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# Europe and Central Asia

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

### July - December 2004

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#### FOREWORD

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This bulletin contains information about AI's main concerns in Europe between July and December 2004. Not every country in Europe is reported on: only those where there were significant developments in the period covered by the bulletin, or where 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 Amnesty International.

This bulletin is published by Amnesty International 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

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## ALBANIA

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

Following its consideration of the initial report of Albania on its implementation of the International Covenant on Civil and Political Rights, the UN Human Rights Committee, on 1 November, noted its concern "about allegations of arbitrary arrests and detention, the excessive use of force by law enforcement officials, ill-treatment of detainees in police custody and use of torture to extract confession from suspects". The Committee further stated that "[i]t regrets that acts of torture by law enforcement officials are considered as 'arbitrary acts' only and treated accordingly. It is also concerned that despite several cases of investigations and punishment of those responsible for ill-treatment, many cases have not been investigated properly and compensation to victims has not been provided (art. 7)." Among the Committee's recommendations were that: "[T]he State party should take firm measures to eradicate all forms of ill-treatment by law enforcement officials and ensure prompt, thorough, independent and impartial investigations into all allegations of torture and ill-treatment. It should prosecute perpetrators and ensure that they are punished in a manner proportionate to the seriousness of the crimes committed, and grant effective remedies including compensation to the victims."<sup>1</sup>

The Committee also urged Albania to reinforce remedies against trafficking, domestic violence and the abuse and exploitation of children. The Committee further called for guarantees for the independence of the judiciary, and for protection of minority rights.

### **Albania ratifies Protocol 12 of the ECHR**

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<sup>1</sup> *Concluding observations of the Human Rights Committee, CCPR/CO/83/ALB, paragraph 13*

In July Albania ratified Protocol 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits discrimination by any public authority on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

### **Impunity**

Prosecutors did not always investigate complaints of ill-treatment or did so only after delay. Even when an investigation was formally opened, it was often inconclusive. Prosecutors were reluctant to apply articles of the Criminal Code dealing with torture and "any other degrading or inhuman treatment", preferring to invoke lesser charges, such as "arbitrary acts", which in practice is often punished with a fine.

### *Allegations of custodial torture and ill-treatment*

Police officers were alleged to have tortured or ill-treated detainees during arrest and in police custody. Such practices were facilitated by violations of legal procedures, in particular the denial of the detainee's right of access to a lawyer from the moment of arrest.

Merita Kola [f], aged 22, was arrested on 23 July on a charge of trafficking for prostitution. In a letter she subsequently sent to the Prosecutor General and the People's Advocate she protested her innocence. She further complained: "After they arrested me, they took me to Burrel police station, where at 11.30pm I was questioned without a lawyer". She alleged that (named) police officers swore at her, slapped her and kicked her in the stomach until she lost consciousness; they then revived her by pouring water on her. One officer allegedly tore the earring from one of her ears, causing heavy bleeding, and the chief prosecutor of Burrel allegedly threatened her. Following the publication of her allegations in the press on 6 August, Merita Kola was released and charges against her were dropped.

In October, Gentian Pollo, a schoolteacher, was among a number of people who were injured and required hospital treatment after masked police units entered two bars in the village of Lazarat in southern Albania to arrest a convicted criminal. He subsequently alleged that police beat and kicked him while driving him, handcuffed, to Gjirokaster police station, and again at the police station. No charges were brought against him.

Complaints of ill-treatment by remand and convicted prisoners were less frequent, but in September a group of prisoners held in Prison 302 complained of ill-treatment by prison guards. In August the parents of two remand prisoners complained that their sons, held in Kukës police station, had been beaten by police.

#### *Alleged custodial ill-treatment of children*

In November the Children's Human Rights Centre of Albania (CRCA) published a report, *No one to care*, based on visits by its monitors to police stations and remand centres during the period from 2000 to 2004. The CRCA stated that nearly all the children (aged 14 to 17) interviewed alleged that they had been ill-treated by police during or following arrest, often to force them to confess to crimes. The report cited, among others, the cases of S.T., aged 17, and his younger brother, E.T., aged 15, who were arrested in 2004 on a charge of armed robbery, and held in pre-trial detention in Gjirokastër police station. S.T. told CRCA monitors that during questioning he was repeatedly beaten and punched by five police officers. "I told them right at the beginning where I had put the gun and money, but they didn't believe me." He alleged that his younger brother was similarly beaten.

The CRCA expressed particular concern that, in violation of the law, children continued to be held in cells together with adults, which exposed them to abuses, including potential sexual abuse.

In September the School for Magistrates, with the assistance of UN Children's Fund (UNICEF), started a training course for judges and prosecutors working with children.

#### *Death in custody of Eriguert Ceka*

In July Eriguert Ceka, aged 17, suffered an injury to his head while in remand custody in Rrëshen police station on a charge of theft. Three days later he died in Tirana military hospital. Shortly after, two police officers were arrested in connection with his death for investigation on charges of "arbitrary acts", "abuse of duty" and infringing the rules of service. In separate trials in November and December the officers, Viktor Shtjefanaku and Gjon Reci, were convicted of contravening service rules and sentenced to seven months' and eight months' imprisonment respectively. The court failed to establish how Eriguert Ceka came to be injured.

#### **Conditions of detention**

The conditions of detention in police stations, with poor ventilation, sanitation and diet, and no heating or access to television, radio or reading materials, in most cases remained unchanged and often could be considered as inhuman and degrading. In July the Albanian Human Rights Group visited Shkodër police station and reported that about 140 detainees were held there, although it had capacity for only 45. In one cell measuring about 18 square metres, there were 30 detainees. At the time the temperature was 42° C, and the cell had only three small windows. The Minister of Justice ordered that all prisoners convicted in final instance held in police stations were to be transferred to prisons by the end of July. This temporarily reduced the severe overcrowding in police stations, although it increased overcrowding in prisons. In November the Albanian Helsinki Committee again reported overcrowding and poor hygiene in Fier and Krushë police stations. The implementation of a government decision to transfer responsibility for all pre-trial detention



premises from the Ministry of Public Order to the Ministry of Justice continued to be delayed. A European Union-assisted prison reform plan for the construction of new remand and prison facilities was announced in September.

### **Violence against Women**

#### *Trafficking of women and children for forced prostitution and cheap labour*

Albania continued to be a source country for the trafficking of women and children, mostly to EU countries, for forced prostitution, cheap labour or use as beggars, with most victims of these forms of exploitation leaving the country by land. According to Vatra, a shelter in Vlora for trafficked women, the number of trafficked women returned from EU countries increased in 2004. Prosecutions for the trafficking of women and children doubled by comparison with the previous year, and heavy sentences were imposed. However, the problem of the protection of witnesses remained: because of lack of secondary legislation and funding very few victims benefited from a witness protection law adopted in March.

#### *Violence in the family*

Independent studies, and the experience of non-governmental organizations (NGOs) working with women, indicated that domestic violence was common. Domestic violence counselling centres in Tirana, Berat, Shkodër and Pogradec reported in November that they had received 6,670 calls for help calls in the last three years, but concluded that many other women were reluctant to report domestic violence. In December it was announced that a project organized by UNICEF, the School for Magistrates, and an NGO, the Women's Advocacy Centre, would provide specialist training to judges, prosecutors and judicial police on how to handle cases of domestic violence.

The Criminal Code did not specifically criminalize domestic violence. Under the

Family Code, adopted in 2003, a spouse who has been subjected to domestic violence may ask a court to ban the perpetrator from the home, but this measure could not be applied by courts for lack of supporting legislation. In October an initiative was launched by 10 Albanian NGOs to draft legislation against domestic violence.

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## **ARMENIA**

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### **Conscientious objection (update to AI Index: EUR 01/004/2202, 01/002/2003 and 01/005/2004)**

In July a law entered into force providing for the unarmed military service of three years or alternative civilian service under the Ministry of Defence for three-and-a-half years – almost double the length of ordinary military service – for young men objecting to compulsory armed military service on the grounds of their religious beliefs or convictions. However, conscientious objectors continued to be sentenced to prison despite applying to do alternative civilian service, reportedly because they were called up for military service before the entry into force of the law. Conscientious objectors still serving prison sentences in July were not released as a result of the entry into force of the law, despite Council of Europe recommendations for the Armenian authorities to free all those so imprisoned. In its Resolution 1361 adopted on 27 January 2004, the Parliamentary Assembly of the Council of Europe had "expressed its indignation at the fact that 20 or so young people who refuse to perform military service are still in prison. It therefore demands that they be released immediately by presidential pardon pending the entry into force on 1 July 2004, of the law on alternative civilian service."

As of the end of December prison sentences of between one and two years had been imposed on 13 men, all Jehovah's Witnesses, as a result of their conscientious

objection, because alternative service arrangements were reportedly not yet in place. One had received a fine. A further 11 had been released on parole. Two were awaiting trial at the end of the year.

### **Religious Freedom**

In October the Ministry of Justice finally registered the Jehovah's Witnesses. They had sought registration for nine years. They had not been allowed to print or import religious literature, hold religious conventions or meetings or build places of worship.

### **Police ill-treatment and conditions of detention**

In July the report on the first visit to Armenia by the Council of Europe's Committee for the Prevention of Torture or Inhuman or Degrading Treatment or Punishment (CPT) was published. The report concerned the CPT's first visit to Armenia in 2002. It concluded that people detained ran a significant risk of being ill-treated, and recommended professional training for police officers as a priority. The report also raised concerns about overcrowding in prisons, conditions of detention for people sentenced to life imprisonment, and shortcomings at a psychiatric hospital.

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## **AZERBAIJAN**

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### **Admissibility of torture evidence (update to AI Index: EUR 01/001/2004 and EUR 01/005/2004)**

On 22 October the Court of Grave Crimes handed down sentences of between two-and-a-half and five years' imprisonment to seven opposition politicians who had gone on trial in May for their alleged participation in violent clashes between opposition supporters and law enforcement officers in the wake of the presidential elections in October 2003. Rauf Arifoglu, a deputy

chairman of the Musavat (Equality) party and editor-in-chief of the *Yeni Musavat* opposition newspaper, was sentenced to five years' imprisonment; Arif Hajili and Ibrahim Ibrahimli, also deputy chairmen of Musavat, received five and three years' respectively; Panah Huseynov, chairman of the Khalq (People) party was sentenced to four-and-a-half years'; Etimad Asadov, chairman of the Karabakh's Invalids Association to two-and-a-half years'; Sardar Jalologlu, the executive secretary of the Azerbaijan Democratic Party to four-and-a-half years'; and Igbal Agazade, the chairman of the Umid (Hope), to three years' imprisonment.

During cross-examination in court several witnesses for the prosecution and others for the defence reportedly retracted earlier testimony stating that law enforcement officials, including by the use of force, had pressured them to make incriminating statements against the seven defendants. Individual law enforcement officials, accused by some of the seven defendants of having tortured or ill-treated them, denied in court that they had committed any human rights violations. The court reportedly ordered no prompt and impartial investigations into any allegations of torture and ill-treatment.

The Organization for Security and Co-operation in Europe (OSCE), which had monitored the trial, expressed dismay at the "harshness" of the sentences. The OSCE stressed their concern about "pervasive and credible allegations" of torture and ill-treatment of some of the defendants and the witnesses, as well as the court's failure to investigate such allegations and to exclude evidence obtained under torture. The Parliamentary Assembly of the Council of Europe (PACE) had earlier called the seven defendants "presumed political prisoners" and had asked for them to be released or pardoned as part of Azerbaijan's obligations and commitments as a member state of the Council of Europe.

On 19 November the Court of Appeals upheld the original verdict. An appeal

against the verdict was still pending with the Supreme Court at the end of the year.

There was widespread concern about allegations that, after they were reportedly arbitrarily detained in October 2003, some of the seven opposition politicians had been tortured by members of the Ministry of Internal Affairs' Organized Crime Unit to force them to confess to having organized or participated in the post-election violence, and to denounce the opposition electoral bloc Bizim Azerbaijan (Our Azerbaijan) and its presidential candidate, Isa Gambar, the chairman of Musavat and runner-up in the election, who had been placed under house arrest. Others had been reportedly detained in cruel, inhuman and degrading conditions.

**Judicial harassment of human rights defender (update to AI Index: EUR 01/001/2004)**

On 2 April 2004 the Baku Court of Grave Crimes handed down a five-year suspended sentence to human rights activist and imam (Islamic leader) of the independent Juma (Friday) mosque, Ilgar Ibrahimoglu Allakhverdiev, for his alleged participation in the post-election violence. He was released from the courtroom.

