stand trial in connection with the death of Ahmed Jaber Karim 'Ali, who was one of four men arrested on suspicion of looting in May 2003 in Basra. It had been alleged that UK servicemen punched and kicked the suspected looters before forcing them into the Shat Al-Basra canal where Ahmed Jaber Karim 'Ali, who could not swim, drowned.

AI had in the past called for effective, prompt, impartial, independent and thorough investigations in Baha Musa's case and in the cases of other Iraqi civilians who had allegedly been mistreated by UK troops (see AI Index: EUR 45/031/2004).

AI considered that the UK was also breaching international and domestic human rights law in its actions relating to the internment without charge or trial in Iraq. While the majority of people had been interned by US forces, as of October, the UK forces were interning some 33 people.

AI was concerned that that even after months of internment the UK continued to hold internees without providing them or their legal counsel with adequate information to enable them to refute the evidence being used to continue their internment.

Hilal 'Abdul Razzaq 'Ali al-Jedda, a dual Iraqi/UK national who was arrested in October 2004, continued to be detained without charge in Iraq by UK forces. Hillal 'Abdul Razzaq 'Ali al-Jedda filed a case against the UK MoD relating to his internment in Iraq. In July his case was heard before the High Court of England and Wales in London. AI observed the proceedings. Hillal 'Abdul Razzaq 'Ali al-Jedda's legal team argued that his detention, ordered as a "preventive security measure", was illegal because he had not been charged with any offence. They said that his continued detention breached the ECHR and the HRA.

In August the High Court ruled in favour of the government. However, the Court stated that "[a]lthough detained for imperative reasons of security, the claimant has not been charged with any offence; and the Secretary of State acknowledges that, as matters stand, there is insufficient material available

which could be used in court to support criminal charges against him. The claimant is therefore detained simply on a preventive basis." It appeared that much of this "material" had been kept secret from Hillal 'Abdul Razzaq 'Ali al-Jedda and his lawyer.

By the end of the year, Hillal 'Abdul Razzaq 'Ali al-Jedda continued to be held without charge or trial by UK forces in Iraq. AI urged the UK authorities to release Hillal 'Abdul Razzaq 'Ali al-Jedda and other internees similarly held unless they were to be promptly charged with a recognizably criminal offence and brought to trial before an independent and impartial court in proceedings which meet international standards.

#### **Guantánamo Bay (update to AI Index: EUR 45/001/2005)**

At least seven UK residents continued to be held in Guantánamo Bay at the end of the year, including Bisher al-Rawi, an Iraqi national and legal resident in the UK, and Jamil al-Banna, a Jordanian national with refugee status in the UK. AI continued to be concerned about the role that the UK authorities, including MI5 in particular, had played in the unlawful rendering to US custody of a number of individuals, some of whom were eventually transferred to Guantánamo Bay – via Afghanistan – and about the UK's subsequent refusal, despite clear obligations under international refugee and humanitarian law, to make representations on behalf of these individuals to the US authorities.

AI called for a prompt, thorough, independent, impartial and effective investigation into the duplicitous role that the UK authorities had played and continued to play in the detention – without any legal basis – of UK residents and nationals and possibly many others at Guantánamo Bay in US custody. AI also continued to express concern that

UK intelligence officers had taken advantage of the legal limbo in which UK nationals, residents and possibly others had been held at Guantánamo Bay to interrogate them in the absence of any safeguard, thereby circumventing both domestic and international human rights law. AI noted that anyone arrested in the UK and questioned in connection with al-Qa'ida or other terrorist activities would have the right to legal assistance, including having a lawyer present during questioning.

In December a UK court ruled that David Hicks, an Australian national detained at Guantánamo Bay, was entitled to be registered as a UK citizen and therefore to receive assistance by the UK authorities. AI expressed dismay upon learning that the UK government intended to appeal the ruling.

#### **Undermining the right to seek and enjoy asylum**

AI expressed concern that the Immigration Asylum and Nationality Bill 2005 (IAN) – the fourth piece of legislation in this area by the Labour government – contained provisions which, if enacted, would undermine one of the core aims of the UN Refugee Convention: to provide international protection for people seeking asylum on grounds of political persecution.

In December the UNHCR, commented on the provisions contained in the Bill. While emphasizing that the Refugee Convention "provides the appropriate tools to ensure that refuge is not provided to terrorists", UNHCR expressed concern that the Bill may give rise to an overly broad application of the exclusion clauses of the Convention "with the result that certain persons, who do not fall within the scope of the exclusion clauses, are denied the benefit of international protection".

The Bill also failed to address the considerable concerns about the situation facing the large numbers of asylum-seekers and migrants detained under Immigration Act powers in the UK (see *United Kingdom: Seeking Asylum is not a crime: detention of people who have sought asylum*, AI Index: EUR 45/015/2005). Many detainees have no, or very poor, legal representation and many experience great difficulty in accessing an independent review of their detention by way of a bail application. By the end of the year the Bill's enactment into law was pending before Parliament.

#### **Army training practices called into question (update to AI Index: EUR 01/012/2005)**

In July the UK government admitted that mistakes had led to the bullying of young recruits in the armed forces in response to a highly critical report from the Parliamentary Defence Select Committee in March. However, two main recommendations made by the Committee in its report remained unheeded, namely the establishment of an independent complaints mechanism for people in the army, and for the government to consider the consequences of raising the age of recruitment from 16 to 18.

AI had raised concerns in 2003 over the high incidence of deaths of UK soldiers in non-combat situations (see AI Index: EUR 45/004/2003), and the lack of independent investigations into their deaths.

#### **Prisons**

Martin Narey, the outgoing chief executive in charge of prison and probation services, criticized the record-breaking increase in the prison population, which had led to severe overcrowding. He also said it was "gross" that about 16,000 prisoners were held in

conditions in which they had to share a toilet in a cell in which they also ate. He also highlighted the plight of 5,000 of the 77,500 incarcerated who were profoundly mentally ill and stated that another 3,000 of the total number of inmates were children.

The number of self-inflicted deaths continued to be high.

### **Northern Ireland**

#### *Collusion and political killings (update to AI Index: EUR 01/012/2005)*

The government continued to fail to establish an inquiry into the 1989 killing of human rights lawyer Patrick Finucane. AI reiterated that only an independent judicial inquiry held in public could shed light on collusion by state agents with loyalist paramilitaries in his murder; on reports that Patrick Finucane's death was the result of state policy; and on allegations that different government authorities played a part in the subsequent cover-up of his killing.

On 21 July AI wrote, jointly with British Irish Rights Watch and the Committee on the Administration of Justice, to senior judges in the UK to express serious concern over the UK government's stated intention to hold an inquiry into the killing of Patrick Finucane under the Inquiries Act 2005, given their concern about the legislation.

At the close of the year, more than two years after the inquiry was recommended by retired Canadian Supreme Court Justice Peter Cory, the government had still failed to establish it. A newspaper reported that judges' reluctance to be appointed to preside over an inquiry into the Finucane case held under the Inquiries Act appeared to be the result of an international campaign by AI and the efforts of the Finucane family in resisting such an eventuality. AI continued to

denounce the prospect of holding a Finucane inquiry under the Inquiries Act as a sham.

#### *The end of the Irish Republican Army (IRA) armed campaign*

On 28 July the IRA announced the end of its 36-year armed campaign. In a formal statement, it announced that "all Volunteers have been instructed to assist the development of purely political and democratic programmes through exclusively peaceful means".

On 1 August, the Secretary of State for Northern Ireland, Peter Hain, published plans for the normalization of security across Northern Ireland. The Normalisation Programme was said to aim to create an environment which would allow the return of conventional policing across Northern Ireland. The Secretary of State said that if the enabling environment were to be established and maintained the programme would be achievable within two years.

#### *Abuses by non-state actors*

Abuses by members of paramilitary groups, including killings, shootings and beatings, continued.

Four fatal shootings occurred over a six-week period in July and August, reportedly as a result of a feud between the Loyalist Volunteer Forces (LVF) and the Ulster Volunteer Forces (UVF). The victims, all alleged members of the LVF, were Jameson Lockart, 25, shot in a lorry on 8 July; Craig McCausland, 20, shot in his home on 12 July; Stephen Paul, shot outside his home on 30 July; and Michael Green, 42, shot on 15 August as he got off his motorbike outside a furniture store in Belfast. At the time of the murders the police believed that all four killings could be attributed to the UVF and were conducting inquiries.