In October 2003 police had raided the Juma mosque in the old town of Baku during Friday prayers. They were reportedly trying to detain Ilgar Ibrahimoglu as well as his colleague Azer Ramizoglu, also a human rights activist and leader of Devamm (Centre for the Protection of Freedom of Conscience and Religion). The authorities accused both men of being among the organizers of the post-election violence and Ilgar Ibrahimoglu of hiding weapons in the Juma mosque. Both men initially escaped detention; Ilgar Ibrahimoglu was given sanctuary by the Royal Norwegian Embassy for three days and Azer Ramizoglu went into hiding. Ilgar Ibrahimoglu was subsequently detained in December and held in pre-trial detention until his trial in April 2004.

Ilgar Ibrahimoglu consistently denied any involvement in organizing or participating in the post-election disturbances, and alleged that his arrest and prosecution were meant to punish him for his human rights activities; "for the implementation of the ideas of tolerance, and inter-confessional and inter-religious peace and agreement". Ilgar Ibrahimoglu is a coordinator of Devamm and secretary general of the Azerbaijani Chapter of the International Religious Liberty Association (IRLA). He has worked closely with the Baptist community in Azerbaijan and campaigned for mosques to be allowed to operate independently from the Caucasian Muslim Spiritual Administration, which exercises control over all mosques in Azerbaijan and is closely linked to the regime.

The Juma mosque was not under the authority of the Caucasian Muslim Spiritual Administration. In March a district court in Baku ordered the community out of the 1000-year-old Juma mosque on the grounds that it was an historical building and that the community had no rental agreement. An appeal court upheld the eviction order in April. Although an appeal by the Juma mosque community against the eviction order was still pending with the Supreme Court, police officers raided the mosque on 30 June during morning prayers in an attempt to forcibly evict imam Ilgar Ibrahimoglu and members of the community. Scores of worshippers alleged that police beat them during the eviction. The mosque was reportedly handed over to the Caucasian Muslim Spiritual Administration. In August the Supreme Court rejected the community's appeal. Imam Ilgar Ibrahimoglu claimed that more than 80 members of the community had been summoned to local police stations after the June eviction. Several had been detained short-term and at least one member had been sentenced to seven days' administrative detention. The police had also broken up a prayer meeting led by Ilgar Ibrahimoglu in a private home. In September and October Ilgar Ibrahimoglu was prevented from travelling abroad to attend conferences organized by the OSCE on racism and discrimination and human

rights, to which he had reportedly been officially invited. Azerbaijani officials explained that the conditions of Ilgar Ibrahimoglu's suspended sentence limited his freedom of movement.

#### **Police ill-treatment and conditions of detention**

In December the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published its first report on Azerbaijan. The report on the CPT's visit to Azerbaijan in 2002 concluded that people detained by the police ran a significant risk of being ill-treated. Among the CPT's recommendations were that professional training for police officers become a priority and that legal safeguards against ill-treatment in custody be applied from the moment of detention. The report also highlighted serious shortcomings in the conditions of detention at several police detention centres. While acknowledging efforts made by the authorities to improve prison conditions, the CPT reported overcrowding in some prisons.

#### **Nagorno-Karabakh**

*Death penalty (update to AI Index: EUR 01/003/2000)*

The status of the self-proclaimed Nagorno-Karabakh Republic (NKR), which is not recognized by the international community, remained unresolved. In August 2003 the NKR adopted the criminal code of neighbouring Armenia, thereby abolishing the death penalty. The three prisoners who remained on death row had their death sentences commuted to 15 years' imprisonment.

There had been no executions in Nagorno-Karabakh since 1997.

*Torture and unfair trial (update to AI Index: EUR 01/003/2000, 01/001/2001 and 01/003/2001)*

On 21 September former Defence Minister Samvel Babaian was released from prison after serving a third of his sentence. He was one of 35 prisoners pardoned by President Arkadi Ghukasian on 17 September.

Samvel Babaian was found guilty of organizing a failed assassination attempt on Arkadi Ghukasian, and sentenced to 14 years' imprisonment by the Supreme Court in February 2001, a verdict upheld by the board of the Supreme Court in March 2001. His co-defendants in the trial were sentenced to terms ranging from suspended sentences to up to 14 years in prison. AI had previously raised concern at allegations that Samvel Babaian and other defendants in the case had been ill-treated in pre-trial detention and that fair trial standards had been violated.

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## **BELARUS**

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#### **International concern about human rights (update to AI Index: EUR 01/005/2004)**

The Belarusian authorities remained defiant in the face of international criticism of violations of human rights. In a referendum held to coincide with parliamentary elections on 17 October official results indicated that more than 77 per cent of eligible voters voted to remove a two-term limit on the office of president, thereby supporting President Alyksandr Lukashenka, who has held power since 1994, to run for a third consecutive term. Independent observers including those of the Organization for Security and Co-operation in Europe (OSCE) have said that the elections and the referendum fell far short of democratic standards. In December the Special Rapporteur on Belarus appointed by the UN Human Rights Commission was refused a visa to visit Belarus.

#### **"Disappearances" (update to AI Index: EUR 01/005/2004)**

In August Olga Zavadskaya, mother of the journalist Dmitry Zavadsky who "disappeared" in July 2000, petitioned the General Prosecutor's Office asking that it resume the investigation of her son's case. The request was turned down in October as was her subsequent appeal in November.

The government did not respond to the report by the Parliamentary Assembly of the Council of Europe on the "disappearances" which was released in April 2004 (see AI Index: EUR 01/005/2004) and there were reports of confiscations and detentions in connection with attempts to distribute the report. In September Garri Pogonyailo of the Belarusian Helsinki Committee and Tatyana Reviaka of Spring-96 were detained by police for distributing a brochure which contained the report as well as other information about the "disappearances". They were released after three hours.

#### **Freedom of Expression**

In November the UN Working Group on Arbitrary Detention published a report on its visit to Belarus from 16 to 26 August. The report expressed concern about the use of pre-trial detention as a means to repress freedom of expression, and in particular criticized the fact that offences described as "libel against the president of the Republic", "insult to the president" and "libel against an official" in articles 367, 368 and 369 of the Criminal Code make it possible to limit freedom of expression. The report also made a number of recommendations to the government concerning the independence of judges and lawyers, the use and conditions of pre-trial detention and respect for the presumption of innocence, and expressed concern about those held in detention centres under the responsibility of the State Security Service (KGB).

In September Valery Levonevsky and Alexander Vasiliev, respectively the president and deputy president of the national strike committee of market traders were each sentenced to two years in prison by the Leninsky district court in Grodno after being convicted of publicly insulting

the President (Article 368 (2) of the Criminal Code). They had distributed a leaflet containing a satirical poem and calling on people to take part in 1 May demonstrations and "to come and say that you are against 'somebody' [the President] going on holiday skiing in Austria and having a good time at your cost". Valery Levonevsky was arrested and detained in May in Grodno and Vasiliev was detained after the trial. AI regarded them as prisoners of conscience. (See AI Index: EUR 49/017/2004).

Opposition activists who held peaceful demonstrations to protest at the results of the October parliamentary elections and referendum were subjected to arbitrary arrest and ill-treatment by the police. After demonstrations on 19 October about 50 demonstrators were detained and reportedly beaten. Anatoly Lebedko, leader of the United Civil Party, suffered concussion, broken ribs and possible kidney damage as a result of beatings. Forty people were charged with participation in or organization of unsanctioned public demonstrations and sentenced to up to 15 days' imprisonment, or fined.

#### **Trade Union Rights**

In a report on observance of the right to freedom of association in Belarus that was communicated to the government in July, the Commission of Inquiry of the International Labour Organization stated that trade unions in Belarus were subjected to "significant interference on the part of Government authorities". It stated that the independence of trade unions was compromised and that the rights to freely seek and impart information and ideas through the media and to freedom of assembly had been violated.

In October Sergei Antonchik was sentenced to 15 days' administrative detention by the Partizansky District Court in Minsk for holding a meeting on the premises of the Free Trade Union of Belarus. The meeting, which had been agreed with the Chair of the union, was to organize the setting-up of a new non-governmental organization.

### **Prisoners of Conscience**

#### *Mikhail Marinich*

On 30 December Mikhail Marinich, a prominent member of the opposition, was sentenced to five years' imprisonment by Minsk district court for abuse of his official position and theft. He had been detained on 26 April and charged with various offences, including possession of foreign currency and illegal use and possession of a firearm, which were later dropped. AI had urged that Mikhail Marinich be given a fair trial (see AI Index: EUR 49/024/2004).

He was convicted of embezzling computers which had been given as part of a grant by the US embassy to the organization Delovaia Initsiiativa, of which Mikhail Marinich was chair. The US embassy had submitted documents to the court to say that it had no complaint against Mikhail Marinich. Members of Delovaia Initsiiativa had also reportedly given evidence that they had agreed that Mikhail Marinich should store the computers on his property. AI believes that the lack of evidence to indicate a theft, and the irregularities during the criminal investigation proceedings, indicate clearly that Mikhail Marinich is a prisoner of conscience, held on falsified charges to punish him for his peaceful, oppositional political views. The UN Working Group on Arbitrary Detention was refused permission to visit Mikhail Marinich during their visit to Belarus in August.

*Aksana Novikava [update to AI Index: EUR 01/005/2004 and EUR 49/005/2004]*

At the end of the year Aksana Novikava continued to await implementation of her sentence. In violation of Belarusian legislation she was sentenced to detention when pregnant and it was expected that the sentence would be implemented after the birth of her child. She was sentenced in June to two-and-a-half years' imprisonment at a corrective labour facility for 'libel against the President of Belarus'.

*Yury Bandazhevsky (update to AI Index: EUR 01/005/2004)*

AI continued to campaign for the release of Professor Yury Bandazhevsky who remained detained in a correctional labour settlement in Grodno region, where he was assigned to an agricultural firm to work as a guard. Yury Bandazhevsky was sentenced to eight years' imprisonment for alleged bribe-taking in June 2001, but AI believes that he was convicted because he had criticized official responses to the Chernobyl nuclear reactor catastrophe of 1986.

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## **BELGIUM**

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### **UN Human Rights Committee scrutinizes Belgium's record**

In August AI urged the Belgian authorities to act with all possible speed to implement fully, and as a matter of priority, the recommendations which the UN Human Rights Committee issued on 30 July, following its consideration of Belgium's fourth periodic report on its implementation of the International Covenant on Civil and Political Rights (ICCPR). For further information see *Prompt action needed to address human rights concerns*, AI Index: EUR 14/002/2004.

In information submitted to the Committee before its examination of Belgium's human rights record, AI had focused attention in particular on its concerns about:

- \* alleged police ill-treatment and racist abuse on the streets and in police stations, and the absence of a number of fundamental safeguards against ill-treatment in police custody;

- \* cruel and dangerous methods of restraint during forcible deportation operations by air and the situation of people confined to the transit zone of the national airport;

\* difficulties faced by people wishing to lodge complaints about police ill-treatment;

\* obstacles to prompt and impartial investigations into complaints of police ill-treatment and to the bringing to justice of those responsible for such human rights violations.

AI highlighted the need for urgent reforms in these areas and recalled the detailed recommendations which it had called on the Belgian authorities to address as a matter of priority in 2003. At the same time the organization drew particular attention to:

\* the apparently low level of criminal accountability for human rights violations committed by soldiers participating in the UN multinational peace-keeping operation in Somalia in 1993;

\* legislation adopted in 2003 severely restricting the former wide scope of Belgium's universal jurisdiction legislation, increasing the possibility of impunity for the perpetrators of the worst possible crimes;

\* an increase in racist incidents directed against Jewish, Arab and other Muslim communities.

In its Concluding Observations<sup>2</sup> the Committee expressed concern about a number of human rights issues, including continuing allegations of police brutality, often accompanied by acts of racial discrimination. It noted reports that relevant investigations were not always thorough and judgments, when handed down, were still "mostly of a token nature." It called for more thorough inquiries and for routine linking of actions alleging police ill-treatment and actions brought against alleged victims by the police. It observed that doubts persisted concerning the independence and objectivity of the investigative services working for the Standing Police Monitoring Committee (Committee P) and said that Belgium should adjust the membership of the

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<sup>2</sup> UN document reference: CCPR/CO/81/BEL

investigative services with a view to ensuring that they were "genuinely efficient and independent".

AI noted that the Committee had to reiterate its long-standing call for Belgium to introduce legislation guaranteeing people in police custody the right "to notify their immediate families that they have been detained and to have access to a lawyer and a doctor within the first few hours of detention". The Committee said provision should be made for a doctor's examination to be available at the beginning and at the end of periods in custody.

The Committee indicated its awareness that, despite revised guidelines on the treatment of foreigners during deportation operations, allegations that escorting police officers used excessive force had continued: it recommended better training and monitoring for officials carrying out such operations.