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## UZBEKISTAN

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### **The need for an independent international investigation into the Andizhan events (update to AI Index: EUR 01/012/2005)**

In September AI published a 48-page report entitled *Uzbekistan: Lifting the siege on the truth about Andizhan* (AI Index: EUR 62/021/2005) outlining its concerns about the Andizhan events and calling for an independent international investigation.

In response to Uzbekistan's continued refusal to allow an independent international investigation into the May killings in Andizhan, in November the European Union (EU) announced an embargo on EU arms sales and military transfers to Uzbekistan, and a one-year visa ban on 12 senior government ministers and officials. However the Minister of Internal Affairs, Zokir Almatov, was granted an exception on humanitarian grounds to receive medical treatment in Germany. Zokir Almatov left Germany in December, following calls from the UN Special Rapporteur on torture, human rights organizations and relatives of the victims for Germany to prosecute him. On 5 December, AI called on the German Federal Prosecutor Kay Nehm to investigate allegations of the involvement of Zokir Almatov in "systematic torture of prisoners in Uzbekistan" as well as his involvement in the "massacre in Andizhan in May 2005" and, if necessary, issue a warrant for his arrest while he was in Germany. Following his return to Uzbekistan, he resigned from his post as Minister of Internal Affairs at the end of December on grounds of ill-health.

In December the UN General Assembly adopted a resolution put forward by the EU expressing deep regret over

Uzbekistan's refusal to allow an international investigation and urging the authorities to stop their "harassment and detention of eyewitnesses".

The authorities in Uzbekistan banned European members of the North Atlantic Treaty Organization (NATO) from using Uzbekistan's airspace and requested that all countries withdraw their troops from Termez airbase, apart from Germany.

In November the US military completed its withdrawal from Khanabad airbase, as also requested by the Uzbekistani authorities. The airbase had been leased since October 2001 as part of the US-led "war on terror". On 14 November the government signed a mutual defence agreement with the Russian Federation that would allow Russian use of military facilities in Uzbekistan.

Although in December the trial began of 12 law enforcement officers charged with negligence in connection with the Andizhan events, by the end of 2005 no members of the security forces responsible for human rights abuses had been brought to justice.

### **Extradition requests and forcible returns**

Following the 13 May events in Andizhan, the authorities requested the extradition of suspected supporters of Akramia, according to the authorities an extremist religious group, and Hizb-ut-Tahrir, the banned Islamic opposition party, from Kazakhstan, Kyrgyzstan and the Russian Federation. On 16 June, the Prosecutor General's Office said it was seeking the extradition from Kyrgyzstan of 131 refugees who were "direct participants in the acts of terrorism [in Andizhan]" (see the entry on Kyrgyzstan).

On 9 June, Dilshod Gadzhiev, Tavakkal Gadzhiev, Muhammad Kadirov and Abdubais (Gasani) Shakirov were forcibly

taken from a refugee camp at Besh-Kana in Kyrgyzstan to a detention centre in the city of Osh in Kyrgyzstan, and handed over to Uzbekistani security forces. The four men were reportedly detained incommunicado, and at least one of them tortured, in Andizhan prison after their return to Uzbekistan. The Uzbekistani authorities told the office of the UN High Commissioner for Refugees (UNHCR) in August that the four had returned "voluntarily" and were being held in a detention facility in Tashkent, but denied the UNHCR access to them. By the end of the year only Tavakkal Gadzhiev had been accounted for. He was one of 15 defendants sentenced to long prison terms by the Supreme Court on 14 November for their alleged participation in the Andizhan events; he was sentenced to 17 years' imprisonment.

Russian law enforcement officers detained 14 ethnic Uzbek men in Ivanovo in the Russian Federation on 18 June, allegedly for swearing and refusing to show their identity documents. The Uzbekistani authorities requested their extradition for involvement in the 13 May events, supporting Akramia, and financing "terrorist" activities. All the men denied the accusations. A Russian citizen among them said he had visited Uzbekistan in May only to renew his Uzbekistani passport, and was released on 11 October. The other 13, a Kyrgyzstani national and 12 Uzbekistani nationals, applied for asylum in the Russian Federation in August but were still in custody at the end of 2005.