It was also concerned that rejected asylum-seekers and unauthorized migrants awaiting deportation had been released from detention centres for aliens by judicial order but then confined to the transit zone of Brussels national airport, sometimes for several months, "under questionable sanitary and social conditions". The Committee, considering such practices akin to arbitrary detention which could lead to inhuman and degrading treatment, said that it should end immediately.

The Committee recommended changes to allow a more accessible and effective complaints mechanism for inmates of detention centres for aliens and called on Belgium to ensure that people considered "inadmissible" to the country, and held in the so-called INADs centre at the national airport, be informed of their rights, including their right to appeal and to make a complaint.

The Committee said that Belgium should establish clear rules in its legislation to govern appeals against expulsion orders and said "[i]t should give suspensive effect not only to emergency remedies but also to

appeals accompanied by an ordinary request for suspension filed by any alien against an expulsion order concerning him or her".

Among its other concerns, the Committee pointed to the small number of convictions in criminal and disciplinary proceedings concerning members of the armed forces suspected of having committed human rights violations in the context of the UN multinational peace-keeping operation in Somalia in 1993.

The Committee also noted the number of "racist, xenophobic, anti-Semitic and anti-Muslim acts" in Belgium and urged that all necessary steps be taken to protect communities resident in the country.

It expressed concern about the negative repercussions which the changes made to Belgium's universal jurisdiction legislation in 2003 had for victims of serious violations of international humanitarian law. The Committee said that Belgium should "guarantee victims' acquired right of access to an effective remedy without discrimination of any kind, insofar as the binding rules of general international law relating to diplomatic immunity do not apply." It was also concerned that the definition of "terrorism" in the Terrorist Offences Act of December 2003 was not fully in line with the ICCPR and urged a "more precise definition" of terrorist offences.

The Committee made relevant recommendations to address these concerns, as well as prison overcrowding and trafficking in human beings.

### **Deportation of foreigners**

*Independent commission re-evaluating methods used during forcible deportations of foreigners (Update to AI Index: EUR 01/005/2004)*

An independent commission (the so-called Vermeersch II) continued its re-evaluation of the techniques used in forcible

deportation operations, at the request of the Interior Minister. AI drew the commission's attention to its continuing concerns as well as to the recommendations it had submitted to the Belgian government in 2003. In September the organization submitted detailed observations on the Commission's interim report, pointing out, among other things, that since the interim report had been drawn up, further serious concerns regarding various aspects of the detention and deportation of aliens from Belgium had been expressed by the UN Human Rights Committee. The commission's final report and recommendations had not been published by the end of the year.

*Disciplinary proceedings relating to the death of Semira Adamu in 1998 (Update to AI Index:EUR 01/001/2004)*

In 2003 a Brussels court of first instance had found four law enforcement officers guilty of unconsciously causing grievous bodily harm resulting unintentionally in the death of Semira Adamu, a 20-year-old Nigerian asylum-seeker who died within hours of an attempt to forcibly deport her by air in 1998. The three escorting officers were sentenced to one year's suspended imprisonment and the supervising officer to 14 months' suspended imprisonment. All were sentenced to fines, to be paid by the State, which was itself ordered to pay substantial damages to Semira Adamu's relatives. A fifth officer was acquitted.

Disciplinary proceedings had been opened against the officers following the death but were subsequently suspended until the outcome of the criminal trial. In December it emerged that the sanction which the disciplinary authorities had envisaged against the four officers found guilty of criminal offences in December 2003, consisted of a reprimand (a sanction usually imposed for minor disciplinary offences). However, these sanctions had not actually been imposed, on the grounds that the statute of limitations for such lesser offences had intervened five years after the original incidents of September 1998 (that



is, in September 2003). In December, in response to a parliamentary question concerning the light nature of the sanctions originally envisaged and the halting of the disciplinary proceedings, the Minister of the Interior stated that he had asked the Commissioner General of the Federal Police for a report on the process which had been followed.

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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. On 2 December the European Union (EU)-led peacekeeping Operation Althea/EUFOR was launched as the direct descendant, under the Dayton Peace Agreement, of the Stabilisation Force (SFOR) led by the North Atlantic Treaty Organisation (NATO). In addition to approximately 7,000 EUFOR troops, about 150 NATO troops remained in the territory of BiH, reportedly to assist the BiH authorities in combating "terrorism" and in defence reform. Moreover, some 150 US troops remained in BiH, under a bilateral agreement between the USA and BiH. The European Union Police Mission (EUPM), composed of approximately 500 police officers, remained tasked with monitoring and supervising the activities of the local police.

BiH's application to join NATO's Partnership for Peace was rejected by the North Atlantic Council in December, over the authorities' failure to co-operate fully with the International Criminal Tribunal for the

former Yugoslavia (Tribunal). Following NATO's negative decision, the High Representative took a number of measures aimed at improving BiH and RS co-operation with the Tribunal. These included the removal from office of nine RS officials, including six senior police officers, believed to have supported suspects indicted by the Tribunal or to have failed in their duty to arrest them. The measures ordered by the High Representative prompted the resignation of the RS Prime Minister, Dragan Mikerević.

Some progress was reported in making fully operational a state-level investigative agency (SIPA), which began working in July in a new building in Sarajevo. SIPA is tasked with fighting organized crime and "terrorism", protecting witnesses and investigating war crimes. In July the High Representative set up a police restructuring commission to present proposals, including by drafting legislation and developing policies, for police reform. In a summary of the commission's proposals published in December it was recommended that SIPA, the State Border Service and local police forces be united in a single national police structure.

The special Human Rights Commission within the BiH Constitutional Court, continued to deal with the backlog of cases registered with the Human Rights Chamber before its closure in December 2003. Between January and December 2004 the Commission had resolved 3,231 applications while 5,710 remained pending.

### **War crimes and crimes against humanity**

#### *International investigations and prosecutions*

The Tribunal continued to try alleged perpetrators of war crimes and crimes against humanity, amid increasing financial difficulties which negatively affected its ability to conduct its activities. Addressing the UN Security Council in November, Tribunal Prosecutor Carla del Ponte stated

that lack of adequate resources was already having a negative impact on the activities of the Office of the Prosecutor and could soon adversely affect the conduct of trials.

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 September the Tribunal's Trial Chamber decided to impose a defence counsel on the accused, who had chosen to defend himself, in order to avoid delays in the proceedings caused by the defendant's health problems. In November the Tribunal's Appeals Chamber partially reversed this decision, ruling that Slobodan Milošević should be allowed to take the lead in presenting his case, when he is physically capable to do so.

In October former Chief of Security of the RS Army (VRS) Ljubiša Beara, was transferred to the Tribunal's custody. The suspect is indicted for genocide, crimes against humanity and violations of the laws or customs of war for his alleged role in the VRS attack on the Srebrenica enclave and the subsequent mass killings and executions of Bosniak boys and men. Also in October, the Tribunal unsealed an indictment against Miroslav Bralo, former member of a HVO special unit, charging him with grave breaches of the 1949 Geneva Conventions and violations of the laws and customs of war for crimes, including murder, torture including rape, and the unlawful confinement of civilians, allegedly committed against Bosniaks in the Lašva Valley in 1993. Miroslav Bralo voluntarily surrendered to SFOR troops in November and was transferred to the Tribunal's custody.

In December Dragomir Milošević, indicted by the Tribunal for crimes against humanity and violations of the laws or customs of war for his alleged role, as commander of the VRS Sarajevo Romanija Corps, in the

shelling of Sarajevo, voluntarily surrendered to the authorities of Serbia and Montenegro. He was subsequently transferred to the Tribunal's custody.

Co-operation between the RS authorities and the Tribunal remained inadequate, with the RS police failing to arrest those indicted by the Tribunal and believed to be within their jurisdiction. A total of 19 publicly indicted suspects remained at large at the end of the year, the majority of them Bosnian Serbs thought to be residing in or regularly travelling between Serbia and Montenegro and the RS. In her speech in November to the UN Security Council the Tribunal Prosecutor stated that the failure to date of the RS authorities to arrest a single suspect indicted by the Tribunal raised fundamental questions about the willingness of RS leaders to match their pledges to co-operate with the Tribunal with firm action. The Tribunal Prosecutor also pointed to fundamental systemic weaknesses built into the law enforcement and security structures in BiH, and in particular the RS.

#### *Domestic investigations and prosecutions*

The War Crimes Chamber within the BiH State Court was expected to become operational in January 2005, amid continuing concerns over the lack of financial and other resources needed to meet its requirements. In September and October a number of pieces of legislation regulating different aspects of the functioning of the chamber were passed by the BiH Parliament.

The domestic criminal justice system persistently failed to take steps to actively prosecute alleged perpetrators. A major factor in fostering this continuing impunity was the lack of co-operation between the FBiH and RS judiciary and police forces. Victims and witnesses, as well as courts, remained without adequate protection from harassment, intimidation and threats. However, some trials for war crimes opened or continued before local courts.

The trial of 11 former police officers from Prijedor continued at the Banja Luka District Court. The defendants are accused of the abduction and murder of Father Tomislav Matanović, a Roman Catholic priest, and his parents in 1995.

In July a former member of the Croatian Defence Council (HVO), Dragan Bunoza, was sentenced by the Mostar Cantonal Court to nine years' imprisonment for the murder in 1993 of a nine-year-old Bosniak girl in a village near Stolac. In a separate trial, Marijo Matić, a former member of the HVO military police, was sentenced by the Mostar Cantonal Court to six years in prison for war crimes committed in 1993 against the Bosniak civilian population. Also in July, the Sarajevo Cantonal Court sentenced Milorad Rodić, a former VRS member, for war crimes including forcible expulsions and rape, committed in 1992-93 against the non-Serb population in the Sarajevo suburb of Grbavica.

In September Iraqi-born Abdul Maktouf, already in detention in connection with other offences, was indicted by the BiH State Court for crimes he allegedly committed in 1993 as a foreign fighter in Travnik. The suspect is accused of having taken part in the abduction and severe beating of five Croat and Serb civilians and in the beheading of one of them. The trial began in December.

In December Zoran Knežević, a former VRS member, was sentenced to 10 years' imprisonment by the Sarajevo Cantonal Court for having raped two non-Serb women in the Sarajevo district of Grbavica in 1992 and 1994.

In a joint action conducted by SIPA and SFOR in October, a man was arrested on suspicion of having committed war crimes against the Bosniak population in Foča during the 1992-95 war. Reportedly, during the operation the suspect was wounded by gunshot, after he had attempted to resist arrest by opening fire on SFOR troops.

In November the RS police arrested, on the basis of arrest warrants issued by the

Sarajevo Cantonal Court, eight relatively low-level suspected perpetrators of war crimes committed against the Bosniak population.

### **Unresolved 'disappearances' and Srebrenica commission**

According to data provided by the International Committee of the Red Cross, almost 17,000 persons who went missing during the 1992-1995 armed conflict were still unaccounted for. Many of them were victims of "disappearances", whose perpetrators continued to enjoy impunity.

Between August and November the remains of 456 people were exhumed from a mass grave in Kevljani, near Prijedor. The bodies were believed to be of former Bosniak inmates killed in the Omarska and Keraterm detention camps, run by the Bosnian Serbs.

In October the commission established by the RS authorities to investigate the events which took place in and around Srebrenica between 10 and 19 July 1995 issued its final report. The document presented information about the participation of the RS police and armed forces in the massive human rights violations in Srebrenica, which were recognized by the Tribunal as amounting to genocide. The report acknowledged that 7,800 non-Serbs were killed after the fall of Srebrenica. Moreover, the report identified the location of mass grave sites where the bodies were buried; some of these sites were previously unknown. In November the RS government for the first time apologized for human rights violations committed in and around Srebrenica between 10 and 19 July 1995.

The exhumation of mass graves identified by the Srebrenica commission began at the end of June. To date, approximately 1,300 victims of crimes committed after the fall of Srebrenica have been exhumed and identified.

### **Right to return in safety and with dignity**

According to the UN High Commissioner for Refugees (UNHCR) field mission in BiH the total number of people displaced by the war who had returned to their homes reached one million in July. UNHCR figures put the number of people who returned to their pre-war homes between July and October at approximately 4,700.

Lack of access to employment continued to be a major factor in people's decision not to return and remain in their pre-war community. Employment opportunities were scarce in general, reflecting the weak economic situation and the 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 attacks.

#### **"War on terror"**

The six men of Algerian origin who were illegally transferred to US custody in 2002 by the FBiH authorities and detained in Guantánamo Bay, Cuba, remained in detention. In July a delegation of the BiH Ministry of Justice visited four of the men. In a short public statement following the visit, the head of the delegation commented that the treatment of the prisoners was fair. The delegation had not been allowed to visit the cells where the prisoners were kept, but did report that the men had complained of health problems.

Also in July, the cases of two of the detained men were included in a petition for a writ of *habeas corpus* by the New York-based Center for Constitutional Rights (CCR), which attempted to challenge the lawfulness of their detention. The CCR subsequently included in their petition the remaining four detainees transferred from BiH to US custody.

#### **Accountability of peacekeeping forces**

SFOR and NATO forces continued to arbitrarily detain individuals suspected of supporting persons indicted by the Tribunal.

To AI's knowledge, in no case was an arrest warrant issued against those detained by SFOR, who were not charged with any recognizable criminal offence.

#### **Human trafficking**

In July the BiH State Court sentenced two men, including the owner of a nightclub in Kiseljak, near Sarajevo, to up to 15 months' imprisonment for offences related to the trafficking of women for forced prostitution.

In November, following the death in a Mostar hospital of a Ukrainian woman who had been trafficked for forced prostitution, from AIDS-related illnesses, the local police opened an investigation into trafficking for forced prostitution. The investigation led to the arrest of several people, including two men accused of having held the woman in detention, forcing her to engage in prostitution.

#### **Committee for the Prevention of Torture**

In December the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published its first report on BiH, following a visit in April and May 2003 to a number of detention establishments in the FBiH and the RS. The CPT recommended, *inter alia*, a thorough, independent and impartial investigation into allegations of widespread ill-treatment of detainees in the Zenica Prison (*Kazneno-popravni zavod Zenica*), which allegedly occurred during a riot in February 2003.

The report also pointed to the inadequate staffing levels in the BiH prison system and the lack of out-of-cell activities offered to remand prisoners as having a negative impact on conditions of detention.

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## **BULGARIA**

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**Social care homes for people with mental disabilities**

In September AI wrote to Christina Christova, Minister of Labour and Social Policy, expressing concern about lack of improvements in conditions and treatment in social care homes for people with mental disabilities. AI presented Minister Christova with findings, observations and recommendations, following a visit to 12 social care homes in June 2004. The living conditions and lack of appropriate care for all or only some of the residents, depending on the situation, in the majority of the institutions visited, were so inadequate that they amounted to inhuman and degrading treatment, prohibited by international law. The authorities have still not brought rules regarding placement of adults in social care homes into line with international standards to ensure an independent review of the placement decision and provide effective legal safeguards to the people concerned. When an institution was closed down due to unacceptable conditions, care and treatment, its residents were usually simply transferred to another existing or a refurbished institution, most of which were not in a position to provide significant improvements in living conditions or care. The staffing in institutions was, to varying degrees, inadequate in number and training, particularly on night shifts, when lack of appropriate supervision and care resulted in situations endangering residents' physical integrity. Little improvement has been observed in the provision of medical, including psychiatric care, and other therapies and activities. No reply from Minister Christova had been received by the end of the period under review.

AI was also concerned about the authorities' failure to exercise their supervisory function appropriately and effectively; to put in place legal safeguards to protect residents from abuse; as well as to establish independent mechanisms for investigations into incidents of abuse. This further increase the already considerable risk of physical and mental abuse faced by residents of social care homes. On 17

November in Pastra, Boris Ivanov, a 59-year-old resident of the social care home for men with mental disorders, was found in his bed unconscious. A doctor who was subsequently summoned pronounced Boris Ivanov dead and an autopsy report reportedly established that his death had been caused by head injuries. According to a police statement another resident was suspected of injuring Boris Ivanov and an investigation had been initiated. The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Pastra in December 2003 and concluded that: "[a]s a whole, the conditions witnessed at this establishment could be said to amount to inhuman and degrading treatment". At the time of the visit and in January 2004, the CPT called upon the Bulgarian authorities "to draw up a plan of concrete measures (including a timetable for their implementation) for the urgent replacement of the Home in Pastra with a facility which is in conformity with the standards and criteria for the provision of social services listed in Decree No. 89 of 18 April 2003." Plans to close down the facility had not been put in place at the time of writing of this report and information received following a recent visit indicated that there had been no improvements in the situation.

**Discrimination against Roma**

The European Roma Rights Center, a regional non-governmental organization, reported that in the period under review Bulgarian courts adopted five landmark decisions in civil actions alleging discrimination against Roma. These actions had been taken under the Law on Protection from Discrimination which came into force in January 2004. In July, the Sofia District Court found indirect discrimination in a case involving the Electric Company and a Romani resident of Sofia's Hristo Betov Romani neighbourhood. The case concerned the Bulgarian Electric Company's repeated rejection of the Romani resident's application for electricity supply, on the grounds that he was not hooked up to the network and that he had

not signed a supplementary agreement with the company. The applicant had refused to sign the agreement because only Roma were required to sign such agreements, which contained provisions unfavourable for the signatories.

In October the National Assembly rejected a draft law to establish a fund for educational integration of children from ethnic minority communities. The government's objective was to support projects to improve education for children from ethnic minority communities and to ensure equal access to education. The fund was also expected to receive contributions from international governmental and private donors. The vast majority of children from the Roma community receive substandard education in ethnically segregated schools.

#### **Excessive use of firearms**

In the period under review new reports had been received of incidents in which law enforcement officials resorted to the use of firearms in circumstances which were in breach of internationally recognized principles. On 4 August, at around 10pm, in Samokov, a police patrol reportedly observed three Romani men attempting to steal a radio-cassette player from a vehicle parked on Tsar Boris 3rd Boulevard. According to a statement issued by the Sofia Regional Directorate of Internal Affairs, the officers warned the suspects that they would shoot if they did not surrender. Boris Mihailov was shot in the head after he reportedly assaulted an officer with a knife. Although an investigation into the incident had been initiated by the Sofia Prosecutor's Office the two men who were with Boris Mihailov at the time of the shooting had not been questioned by the end of September. One of them told the Bulgarian Helsinki Committee representative that Boris Mihailov had not been armed and had been trying to avoid apprehension by running away when he was shot. The ambulance staff which arrived shortly after the incident reportedly had not seen any knife at the scene of the shooting. There was no

information that any of the police officers involved had suffered any injuries.

In another reported incident police officers in Plovdiv shot a man in the head on 16 December. A police officer who pursued three men on motorcycles reportedly fired several warning shots. Later, behind a garage, the officer was reportedly confronted by one of the men, who had a knife, and whom he shot in the head. The injured man was then taken to the hospital where his condition had been described as critical. A similar shooting incident occurred in Plovdiv in March (see *Europe and Central Asia: Summary of Amnesty International's Concerns in the Region: January - June 2004*, AI Index: EUR 01/005/2004).

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## **CROATIA**

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#### **General and political developments**

In December the Council of the European Union (EU) decided that negotiations on Croatia's accession to the EU would begin on 17 March 2005, provided that Croatia fully co-operated with the International Criminal Tribunal for the former Yugoslavia (Tribunal). The EU Council urged Croatia to take the necessary steps for full co-operation with the Tribunal and to arrest and transfer to the Tribunal's custody former Croatian Army General Ante Gotovina.

In November Helena Puljiz, a freelance journalist, lodged a complaint with the Parliamentary Committee for the Oversight of Security Service, claiming that she had been interrogated and blackmailed by members of Croatia's Counterintelligence Agency (*Protuobavještajna agencija* – POA), apparently in an attempt to gather information on Croatian President Stjepan Mesić. Following these allegations the head of POA was dismissed in December.

#### **War crimes and crimes against humanity**

### *International prosecutions*

Although the Croatian government pledged its co-operation with the Tribunal, the authorities have failed to arrest and transfer to the Tribunal's custody Ante Gotovina, charged with crimes against humanity and war crimes committed against the Krajina Croatian Serb population in 1995. The Croatian authorities have continued to maintain an ambiguous attitude towards the issues of co-operation with the Tribunal and Ante Gotovina's arrest; reportedly, in October Prime Minister Ivo Sanader publicly stated his belief in Ante Gotovina's innocence. In November Tribunal Prosecutor Carla del Ponte noted in a speech to the UN Security Council that although Croatia had apparently stepped up its efforts to locate and arrest Ante Gotovina, she had serious doubts concerning the efficiency and seriousness of these measures. The Tribunal Prosecutor also suggested that there were strong indications that Ante Gotovina appeared to benefit from a well-organized support network, including within Croatian state structures.

In July the Tribunal unsealed an indictment against Goran Hadžić, who held the position of President of the self-proclaimed autonomous Republic of the Serbian Krajina (*Republika Srpska Krajina* – RSK) between early 1992 and late 1993. Goran Hadžić, who was still at large at the end of the period under review, is charged with war crimes and crimes against humanity, including persecutions, extermination and murder, committed against the non-Serbian population in the RSK.

In September the Tribunal appointed a trial chamber to consider an application by the prosecutor to refer the case of Mirko Norac and Rahim Ademi to the authorities of Croatia for trial by the Zagreb County Court. The accused played a central role in military operations in the Medak Pocket in 1993, as high-ranking military officers in the Croatian Army. They are charged with crimes against humanity and violations of the laws or customs of war committed against the Croatian Serb population. These

include the unlawful killing as well as the cruel and inhumane treatment of Serb civilians and captured and/or wounded soldiers from the Medak Pocket.

A trial continued at the special War Crimes Panel within the Belgrade District Court for war crimes against the ethnic Croat population committed in 1991 in Vukovar, Croatia. After Vukovar fell to the Yugoslav Army and Serbian forces, more than 250 non-Serbs were removed from the Vukovar hospital and executed at the Ovčara farm.

### *Domestic prosecutions*

Trials for war crimes and crimes against humanity continued or started before local courts, mostly against Croatian Serbs. In some cases these trials did not meet internationally recognized standards of fairness; in general, ethnic bias continued to affect the investigation and prosecution by the Croatian judiciary of wartime human rights violations. Despite initial efforts by the Croatian authorities to investigate and prosecute human rights violations allegedly committed by members of the Croatian Army and police forces, there continued to be widespread impunity for such crimes. According to data provided by the Mission to Croatia of the Organization for Security and Co-operation in Europe, in the first 10 months of 2004 the Croatian Supreme Court reversed 15 of 23 verdicts in war crimes trials against Croatian Serb and ethnic Croat defendants, mostly for the failure of the court to establish the facts sufficiently and correctly.

In August the Croatian Supreme Court overturned the acquittal verdict by the Split County Court in the 2002 "Lora" trial against eight former members of the Croatian Military Police. The accused are suspected of having tortured non-Croat civilians and of having murdered two of them in Split's Lora military prison in 1992. The trial had reportedly been marred by intimidation of witnesses, public demonstrations of support for the accused, and the court's alleged lack of impartiality. At the end of the year four suspects were in detention and the remaining four at large,

amid reports of considerable delays in executing the arrest warrants. The new trial is reportedly expected to begin in early 2005.

In September the retrial started at the Karlovac County Court of a former member of the Croatian special police on charges of having killed 13 disarmed Yugoslav 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 March 2004.

In November the retrial began at the Varaždin County Court of three former Croatian police officers and one serving police officer, accused of having killed six captured Yugoslav Army reservists in 1991. In May 2004 the Croatian Supreme Court had quashed an acquittal by the Bjelovar County Court.

### **Unresolved "disappearances"**

The Croatian Government Bureau for Detained and Missing Persons was still searching for approximately 1,200 persons, mostly from the first phase of the 1991-95 war. This figure did not include people, mostly Croatian Serbs, who went missing during 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.

According to information AI has received from associations of families of the missing, the efforts by the Croatian authorities to clarify the fate and whereabouts of missing Croatian Serbs have been largely insufficient, leading to considerable delays, in particular in the identification process.

### **Right to return**

Approximately 300,000 Croatian Serbs left Croatia during the 1991-95 conflict. According to the UN High Commissioner for Refugees, more than 200,000 Croatian

refugees, mostly Croatian Serbs, are still displaced in neighbouring countries and beyond.

While the Croatian authorities had pledged to return illegally occupied residential properties (which had been allocated by the state for temporary use) by the end of June 2004 and other occupied properties by the end of 2004, the repossession rate remained slow. In many cases, physically repossessed properties were made uninhabitable after having been looted or damaged by previous occupants. 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. Lengthy and in some cases unfair proceedings, particularly in lower level courts, remained a major problem for returnees pursuing their rights in court. Croatian Serbs continued to be subjected to discrimination in access to employment and in realising other economic and social rights. In particular, they faced difficulties in obtaining employment in the public sector and, in some cases, in private businesses owned by ethnic Croats.

### **Rights of the child**

In September the UN Committee on the Rights of the Child (Committee) considered Croatia's second periodic report on measures to give effect to the rights enshrined in the Convention on the Rights of the Child. Prior to this examination AI had submitted a written briefing to the Committee detailing its concerns with regard to issues related to the rights of the child (see AI Index: EUR 64/003/2004).