Marsel Isaev, a student, was forcibly deported from Russia to Uzbekistan on 12 October, where he was detained at the Department of Internal Affairs of Tashkent, and questioned about his alleged membership of Hizb-ut-Tahrir before being released on 21 October. An Uzbekistani national, Marsel Isaev had been studying in Tatarstan in the Russian Federation since 2004. According to

reports, in September 2005 he was stopped on the street by officers from the Organized Crime Squad, who detained him and tried to force him to give false evidence as a witness in a trial against an acquaintance accused of membership of Hizb-ut-Tahrir. Marsel Isaev was told that he would not be able to re-register his residence permit, up for renewal, and would be sent back to Uzbekistan as a suspected member of Hizb-ut-Tahrir if he refused to comply with the demands of the officers. At the trial he revealed the attempts to extract a false statement from him. Following this, his residence permit was not renewed and he was detained on 23 September for overstaying his residence permit. Fearing that he would be tortured if he was returned to Uzbekistan, Marsel Isaev applied for asylum in the Russian Federation. On 11 October he was interviewed by officials from the migration department and on 12 October he was informed by the Department for Migration in Tatarstan that his application for asylum had been received and was being processed. Despite his application being under consideration he was deported to Uzbekistan on 12 October.

Nine Uzbekistani nationals, including four registered asylum seekers, were forcibly returned from Kazakstan to Uzbekistan early in the morning of 29 November, in contravention of Kazakstan's obligations under international law. Ruhiddin Fahriddinov, Abdurahman Ibragimov, Tohir Abdusamatov, Sharofuddin Latipov, Nozim Rahmanov, Alisher Mirzaholov, Abdurauf Holmuratov, Shoirmat Shorahmedov and Alizhon Mirganiev were detained by the National Security Committee of Kazakstan, the security services, in the city of Shymkent, Kazakstan on 24 and 27 November, and were held incommunicado until they were returned to Uzbekistan. Abdurahman Ibragimov, Alisher Mirzaholov, Abdurauf Holmuratov and Alizhon Mirganiev were allegedly wanted by the Uzbekistani

authorities for "participation in a banned religious organization". Ruhiddin Fahrudinov is a former independent imam (religious leader) at a mosque in Tashkent and, together with Tohir Abdusamatov, was wanted for "attempting to overthrow the constitutional order". Ruhiddin Fahrudinov's wife, possible prisoner of conscience Rahima Akhmadalieva, was released from prison in 2004 after serving three years of a seven-year prison sentence. Rahima Akhmadalieva was detained in 2001 and ill-treated in pre-trial detention in order to force her to disclose her husband's whereabouts. Rahima Akhmadalieva and her oldest daughter, Odina Maksudova, continued to be harassed by law enforcement officers, including by being frequently arbitrarily detained for long periods of time for questioning (see AI Index: EUR 01/005/2004). His brother-in-law, Farukh Khaidarov, a teacher of Arabic language at the Egyptian Cultural Center in Tashkent, reportedly "disappeared" in June 2004 (see AI Index: EUR 01/002/2005).

The nine men were detained at various places in Uzbekistan and considered to be at risk of torture or other ill-treatment. According to reports, only two of the eight men were initially given access to lawyers. They were Alizhon Mirganiev, who was being held at the Ministry of Internal Affairs pre-trial detention centre in the capital, Tashkent, and Sharofuddin Latipov, who was being held at the National Security Service building in Tashkent. It was not known where the other detainees were being held. AI was unaware of whether any of the nine men had been charged by the end of the year. It is believed that they fled Uzbekistan to escape arrest and possible torture by the Uzbekistani authorities. Some of the men were believed to have been followers of independent imam Obidkhon Nazarov, in hiding since 1998.

### **Unfair trials of 13 May suspects**

Hundreds of people suspected of involvement in the 13 May events were detained, and many were allegedly ill-treated or tortured. In June, the Prosecutor General said that 102 detainees had been charged. The charges included "terrorism" and premeditated, aggravated murder – both capital offences – as well as attempting to overthrow the constitutional order and organizing mass disturbances. Following unfair trials, at least 73 people were convicted of "terrorist" offences and sentenced to between 12 and 22 years' imprisonment for their alleged participation in the unrest.