In its concluding observations the Committee expressed, *inter alia*, its deep concern at cases of violence between children and young adults placed in homes for re-education and other institutions, and at cases of violence and bullying between children and young adults in social care institutions. Moreover, it expressed concern at the *de facto* discrimination against ethnic and national minorities, Romani and foreign children, and at incidents of harassment



and hatred that have a negative effect on the development of children. The Committee was also concerned at the different access to education of children belonging to minorities and vulnerable groups, including Romani children, which "hampers their full enjoyment of a system of education adequate to their values and identity".

The Committee recommended that the authorities "take all necessary measures to prevent acts of violence in homes for re-education and social care institutions" and urged the authorities to increase the protection of children in social care institutions by ensuring, *inter alia*, that violent acts are reported and investigated, and providing adequate support and treatment, including psychological treatment, to victims of such violence. The Committee also recommended that Croatia "strengthen its administrative and judicial measures to prevent and eliminate *de facto* discrimination against children belonging to minorities, especially Roma and foreign children" and allocate adequate resources towards the implementation of the National Programme for Roma.

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## CYPRUS

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### **Discrimination against Roma**

On 30 June the Ombudsperson, a post appointed by the President, released a report on the living conditions in the Roma settlement of the village of Makounta, in which she expressed concern regarding the failure of authorities to implement policies decided in March 2000. The policies were originally designed to provide solutions to problems of accommodation and access to the job market that the Cypriot Roma were facing. The Ombudsperson further noted problems of access to medical services and to education for the Roma in Makounta. She concluded that this failure was to a large extent due to the authorities' refusal to grant the Roma rights that they should be able to enjoy as Cypriot citizens. An

example of this was the policy of detaining Roma in prison without a court order (a practice also applied to undocumented migrants). The Ombudsperson called on authorities to take measures to ensure that the Roma were treated in accordance with national and international anti-discrimination legislation, and national legislation which safeguards fundamental rights and freedoms regardless of citizenship or communal membership. Another report, published by the Ombudsperson's office on 5 July, noted problems of access to education faced by Roma children in the town of Limassol.

### **Detention of refugees**

In December, AI received information about the conviction and imprisonment of two Palestinians (their names are known to AI) for possession of false identification documents. The couple had been arrested while trying to board a plane to a western European destination where they had allegedly been planning to seek asylum. They subsequently applied for asylum in Cyprus on the grounds of fear of persecution if returned to the Occupied Territories, and their applications were under review when the court convicted them to eight months' imprisonment. AI was concerned that this conviction might constitute a violation of Article 31(1) of the Refugee Convention, that prohibits the imposition of penalties "on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened (...), enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence". The organization was further concerned about the lack of access offered by the authorities to the couple to professional and independent translation services during their trial.

### **Conscientious Objection**

In his report published in February on his visit to the island, the Council of Europe's

Commissioner for Human Rights expressed concerns about the length of alternative civilian service for conscientious objectors, which is 42 months. AI believed the length of this service, which was 1.75 times that for military service, was punitive, and was also concerned about the procedures to determine conscientious objector status. Such determination remained under the jurisdiction of the Ministry of Defence, which AI believed to be in contravention of international standards, according to which the entire institution of alternative service should have a completely civilian character.

### **Committee for Missing Persons**

In August the Committee for Missing Persons reconvened after five years, in an attempt to uncover the fate and whereabouts of about 2,000 people who went missing during ethnic strife on the island since 1963. The Committee comprised one Greek-Cypriot representative, one Turkish-Cypriot representative and an independent expert. AI has in the past expressed concerns about the constitution of the Committee and urged the United Nations to establish an effective commission of inquiry, comprised of independent experts, to investigate the issue (see report, *Cyprus: Proposal to the United Nations to establish an effective commission of inquiry to investigate "disappearances", "missing" persons and deliberate and arbitrary killings in Cyprus*, AI Index: EUR 17/01/96).

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## **CZECH REPUBLIC**

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### **Cage beds – a restraining method in violation of international human rights law**

On 13 July, the Czech Minister of Health Jozef Kubinyi issued a press statement stating that he had instructed directors of all health institutions to immediately cease

use of "cage beds"<sup>3</sup>, calling for the elimination of "net beds" by end 2004, and advising replacement of these beds with seclusion rooms and increased numbers of staff to improve care for people with mental disabilities. This decision was made days after the authorities received a letter of concern from JK Rowling, author of the well-known *Harry Potter* series of books.

On 16 July, AI and several regional and local non-governmental organizations<sup>4</sup>, called on the Czech authorities to extend the ban with immediate effect to the use of "net beds" in psychiatric institutions as well as to the social care home system. AI was particularly concerned that the Czech President Vaclav Klaus, in a statement reported on 14 July, criticized the Minister of Health and stated that the cage bed ban "was an unduly hasty step". Furthermore, the president's spokesperson stated that "this decision has been a premature reaction to irresponsible and populist attacks against the quality of health care and protection of human dignity in the Czech Republic".

The use of cage beds in the Czech Republic had been criticized by the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) after a visit to Opava Psychiatric Hospital and the Ostravice Social Care Home in April 2002. The CPT concluded that "net- and cage-

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<sup>3</sup> The Czech authorities make a distinction between "cage beds" and "net beds". "Cage beds", beds which are fitted with a metal-barred construction above the mattress, and "net beds", beds with a metal frame covered with netting, are designed to enclose a person within their confines. Cage beds are used in the Czech psychiatric facilities under the control of the Ministry of Health and in social care homes for children and adults with mental disabilities, under the authority of the Ministry of Labour and Social Affairs.

<sup>4</sup> Mental Disability Advocacy Center, based in Budapest, and Czech non-governmental organizations: The Center for Mental Health Care Development, Czech Helsinki Committee, Fokus - Association for Mental Health Care, Inclusion Czech Republic, User and Ex-user Organization Kolumbus and Sympathea - Czech National Association of Family Members.

beds are not an appropriate means of dealing with patients/residents in a state of agitation". The CPT recommended that "cage-beds be immediately withdrawn from service and that net-beds cease to be used as a tool for managing such persons as soon as possible", adding that "more suitable means than net-beds can also be found to ensure the safety of persons with impaired mobility or nocturnal disorders (e.g. disorientation/sleepwalking)."<sup>5</sup> The UN Human Rights Committee commented on the use of cage beds in August 2003 during its examination of Slovakia, recommending that "the use of cage beds should immediately cease."<sup>6</sup>

Dr Milada Emmerova, appointed Minister of Health in August, confirmed her predecessor's ban on "cage beds" but retained the use of "net beds", issuing regulations for their use on 17 December.

#### **Allegations of illegal sterilization of Romani women**

In September, the European Roma Rights Center, a regional non-governmental organization, and the League of Human Rights, Life Together and IQ Roma Service, published a report alleging coercive sterilizations of Romani women in the Czech Republic. Their research indicated that a practice which had officially been promoted in the 1970s and 1980s continued into the 1990s when Romani women were subjected to sterilization procedures without full and informed consent. According to the non-governmental organizations documented cases included instances in which no consent, in any form, had been sought prior to the operation; cases in which consent was obtained during delivery or shortly before delivery, during advanced stages of labour; or instances in which consent had been obtained in circumstances which could not be considered to amount to free and informed, as required by internationally recognized principles.

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<sup>5</sup> See Council of Europe document CPT/Inf (2004) 4

<sup>6</sup> See CCPR/CO/78/SVK

Jan Jarab, the Government's Human Rights Commissioner, reportedly stated that Romani women may have given only a formal consent to sterilization in some cases but denied any racial motivation, saying that there were general failings in respect for patient's rights. The Ombudsman's Office was conducting an investigation into the allegations.

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## **FRANCE**

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### **Acts of racist or religious violence**

In July President Jacques Chirac made a national appeal for religious and racial tolerance, calling for urgent action against a rise in the "despicable and odious acts of hatred soiling our nation". Acts of violence were directed at members of Jewish and Muslim communities and Muslim, Jewish and Christian buildings or cemeteries were desecrated. Over 1,000 racist incidents were recorded throughout the year, of which over 360 were described as acts of racist violence.<sup>7</sup> There were many profanations of cemeteries and burial sites, especially in Alsace. According to figures released by the Ministry of the Interior in December, there were 92 acts profaning Christian places of worship, 31 attacks on Jewish places of worship and 28 attacks on Muslim ones. Two-thirds of racist attacks against Jews and Muslims took place in Ile-de-France. Corsica, with its large immigrant population, was the focus of a wave of attacks or threats against persons of North African origin, or their property. The Ministry of the Interior registered 107 such incidents in Corsica, compared to only 15 in 2003.

In September a demonstration was held in Corte (Haute-Corse) by a number of individuals and organizations, including AI, to protest against a pattern of serious attacks on properties belonging to the

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<sup>7</sup> These figures include to racist acts against both Jews and Muslims

immigrant community. The attacks were attributed to a constellation of small armed groups with nationalist aims. One such group, Clandestini Corsi, claimed responsibility for several racist acts in Corsica and in September issued a statement congratulating the "anonymous underground movement" [Trans: "*le mouvement clandestin anonyme*"] for an attack on the home of a North African resident in Biguglia. Clandestini Corsi also made threats against anti-racist and human rights groups for condemning the violence. AI reiterated its concerns in November, following the attack by a group of armed men on the house of a Moroccan imam (Islamic leader), Mohammed al-Akrach, at Sartène (Corse-du-Sud), when five or six gunshots were fired into the door. It called on the French authorities to make it their priority to bring the perpetrators of racist attacks promptly to justice. With regard to the attack on the imam's house, and a similar attack on a house where a woman and four children were living, AI stated: "The identity of the perpetrators of the most recent attacks is not yet known. However, Corsican nationalists or autonomists, some of whom have claimed responsibility for previous racist attacks, have a particular responsibility to be firm and consistent in their condemnation of such attacks, irrespective of the identity or aims of the perpetrators". (See AI Index: EUR 21/001/2004). In December four minors were arrested for throwing acid into a hostel for immigrants in Ajaccio and other incidents were reported.

### **Ill-treatment by state agents**

In November Abdelkader Ghedir sustained a fractured skull and fell into a coma at a police station after being questioned and allegedly ill-treated by security officers of the state railways, the Surveillance Générale (SUGE) of the SNCF (Société nationale des chemins de fer) in the presence of police officers. He was taken to the hospital of Beaujon de Clichy (Hauts-de-Seine). Three SUGE officers were placed under judicial investigation on a charge of "voluntary acts of violence" [Trans: "*violences volontaires*"] and one, alleged to

have kned Abdelkader Ghedir in the head, was provisionally imprisoned.

According to reports, Abdelkader Ghedir was involved in a violent interpellation at the station of Villeparisis-Mitry-le-Neuf in Mitry-Mory (Seine-et-Marne) after railway officials had seen a person throwing stones at trains and called police officers to the scene. A mixed group of SUGE and police officers escorted Abdelkader Ghedir into the railway station, where the acts of violence were committed. He was then transferred to the police station, where he lapsed into unconsciousness.

Demands for an internal police inquiry into the police role in the incident were rejected. Controversy was aroused when the prefect of Seine-et-Marne stated that the police had not been involved in the incident – a statement in apparent contradiction with other accounts. It was unclear to date why an inquiry by the internal police complaints body, the Inspection générale de la Police Nationale (IGPN), had been ruled out. Abdelkader Ghedir remained in a coma at the end of the year.

Earlier, in October, Pierre Truche, president of the police and prison oversight body, the Commission nationale de la déontologie de la sécurité (CNDS), criticized the police complaints body for the Paris area (Inspection générale des services – IGS) for an ineffective inquiry into a police attack on members of the Kabyle ethnic community during New Year celebrations in Paris on the night of 31 December – 1 January 2004. After an altercation in front of the building an officer released tear gas into the premises where the proprietor was celebrating with family and friends. One woman, who was carrying a baby, was reportedly kicked by an officer. Several witnesses testified that, after the tear gas was released, the door was shut to prevent anyone leaving. The body of one person, a Swedish national, was found the following day lying on a staircase. The CNDS expressed concern that the police did not report the case immediately to the public prosecutor or send for medical assistance, and that the IGS appeared to have made

no effort to identify the officer who released the tear gas. Pierre Truche did not make any direct link between the death of the man and the use of the tear gas but stated: "the violence of which he was a victim can only have aggravated the risk of death to which he was exposed".

### **Unaccompanied children in border areas**

The Association nationale d'assistance aux frontières pour les étrangers (ANAFE), a coordinating body for organizations, including AI, which work to assist foreign nationals in border zones, and which, with the Red Cross, has access to holding areas (*zones d'attente*), expressed concern throughout the latter part of the year about the situation of unaccompanied minors. According to figures released by the Ministry of the Interior, 723 unaccompanied children were placed in holding areas in 2004, of whom 628 were returned to their countries of origin. Both ANAFE and the Red Cross were concerned about a number of specific cases which reflected the systematic practice of barring unaccompanied children from entry into France and holding them for several days in holding areas before returning them and without giving appropriate consideration to their cases. In one case, a 12-year-old girl called "Christelle" was detained for six days in a holding area before being returned to Haiti, while her mother waited in the airport (Roissy-Charles de Gaulle), outside. Similar but separate cases related to a 14-year-old boy and a seven-year-old girl from the Democratic Republic of the Congo. The girl was subsequently reported to have been placed in an institution in Switzerland. In both cases their mothers were in France. In September a similar case, involving "Hamed", a 16-year-old boy from the Ivory Coast, led to a landmark decision (*arrêt*) by the Court of Appeal of Paris, on 7 December, that the holding areas should be considered, juridically, as a part of French territory and that the judges of juvenile courts (*juges des enfants*) had competence over them.

### **Torture proceedings in court**

In October French prosecutors called for the former Chilean dictator, General Augusto Pinochet, to be tried over the disappearance of four French nationals in Chile in the 1970s. Augusto Pinochet was one of 20 other former military officers suspected of having ordered their arrest and detention. The government and judicial authorities were reportedly deciding whether General Pinochet, currently undergoing judicial proceedings in Chile, should be tried in France in his absence.

In December the Court of Cassation, the highest court in the legal system, rejected an appeal lodged by General Paul Aussaresses following his conviction on a charge of "justification of torture" [Trans: "*apologie de la torture*"]. His memoirs, published in 2001, described acts of torture and summary executions by French army officers in Algeria in the 1950s, and maintained that they had been necessary. In April 2003 the Court of Appeal of Paris had fined him 7,500 Euros and his editors, Plon, were fined another 15,000 Euros. The Court of Cassation upheld the view of the public prosecutor that freedom of expression should not be confused with the right to say "anything anyhow" [Trans: "*ne peut pas se confondre avec le droit de dire n'importe quoi et n'importe comment*"].

### **Case updates**

#### *Ricardo Barrientos*

In September the Court of Appeal of Paris issued an order that there was no case to answer (*ordonnance de non-lieu*) in the case of Ricardo Barrientos, an Argentinian national who had died during forcible deportation from Roissy-Charles de Gaulle airport in December 2002 (see *Amnesty International Annual Report 2003*). He had been escorted, struggling, onto the aircraft before other passengers embarked and seated, bent double, and with his hands cuffed behind his back. Two police officers and three gendarmes applied continuing pressure to his shoulder blades. His torso,

thighs and ankles were bound with Velcro tape. He was covered with a blanket and a mask so that he could not see or be seen by the passengers. He collapsed before take-off. An autopsy concluded that he had died of naturally-occurring complications of a heart condition, and a police inquiry concluded that procedures had been followed, although it was not clear what these procedures were.

On 20 September the Court of Appeal of Paris issued an order that the case be dismissed. It decided that Ricardo Barrientos had not been subjected to acts of violence and the officers were simply obeying orders to keep the deportee under restraint. No appeal was lodged.

AI's concern in the case was that the inquiry should help elucidate whether the procedures which the officers had used were in conformity with international standards and whether they had been made taking such standards into consideration. In its 13th General Report the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment pointed out the "risk when a deportee, having been placed on a seat in the aircraft, struggles and the escort staff, by applying force, oblige him/her to bend forward, head between the knees, thus strongly compressing the ribcage", and noted that "the use of force and/or means of restraint capable of causing positional asphyxia should be avoided wherever possible".

"Yacine"<sup>8</sup>

In December the correctional court of Nanterre (Hauts-de-Seine) sentenced two police officers from Asnières police station to eight-month and four-month suspended prison sentences for acts of violence against a 16-year-old minor who was being held in police custody in 2001. (AI Index: EUR 01/002/2002). The court stated that the violence used by the police officers was "well in excess of the reasonable use of

force" [Trans: "allaient bien au-delà de l'usage raisonnée de la force"]. "Yacine" had required emergency surgery for removal of a testicle. The state prosecutor had requested the acquittal of the police officers, who appealed against the convictions.

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## GEORGIA

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### International scrutiny

#### *Draft report and resolution by the Council of Europe's Monitoring Committee*

The 15 December draft report and resolution on Georgia by the co-rapporteurs Matyas Eörsi and Evgeni Kirilov of the Committee on the honouring of obligations and commitments by member states of the Council of Europe (Monitoring Committee) concluded that the "human rights efforts of the new authorities, in spite of some positive developments, still need to be improved". They pointed out that the "post-revolutionary situation should not become an alibi for hasty decisions and neglect for democratic and human rights standards". The co-rapporteurs deplored the fact that advice by Council of Europe experts had not been taken into account adequately on several occasions. For example, they criticized the authorities for having failed to appropriately address suggestions and advice by the Venice Commission regarding amendments to the country's Constitution adopted by the Georgian parliament in February, as well as those concerning the autonomous status of Abkhazia adopted in July.

With regard to the human rights situation in Georgia the co-rapporteurs raised concern about the "ill-treatment of detainees, particularly during the pre-trial detention [which] continues to be a major problem in Georgia" and called on political leaders including the President to "publicly campaign against any mistreatment of detained persons". They also deplored the lack of independence of the judiciary and pointed out that the "respect for the

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<sup>8</sup> The full name is known to AI but has been withheld.

principle of the presumption of innocence for some categories of suspects has yet to take hold in the new Georgia". In addition, the co-rapporteurs highlighted that the prison conditions in the pre-trial detention facilities and prisons they had visited were "extremely bad", in particular due to overcrowding. They raised concern with regard to the government's fight against corruption pointing out that "arrests of some former officials accused of corruption were carried out in spectacular circumstances, often without warrants even in cases where there was no indication that suspects had the intention to flee". The draft report also criticized the "Georgian version of the plea-bargaining system" which was applied in a "seemingly arbitrary way" and was "incompatible with Council of Europe standards".

The draft report and resolution proposed – "as a sign of understanding and support to the new Georgian authorities" – to extend the deadlines for the fulfilment of a number of commitments undertaken by Georgia when joining the Council of Europe that the country had yet to comply with. For example, it called on the authorities to accede to the European Charter for Regional and Minority Languages and the Framework Convention for the Protection of National Minorities before September 2005. In addition, it urged the authorities to "create, without any further delay, legal, administrative and political conditions for the start of the process of [the] repatriation [of the Meskhetian population] with the view to its completion in the foreseeable future".

The draft report and resolution was based on a visit by the co-rapporteurs to Tbilisi and Batumi from 5 to 8 July. It was due to be voted on at the Winter Session of the Parliamentary Assembly of the Council of Europe in January.

#### *European Court declared case filed by Jehovah's Witnesses admissible*

On 6 July the Second Chamber of the European Court of Human Rights declared

the application, Gldani Congregation of Jehovah's Witnesses v. Georgia, admissible. The Jehovah's Witnesses had filed this case in June 2001.

The case referred to the October 1999 attack on a congregation of Jehovah's Witnesses by radical supporters of the Georgian Orthodox Church and the defrocked Georgian Orthodox priest Basil Mkalavishvili. Around 200 attackers beat the congregation of some 120 Jehovah's Witnesses, who had gathered in a rented theatre in Tbilisi to hold a Sunday service, with iron crosses and wooden clubs. The police reportedly refused to come to their help. Sixteen worshippers were said to have needed hospital treatment as a result of the attack. To AI's knowledge, none of the alleged perpetrators had been convicted in relation to this attack by the end of the period under review.

Three more cases were filed with the European Court in the years following the October 1999 attack. They concerned further attacks on Jehovah's Witnesses as well as the deregistration of two legal entities of the Jehovah's Witnesses in Georgia that had been confirmed by the Supreme Court of Georgia in February 2001.

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

AI continued to receive reports about torture and ill-treatment in pre-trial detention.

For example, on 1 September seven men were reportedly detained in the western town of Zugdidi, accused of membership of a paramilitary group and possession of firearms and explosives. One of them, Geno Kulava, was reportedly tortured and ill-treated in the police station of Khobi district. According to reports, he was suspended from a pole between two tables, kicked and beaten, including with truncheons, and dropped on the floor; a burning candle was held against his forearm and one of the police officers reportedly spat in his face. After his lawyer complained to the court

that his client had been tortured, Geno Kulava was examined by forensic experts on two occasions. They found marks of severe beatings and bruises on several parts of his body. The independent forensic expert Maia Nikoleishvili, who examined Geno Kulava on 13 September, established that the bruises were caused by blunt heavy objects. Examining the area of his forearm she did not exclude that the injuries were caused by heat. One of Geno Kulava's co-defendants, Levan Dzadzua, who was also detained on 1 September, was reportedly beaten by police in the police station of Ingur Paper Mill Settlement, a district belonging to the town of Zugdidi. On 15 November Geno Kulava was released from prison following a court ruling, reportedly because of procedural violations during his detention and the investigation. However, he was immediately rearrested, accused of abducting a resident of Zugdidi. Geno Kulava and Levan Dzadzua were still detained in the investigation-isolation prison No. 4 in Zugdidi at the end of the period under review. The authorities had reportedly not opened a thorough and impartial investigation into the allegations of torture and ill-treatment, and none of the alleged perpetrators had been brought to justice.

### **Religious minorities**

*Suspended sentences handed down in connection with a series of attacks on religious minorities (update to AI Indexes: EUR 01/002/2002, EUR 01/001/2004, and EUR 01/005/2004)*

By the end of 2004 AI knew of three trials that had resulted in the conviction of several perpetrators of attacks on religious minorities. To AI's knowledge, none of the attackers had been imprisoned for involvement in a series of attacks on religious minorities by supporters of the Georgian Orthodox Church in recent years. Hundreds of perpetrators of attacks on religious minorities remained unpunished.

In the first of these trials five men were found guilty of involvement in attacks on

Jehovah's Witnesses by Rustavi City Court in November 2003 and were given suspended sentences of up to four years. In April 2004 a court in Tbilisi reduced the sentences to a maximum of two years following an appeal by the defendants.

In the second trial that concluded on 14 December Samtredia District Court convicted Dzhano Margiani on charges including "threatening with death, damage to health or destruction of property" (Article 151 of the Criminal Code of Georgia) and "damaging or destroying property" (Art. 187 part 1). He was given a suspended sentence of three years and ordered to pay compensation equivalent to around \$1.100. On 28 December Dzhano Margiani and a group of some 40 people reportedly verbally abused and threatened several Jehovah's Witnesses and damaged a building belonging to members of the Jehovah's Witness congregation that was in the process of being built.

In the third case a supporter of defrocked Georgian Orthodox Priest Basil Mkalavishvili was put on trial in August and given a two-year suspended prison sentence on 14 December for his part in attacks on a Jehovah's Witnesses convention in the town of Marneuli in September 2001. The charges against him included "intentionally causing light damage to health" (Article 120 of the Criminal Code of Georgia), "illegal interference with the execution of religious rites or other religious rules and habits" (Art. 155 part 1), and "damaging or destroying property" (Art. 187). On 28 September 2001, a group of around 100 people, many of whom were wearing masks, reportedly set up a roadblock on a main road leading out of Tbilisi towards the town of Marneuli, where a Jehovah's Witness convention was due to be held that day. The Jehovah's Witnesses had reportedly informed the authorities in advance of the convention and received guarantees from the police that proper measures would be taken to protect their right of assembly. However, police reportedly stood aside and watched as the group stopped the buses carrying Jehovah's Witness delegates, dragged men, women and children outside,



and kicked, punched, and beat them with clubs. Up to 40 people were said to have been injured, around 12 seriously. Police also allegedly stood by and watched as the group looted and set fire to the convention site, and confiscated film and a video camera from the Jehovah's Witnesses.

*The trial against Basil Mkalavishvili and six of his supporters (update to AI Index: EUR 01/005/2004)*

The trial of defrocked Georgian Orthodox priest Basil Mkalavishvili and Petre Ivanidze, two alleged key figures in the attacks on religious minorities, and of five of their supporters – Avtandil Donadze, Avtandil Gabunia, Merab Korashinidze, Akaki Mosashvili, and Mikhail Nikolozashvili – opened in Vake-Saburtalo District Court in Tbilisi on 27 August. The seven men had been arrested by police on 12 March 2004 in an operation marred by excessive use of force by police. Two others were also arrested at the time, but were released before the trial started.

Basil Mkalavishvili and Petre Ivanidze stood trial accused of storming the Ombudsman's office in Tbilisi on 22 January 2001; of breaking up two religious gatherings of Jehovah's Witnesses in January and February 2001 respectively; of an attack on the Baptist church in Tbilisi in March 2001; and of burning United Bible Society and Baptist books in Tbilisi in February 2002. The charges against them included "illegal interference with the execution of religious rites or other religious rules and habits" (Article 155 of the Criminal Code), "persecution" (Art. 156), "beatings" (Art. 125), and "arson" (Art. 187 part 2). The five co-defendants were only charged with "putting up resistance to the police" (Art. 353) relating to the police operation on 12 March.