The first trial, of 15 defendants including Tavakkal Gadzhiev, who had been forcibly returned from Kyrgyzstan on 9 June, opened on 20 September before the Supreme Court in Tashkent. Access to the court was restricted and most relatives of the defendants, without notice of the trial, were not able to apply to attend. Only one local independent human rights organization was allowed to observe the trial – others were refused permission despite having applied for access. The government refused a request by the UNHCR to send observers, however some diplomats and members of international organizations as well as journalists were allowed in. The defendants pleaded guilty to charges of "terrorism" and asked for forgiveness, but there were concerns that their confessions, which closely followed the wording of the charges, had been extracted under duress. All were presumed guilty before the trial. Most had been held incommunicado and none was granted adequate access to a lawyer of his choice in pre-trial detention. There was no cross-examination of defendants or witnesses, and contradictions in the testimonies were not addressed. Witnesses for the defence faced intimidation. The only witness among the

hundreds summoned, Markhuba Zokirova, who told the court she had seen the security forces firing indiscriminately at mostly unarmed civilians, including women and children, even as they ran for safety, asked the prosecutor whether she would be arrested for telling the truth. National newspapers subsequently denounced her as a traitor and accomplice to terrorists. On 14 November the 15 defendants were sentenced to terms of imprisonment ranging from 14 to 20 years. Their appeals against these sentences were pending at the end of 2005. The UN High Commissioner for Human Rights together with UN special rapporteurs and the EU expressed serious concerns about the conduct of the trial.

At least four more trials reportedly started in November; they were not held in accordance with international fair trial standards. Most detainees were believed to have been held incommunicado before the trial and denied access to lawyers of their choice, relatives or medical assistance. The identity of the defendants, the charges against them, and the dates and locations of their trials were not disclosed to their relatives. International observers, human rights activists and families were denied access to all four trials, which were closed and held in different locations outside Tashkent. In early December 58 defendants were sentenced to terms of imprisonment from 12 to 22 years.

**Clampdown on dissent (update to AI index EUR 01/012/2005)**

The May events in Andizhan continued to be used as a pretext for tightening restrictions on political freedoms in the name of national security and the "war on terror". Civil society activists, including human rights activists and journalists who had tried to publicize the 13 May events, continued to be threatened, assaulted, detained and

forcibly confined to their homes. Some human rights defenders continued to be held as prisoners of conscience on serious criminal charges. The authorities and the official media stepped up their campaign of denouncing as traitors and hypocrites those who questioned the official version of events and increasingly targeted foreign news outfits.

In October, the British Broadcasting Corporation (BBC) decided to close its Uzbekistan office, located in Tashkent, and withdraw its local staff for at least six months due to security concerns, following increased harassment of its staff by the Uzbekistani authorities. Individual members of staff, including international staff, had been accused by the authorities of complicity in the Andizhan events. In December, the Ministry of Foreign Affairs refused to renew the accreditation of the Uzbek Service of Radio Free Europe/Radio Liberty (RFE/RL), also based in Tashkent. Under Uzbekistani law, to work without accreditation is an offence punishable by a fine or imprisonment.

Independent journalist Aleksei Volosevich was in Andizhan on 13 May and reported the events on the main independent Russian language website, *www.ferghana.ru*. He also reported on the above-mentioned trial of the 15 men charged with organizing the Andizhan events and on other trials of leaders of the opposition.

Aleksei Volosevich was reportedly named and accused of treason against the state in an article which was published on 25 May in the main national, governmental newspaper *Pravda Vostoka* (Truth of the East), under the title "In defence of the sovereignty of the Uzbekistani people". On 9 November, he was attacked by five unknown men who knocked him to the ground near his home in Tashkent and poured several buckets of green indelible paint on him. The entrance and the door to his apartment were also splashed with

paint, and derogatory words directed at Aleksei Volosevich were written on them.

Prominent human rights defender Saidzhakhon Zainabitdinov was arrested on 21 May and detained as a prisoner of conscience. Initially held in police custody at the Andizhan Regional Department of Internal Affairs, he was reportedly transferred to Tashkent in July. His family and lawyer were denied information about his whereabouts. In November he was reportedly in an isolation unit at Tashkent prison, still incommunicado. Initially charged with defamation, punishable by up to three years in prison, in relation to an open letter about the case of the 23 entrepreneurs, he was subsequently charged with "terrorism" and other more serious charges. The real reason for his detention appeared to be his public representation of one of the 23 entrepreneurs at the trial, and his reporting of the 13 May events, which received international media coverage and which provided a stark contrast to the official version of events.