There were allegations that at least four victims who had suffered particularly severely from the attacks – Leila Kartvelishvili, Benjamin Bakuradze, Otar Kalatozishvili and his son Zaza Kalatozishvili – were dropped from the list of those called

to testify in court. The trial was still ongoing at the end of 2004.

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## GERMANY

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### **Germany's torture debate (update to AI Index: EUR 01/005/2004)**

The debate over whether torture should be allowed in exceptional cases continued. The discussion had been triggered by events that took place in Frankfurt am Main police station in October 2002 and which became public in February 2003. Wolfgang Daschner, the vice-President of the Frankfurt am Main police, ordered a subordinate police officer to threaten the use of force against a criminal suspect in order to obtain information about the whereabouts of a kidnapped 11-year-old boy.

On 20 December 2004 Wolfgang Daschner and a subordinate police officer were found guilty of threatening a suspect with torture (under Article 240 part 1 of the Federal Criminal Code). However, the Regional Court found that there were some mitigating circumstances in their cases and therefore issued only a caution under penalty, which means that both officers will have to pay a fine if they commit a new crime within the next year. Despite the statement of the Presiding Judge that torture is a crime violating international and constitutional law, AI remained concerned about the leniency of the sentence.

AI also remained concerned about the lack of an active, unequivocal response from senior politicians and constitutional lawyers reaffirming Germany's commitment to upholding international obligations on the prohibition of torture.

### **Ratification of the Optional Protocol to the UN Convention against Torture**

Although Germany supported the adoption of the Optional Protocol to the UN Convention against Torture and Other Cruel,

Inhuman or Degrading Treatment or Punishment at the international level, there have been delays concerning its ratification, especially at the regional (*Länder*) level. After a long period of hesitation and reluctance, the Ministers of Interior of the 16 *Länder* expressed their general support for the aim of the Protocol and recommended bringing forward the process of its ratification.

The Protocol calls, *inter alia*, for the establishment of an independent mechanism for monitoring detention facilities nationally. Consultations about the establishment of such a mechanism are under way. AI urges the authorities to ensure that any such national mechanism has an appropriate remit, and adequate resources, to enable it to fulfil the requirements of the Protocol.

### **Concerns about asylum-seekers and refugees**

#### *New Immigration Act*

The new Immigration Act (*Zuwanderungsgesetz*) was set to come into force in 1 January 2005, following a compromise reached by a mediation committee of both houses of parliament (*Bundestag* and *Bundesrat*). AI welcomed provisions in the new regulations which will improve the situation of victims of human rights violations committed by non-state actors and of gender-based violations, who can now be recognized as refugees. AI remained concerned, however, at several provisions which it fears may worsen the situation of asylum-seekers and people who do not get a residence permit but are instead "tolerated" (*geduldet*) – which means that their stay is illegal but they are not deported.

AI also expressed concern about a provision enabling the authorities to order the deportation of non-nationals when the German authorities suspect that they have links with "terrorist groups" or have supported "terrorist activities". Although the suspicions must be based on evidence,

the provision is still very vague. The non-national can appeal against the deportation order only to one court in summary proceedings and cannot challenge the decision of the court at another instance.

#### *Refugee status revoked*

In 2004 the German authorities continued to revoke the refugee status in particular of refugees from Afghanistan, Iraq and Kosovo. In 2004 such status had been revoked in a total of over 10,000 cases. Those affected by this situation may stay in Germany but lose all their rights as refugees. The authorities developed plans to deport refugees back to Afghanistan and Iraq, as well as sending members of minority groups back to Kosovo in 2005, despite the fact that the human rights situation in these countries continued to cause great concern.

#### *Asylum seekers from Chechnya (Russian Federation)*

During the period under review more asylum-seekers from Chechnya were granted asylum than in previous years. Nevertheless, a huge group of Chechen asylum-seekers were denied refugee protection as the German authorities claimed that they had the option of living in safety outside the Chechen Republic within the Russian Federation. This group was at risk of being forcibly returned to Russia. However, AI considered that they continuing levels of discrimination faced by Chechens in Russia rendered them at risk of human rights violations.

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## **GREECE**

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### **Disputed deaths of migrants**

On 3 November, trial proceedings were scheduled to start against a police officer accused of the fatal shooting of 18-year-old Albanian Vullnet Bytyci on 23 September 2003, when the latter tried to cross the Greek-Albanian border clandestinely. AI was informed that, by December, visas had

not been granted to Vullnet Bytyci's family by the Greek embassy in Albania, so that they could be present at the trial. As civil claimants, the family's presence is required under Greek law for the case to be heard. In addition, the organization received allegations that the translation provided of the Albanian witnesses' testimonies given at the time of the incident, which were to be used as evidence in the trial, was flawed. AI urged the authorities to take all necessary steps to ensure that the proceedings complied with international fair trial standards, including by ensuring that the statements of all witnesses were thoroughly examined and that all crucial witnesses, as well as the victim's family, were able to attend the trial and be provided with professional interpreting services. AI also reiterated concerns regarding the misuse of firearms by the police, policing of Greece's north-western border, and the treatment of Albanian migrants. The trial was eventually postponed until February 2005.

According to reports Luan Bërdëllima, a 36-year-old Albanian working in Greece, died on 25 August, after falling unconscious from a blow to the head by a police officer 11 days earlier. Luan Bërdëllima was said to have been drinking coffee in a cafe in Athens with some Albanian friends when several police officers entered, and checked their papers, which were in order. According to witnesses, the police officers insulted the men because they were Albanians. Luan Bërdëllima told the police not to speak to them in that manner, whereupon one of the police officers hit him on the head with the butt of his pistol and then fled after Luan Bërdëllima fell to the ground unconscious. Luan Bërdëllima remained in a coma until his death. The organization has received information that an investigation into the case was initiated but that Luan Bërdëllima's companions, who would have acted as witnesses, were advised by their lawyer to leave Greece.

### **Ill-treatment of migrants**

In December, AI expressed serious concerns about reports that Greek police

officers subjected a group of Afghan asylum-seekers to interrogation techniques which included the torture of both adults and minors, and called on the authorities to conduct a prompt, thorough and impartial investigation of the allegations, and to bring perpetrators to justice (see press release, *Greece: Alleged torture of asylum-seekers must be investigated*, AI Index: EUR 25/016/2004). On 13 December, police officers in civilian clothes visited a house in the Agios Panteleimonas area of Athens, where between 40 and 60 Afghan asylum-seekers and refugees were lodging. The police were seeking information about an Afghan national who had escaped from court, where he had been taken on charges of staying illegally in the country. The police collected all those present in the house, including minors, in one room and allegedly beat them severely, torturing some of them. The same sequence of events was repeated in the following days in the same house. Police officers took a 17-year-old boy to the police station and reportedly tortured him there. He said that they undressed him, forced him on the ground, spread his legs and put a gun to his temple, threatening to kill him. A police officer reportedly took a photograph on his mobile phone. Reportedly, around 60 Afghans (lodgers and visitors to the house) were beaten, but – fearing reprisals – only 30 of them complained. At least 17 of the victims were aged 15 to 17. In addition, AI expressed concern about reports that police took documentation from three of the Afghans, who were in the process of seeking asylum in Greece, and failed to return their papers to them. AI stated that, in its view, the circumstances which led to previous refugee movements from Afghanistan had not yet changed in a manner that should lead hosting countries to believe that it was safe to return asylum-seekers to Afghanistan, and called on the authorities to afford adequate protection to this vulnerable group.

### **Impunity concerns at end of trial proceedings (update to AI Index: EUR 01/005/2004)**

A high profile alleged rape case of Ukrainian national Olga B. came to a close on 22 December, with the acquittal by the jury of the police officer accused of the rape. AI had expressed concerns about impunity of the police and independence of the judiciary throughout the proceedings. At a first trial the policeman was acquitted, as the court failed to call the victim to the trial and concluded, in May 2003, in her absence, that she had consented to sexual intercourse. At that time, the bar owner had been convicted of trafficking for the purposes of prostitution and sentenced to three years' imprisonment. The three co-defendants were convicted of procuring or assisting in trafficking women and received two-year prison sentences. All prison sentences were converted to fines of €1600 for each of these defendants, as well as the bar owner. The court then failed for a second time to call Olga B. to testify, at a re-trial in October 2003. AI had also expressed concerns about the failure of the authorities to provide state protection and legal aid to the victim throughout. In September 2003, Olga B. filed a complaint against the two bailiffs who had falsely claimed to have served her the summons for the first trial. The case is to be heard in 2005.

In another trafficking trial, which concluded on 3 December, the three-member Felony Appeals Court sentenced one person to 25 years' imprisonment on trafficking charges. The victims, Romanian citizens Gina M. and Camelia P., at the time aged 16 and 15 respectively, had filed complaints against the traffickers in October 1998. By the time of the trial hearing, charges on the offences of pimping and pandering were dropped as a result of the statutory limitation of five years for misdemeanours. One of the two key individuals accused, as well as 10 others, did not stand trial because they could not be located. State protection had not been provided to the victims.

### **Trafficking of children**

In November, AI expressed concern at the failure of the Greek authorities to investigate thoroughly the case of 502

children, many of whom had been trafficked, who went missing from the Saint Barbara Children's Institution in Athens between 1998 and 2002. The children, the great majority from Albania, went missing between 1998 and 2002 from the state-run children's home in Athens, where they were being sheltered after being taken off the streets by police. Many of the children were apparently victims of traffickers, who exploited them by putting them to work on the streets selling trinkets or begging. AI expressed concern that the children were not protected adequately at the institution and that once the children went missing, little or no effort was made by the Greek authorities to ascertain their whereabouts. The fate and current whereabouts of these children was unknown, although it seemed likely that many went back onto the streets into the hands of traffickers and continued to be exploited. Despite intervention by non-governmental organizations, including the Swiss-based Terre des Hommes and the Greek Helsinki Monitor, and a report issued in March 2004 by the Greek Ombudsman, following a request for investigation by the Albanian Ombudsman, by the end of the period under review the Greek authorities had not yet undertaken a thorough and impartial judicial investigation into the case, although a preliminary police inquiry was launched in May 2004.

### **Conscientious objection**

On 16 December the Naval Court of Piraeus sentenced Lazaros Petromelidis to 30 months' imprisonment on two counts of insubordination (relating to incidents on 26 July 1999 and 3 July 2003). Prior to the trial, AI had expressed concerns about the repeated prosecutions against Lazaros Petromelidis, who is the President of the Association of Greek Conscientious Objectors. He first objected to military service on grounds of conscience in 1992, refusing to perform the alternative service he was offered, as it was located further away and was seven-and-a-half times longer than the military service he would otherwise have had to perform. He has been repeatedly persecuted since.

On 13 September conscientious objector Giorgos Monastiriotis, 24, was arrested and brought directly to the Naval Court of Piraeus for trial. He was sentenced on the same day to three years and four months' imprisonment for desertion, and was taken immediately to prison in Corinth. Giorgos Monastiriotis, who had joined the Greek Navy on a five-year contract, had refused, citing conscientious reasons, to follow his unit in May 2003 when the frigate "Navarino", on which he was serving, was sent to the Persian Gulf (as part of operation "Enduring Freedom"). He is the first Greek professional soldier known to have refused to participate in the recent war in Iraq on the basis of his conscientious objection and to have declared his resignation from the Navy for this reason. AI regarded Giorgos Monastiriotis as a prisoner of conscience, and called for his immediate and unconditional release. Giorgos Monastiriotis was subsequently released on appeal.

AI urged the authorities to stop prosecutions against all conscientious objectors and to introduce an alternative fully civilian service, of non-punitive length, according to European and international standards and recommendations.

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## HUNGARY

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### **Death in suspicious circumstances and ill-treatment of Roma**

According to the Roma Press Center, on 25 July at around 6pm, in Kecskemét, three police officers pursued Jakub Richárd, a 19-year-old Romani youth for whom an arrest warrant had been issued. One of the officers reportedly tacked Jakub Richárd to the ground, twisting his arm behind his back and pressing him face down, with his knee in the detainee's back. Jakub Richárd died while being held in this way. The same police procedure in immobilizing a suspect had resulted in death of a Bulgarian national in June (see AI Index: EUR 01/005/2004). When the members of Jakub

Richárd's family heard about his death they surrounded the body and initially refused to allow the police to take it away. A forensic medical examination ordered by the Budapest Central Police Station reportedly established that Jakub Richárd died as a result of a pre-existing heart condition, exacerbated by the physical and psychological stress of the chase. Jakub Richárd's family stated that they had not been aware of this condition. There was concern about other findings and whether they had in any way influenced Jakub Richárd's death. These included an injury to the windpipe, presence of sand in his throat and a swelling to the brain. A second forensic analysis confirmed the findings of the preliminary conclusions. These were not challenged by the investigating prosecutor or the parliamentary commissioner for human rights. However, there was no independent inquiry into whether the above-described police procedure to immobilize suspects was in line with international standards on the use of force.