On 27 August Elena Urlaeva, a human rights activist and member of the unregistered secular opposition political party, Free Peasants (Ozod Dekhonorlar), was detained by police officers as she was putting up leaflets in Tashkent. She was charged with desecrating state symbols, under Article 215 of the Criminal Code. Although the Article does not envisage a psychiatric evaluation of the accused, Elena Urlaeva was nevertheless taken by police to the Psychiatric Hospital in Tashkent for a psychiatric evaluation which on 20 September established her state as "healthy, sane, and adequate". On 23 September, Elena Urlaeva was transferred to the Republican Psychiatric Hospital for a second examination that established that she was mentally ill and in need of medical treatment. She was released at the end of October.

In August, Nosir Zokirov, a correspondent for RFE/RL's Uzbek Service (Radio Ozodlik) based in Namangan, was sentenced to six months' imprisonment for allegedly insulting a security officer. Nosir Zokirov was summoned to court in Namangan on 26 August. Reportedly, Nosir Zokirov was tried without the presence of a defence counsel or the examination of witnesses and was sent directly to prison following his conviction under Article 140 of the criminal code for insulting a member of the security forces. The case was brought against him following an angry phonecall Nosir Zokirov made to security police in Namangan on 6 August, in which he protested at attempts to pressure a local poet, Khaidarali Komilov, to lie about an interview he gave Nosir Zokirov which was broadcast in early August.

Mutabar Tadzhibaeva, Chairwoman of the human rights organization Fiery Hearts Club (Utiuraklar), based in Ferghana City, and one of the founders of the national movement Civil Society, was detained on 7 October. Mutabar Tadzhibaeva has monitored human rights violations in Ferghana Valley and was due to attend an international conference on human rights defenders in Dublin on 8 October. She was scheduled to fly to Tashkent on the evening of her arrest to catch a flight to Ireland.

According to Mutabar Tadzhibaeva, an argument had arisen between her and an employee of her fish farm over a sum of money that he owed her, and on 7 October the employee came to her house in Margilan, Ferghana Valley, to repay his debt. Reportedly, it was at this point that armed police and special force agents in masks entered her house and charged Mutabar Tadzhibaeva with swindling and extortion (Article 168 and Article 165 Part 2b of the Criminal Code), the latter of which carries a possible sentence of 10 to 15 years' imprisonment. The police

and special force agents also allegedly searched her house without a warrant and seized a computer and several documents. Mutabar Tadzhibaeva has denied all allegations.

Mutabar Tadzhibaeva was reportedly being held in a pre-trial detention centre in Ferghana City (SIZO-10). Mutabar Tadzhibaeva reportedly started a hunger strike protest the day after her detention, which resulted in her receiving medical attention. According to information received from Mutabar Tadzhibaeva's lawyer, her state of health in December was poor and she had allegedly been denied further medical attention. Her lawyer also reported that Mutabar Tadzhibaeva had been threatened by guards and fellow detainees whilst in detention. Furthermore, she had allegedly been denied all access to her family and had often been refused access to her lawyer. Her lawyer had also reportedly been harassed by the authorities and was allegedly under constant police surveillance.

Mutabar Tadzhibaeva has come under increasing pressure from the authorities for her human rights activities. On 22 September, she gave an interview to Radio Ozodlik in which she spoke out about the government's crackdown on human rights activities since the Andizhan events and the above-mentioned trial of 15 defendants in connection with the Andizhan events, which started on 20 September. Several of the 15 defendants reportedly accused her of being involved in the uprising. The authorities also reportedly spread a rumour that a criminal case had been filed against her for her supporting members of Akramia.

### **Death penalty**

Reports about new death sentences continued to be received in the period under review.

### *Presidential decree on abolition of the death penalty from 2008*

On 1 August, President Islam Karimov signed the decree "On abolishing the death penalty in the Republic of Uzbekistan" stipulating the abolition of the death penalty in Uzbekistan from 1 January 2008.

In its report *Uzbekistan: Questions of life and death cannot wait until 2008. A briefing on the death penalty* (AI Index: EUR 62/020/2005), issued on 1 September, AI welcomed the government's commitment to abolish the death penalty. However, the organization urged the authorities to build on this step by promptly commuting all pending death sentences and introducing a moratorium on death sentences until the full abolition of the death penalty in 2008. AI pointed out that if no fundamental changes were introduced immediately then scores of people were likely to be sentenced to death in unfair trials accompanied by torture allegations and executed before January 2008.