On 7 December, in Szigetvár, police officers took Géza S. and his wife, who are Roma, to the police station for questioning. "They pushed us into the car and kept repeating: 'you are going to die now filthy gypsies,'" Géza S. told the Roma Press Center. He also stated that he and his wife were questioned in separate rooms where five officers reportedly beat them in the course of one-and-a-half hours in order to extract their "confessions" to thefts which had occurred on 25 November. The ill-treatment stopped when the victims managed to produce train tickets proving that they had not been in town on the particular date. They were released shortly afterwards. Géza S. was subsequently admitted to a hospital, where he received treatment for kidney, lung and corugation injuries. The Baranya County Prosecutor Investigation Bureau initiated an investigation into the case.

Relatively very few cases of police ill-treatment of Roma ever result in prosecution of those suspected of human rights violations. On 21 July, the European Court of Human Rights found that the

Hungarian Government had violated the European Convention on Human Rights in the case of Sandor Balogh v. Hungary. The case concerns ill-treatment in custody which occurred on 9 August 1995 in Oroshaza police station, where Sandor Balogh had been interrogated for several hours. During the questioning he was repeatedly slapped by the officers across the face and his left ear and punched on the shoulder. He suffered a serious injury to his ear for which he received hospital treatment. Criminal proceedings initiated in November 1995 against the police officers involved were suspended after a medical expert concluded that it could not be established whether the injury in question had been caused before, during or after Sandor Balogh's interrogation by the police. In its ruling, the Court held that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) and awarded Sandor Balogh pecuniary and non-pecuniary damages.

In another positive development, on 30 December eight police officers were changed by the Kaposvár Military Prosecution Office for illegally detaining Rudolf Rigó, a 31-year-old man from Kaposhomok, and beating him, on 31 January 2004. Rudolf Rigó stated to the Roma Press Center that the police officers beat him in order to force him not to press charges against their colleague, the local deputy, who repeatedly verbally insulted him by calling him Cigány (Gypsy). Rudolf Rigó's mother-in-law observed from a neighbouring house how six black-hooded police officers surrounded his house. Two other officers went into the house and came out dragging Rudolf Rigó away in handcuffs and forced him into a police car. When the car stopped on a remote country road, Rudolf Rigó stated, the police officers pulled him out of the car and beat him for 10 minutes. As a result of the beating Rudolf Rigó suffered a broken nose, and injuries to his eye, his side and right leg. He was then left to walk 15 kilometres back to his house.

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## ITALY

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### **Scrutiny by the UN Committee on Economic, Social and Cultural Rights**

The UN Committee on Economic, Social and Cultural Rights considered Italy's fourth periodic report on its implementation of the International Covenant on Economic, Social and Cultural Rights in November. The areas of concern indicated in the Committee's concluding observations included those outlined below.

- \* The lack of an independent national human rights institution (NHRI) conforming to the so-called 'Paris Principles' relating to the functioning of NHRIs, adopted by the UN General Assembly in 1993. The Committee recommended that Italy undertake "with a broad base of civil society representatives and with the support of the National Institutions Unit of the Office of the UN High Commissioner for Human Rights", the necessary consultations concerning the possible establishment of an NHRI.
- \* The limited implementation of measures already adopted by Italy to combat racism and discrimination, in particular the failure to establish any regional or local bodies, as envisaged under a legislative decree of 1998, to monitor these phenomena. The Committee recommended the effective implementation of the measures already adopted, including through the establishment of adequately resourced monitoring bodies across the whole country.
- \* The lack of "comprehensive legislation on asylum-seekers". The Committee called on Italy to adopt such legislation and to ensure that the economic, social and cultural rights of asylum-seekers "are duly taken into account".
- \* The small number of complaints of domestic violence lodged, especially by women, despite the relevant measures taken to combat domestic violence. The Committee urged Italy to intensify its efforts to combat this human rights

violation and to undertake information campaigns to educate the population regarding the consequences of domestic violence.

\* The continuing plight of Roma immigrants "living in camps with poor housing, unhygienic sanitary conditions, limited employment prospects and inadequate educational facilities for their children". The Committee urged increased efforts to build more permanent housing settlements for Roma immigrants and all necessary measures taken to promote their integration into local communities, to offer them job opportunities and to make adequate educational facilities available to their children.

### **Asylum and immigration**

There was still no specific and comprehensive law on asylum. The protection for asylum-seekers offered under certain provisions of immigration legislation (the so-called Bossi-Fini law 189/2002), the implementing legislation of which was not published until December, did not guarantee access to a fair and impartial individual asylum determination procedure. Its provisions allowed many asylum-seekers to be detained or restricted in their liberty, in circumstances beyond those allowed under international standards. The legislation also provided for the majority to have their asylum applications handled via an accelerated, summary procedure and to be expelled from Italy while awaiting the outcome of appeals lodged against negative decisions on asylum applications arrived at through the summary process. AI was concerned that similar provisions were contained in a draft bill concerning humanitarian protection and the right of asylum (C.1238-A), submitted to parliament during 2004, and which was still awaiting full parliamentary discussion at the end of December.

There were fears that many people in need of protection were forced to return to countries where they were at risk of grave human rights violations. Excessive delays in

the asylum determination process, combined with inadequate provision for the basic needs of asylum-seekers, resulted in many people being left destitute while awaiting the outcome of initial asylum applications.

Hundreds of migrants and asylum-seekers continued to arrive on southern shores by boat and many others perished in the attempt. Many such boats set out from Libya. AI feared that the Italian government's attempts to deal with arrivals by sea risked seriously compromising the fundamental right to seek and enjoy asylum and the principle of "non-refoulement" that prohibits the forcible return of an individual to a territory where s/he would be at risk of serious human rights violations. The Office of the UN High Commissioner for Refugees (UNHCR), AI and a number of other domestic and international organizations working for refugees' human rights expressed deep concern about a number of episodes where the fundamental rights of people arriving by sea were not respected.

\* In July UNHCR expressed "strong concern over apparent disregard for accepted international and European standards and for fundamental elements of due process" in connection with the expulsion to Ghana of 25 asylum-seekers. They were among a group of 37 people who had been allowed, on humanitarian grounds and after considerable delay, to disembark in Italy from a boat, the Cap Anamur, belonging to a German non-governmental organization of the same name. (For further details see [www.amnesty.it](http://www.amnesty.it) - Press Release No.CS91-2004)

\* In October UNHCR expressed "deep concern" over the fate of hundreds of foreign nationals, the majority of them apparently from North Africa, who had arrived on the southern island of Lampedusa, following reports that many were being sent to Libya "without proper assessment of their possible protection needs". It said that lack of access to the individuals concerned, in both Italy and Libya, was preventing UNHCR from

exercising its mandate to ensure that refugees are properly protected. AI called for such access to be granted immediately. UNHCR subsequently reported that some five days after requesting authorization, and "following the return by air of more than 1,000 persons to Libya", it was granted access to the Lampedusa processing centre where those arriving had been held initially. Its preliminary evaluation was that "the rushed method used to sort out the incoming persons by nationality" had "not allowed individual persons from all national groups concerned to claim asylum." (For further details see AI Index: EUR 30/01/2004)

\* On 22 October UNHCR urged Italy in particular, but also Malta, to act in accordance with their responsibilities under international law without further delay in connection with the situation of 13 male asylum-seekers on board a German-owned container vessel, the Lydia Oldendorff, which had been moored in international waters off Malta's coast since 15 October. When the vessel had docked in the Italian port of Gioia Tauro (Sicily) on 9 October, the asylum-seekers, all claiming to be Turkish Kurds, were found hiding in a container which had been unloaded from the ship. They were then apparently taken to a local police station where they said they tried to claim asylum but were unable to do so. They were put back on board the ship which proceeded to Malta where it offloaded cargo but where the asylum-seekers were not allowed ashore. The ship's next destination was Turkey, the men's claimed country of origin.

UNHCR pointed out that under international law Italy appeared to have responsibility for assessing the 13 asylum claims. On 23 October the Italian government agreed to accept the asylum-seekers back in Italy and they disembarked in Sicily later that day, whereupon they were transferred initially to a closed detention centre for aliens. UNHCR welcomed the government's decision to "finally receive" the asylum-seekers, "thereby fulfilling its international and European legal obligations".

\* Despite the Italian Ministry of Interior's assurances of acting lawfully, AI was deeply troubled by the apparent speed used in deporting hundreds of people to Libya in December. On 20 December, hundreds of foreign nationals who had recently arrived in Italy were deported from Crotona (Calabria) to Libya, apparently without adequate safeguards. AI feared that the third country nationals sent from Italy to Libya (which is not a party to the UN Refugee Convention) might be at risk of arbitrary detention, or detention on charges, including actual or alleged illegal entry into and exit from Libya, and of ill-treatment while in detention.

Within days AI received reports that Libya was planning to deport dozens of refugees recognized by the UNHCR office in Libya: the refugees, including children and infants, were being detained at the deportation centre of the immigration department in Tripoli. On 23 December AI expressed fear that these refugees might be forcibly returned to their home countries. AI urged the Libyan government to halt all deportations of recognized refugees and to grant all refugees and asylum-seekers the opportunity to challenge any decision to deport them and the right to seek and enjoy asylum in Libya, if they so chose. AI reiterated its call to the Italian government to guarantee that foreign nationals arriving in its territory have access to a fair and satisfactory asylum procedure and reminded the government of its obligation to admit asylum-seekers and refugees to its territory without discrimination. (For further information see AI Index: MDE 19/022/2004)

*Temporary holding centres for aliens  
 (Centri di permanenza temporanea)*

Thousands of foreign nationals without a right of residence in Italy, or suspected of not having such a right, were detained in temporary holding centres where they could remain for up to a maximum of 60 days before expulsion from the country as illegal immigrants, or release. However, delays and inefficiencies in the processing system



led to some people being detained repeatedly for the maximum period. The centres held foreigners detained after arriving by boat, or detained on the streets or in the community, as well as after transfer from prison detention in connection with criminal offences. Many inmates experienced difficulties in gaining access to the expert advice necessary to challenge the legality of their detention and of expulsion orders. Some inmates trying to pursue asylum claims were unable to gain access to the asylum determination process and, in some cases, to close relatives living in Italy.

Tension in the centres was high, with frequent protests, including escape attempts, and high levels of self-harm. There were reports of frequent overcrowding, unsuitable infrastructures, unhygienic living conditions, unsatisfactory diets and inadequate medical care. Several criminal investigations were under way into alleged physical assaults on inmates by security and administrative staff. The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) stated that, in talks with the Italian authorities at the end of a visit to Italy carried out in December, during which it examined, among other things, the conditions of detention and the safeguards offered to foreign nationals held in temporary holding centres in Sicily, the authorities announced the closure of the Temporary Holding Centre at Agrigento "following an immediate observation" made by the CPT delegation. Such reports exacerbated AI's concern about the continuing absence of any permanent, independent monitoring and inspection body, mandated to make regular, unannounced visits of inspection to the holding centres and similar detention facilities, in line with international standards. AI continued to call for the treatment and conditions of the inmates to be brought fully in line with relevant international human rights standards relating to asylum-seekers and all detained persons.

*Criminal investigations into alleged ill-treatment of inmates (Update to AI Index: EUR 01/005/2004)*

\* The trial of a Roman Catholic priest employed as the director of Regina Pacis temporary holding centre in Puglia province, two doctors, five members of the administrative personnel and 11 carabinieri providing the centre's security service, was still under way at the end of December. The defendants had been ordered to stand trial in connection with the physical assault and racial abuse of inmates in November 2002.

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

At the end of December, lawyers representing three former inmates of the holding centre, were still awaiting the decision of the relevant judge on the challenge they had lodged against the Prosecutor's request that no further action be taken in connection with allegations made by the former inmates. The inmates had alleged that they and other detainees had regularly been given strong sedative drugs without their knowledge in the course of 2003.

**Ill-treatment and excessive force by law enforcement officers on the streets and in detention facilities**

A number of the reports of alleged ill-treatment by law enforcement officers concerned immigrants from outside the European Union, including Roma. Police shootings, some fatal, occurred in disputed circumstances. A number of criminal investigations were under way into such incidents. Some officers were brought to

trial but in general law enforcement officers enjoyed considerable impunity.

*Policing of 2001 demonstrations (see previous editions of AI Concerns in Europe and Central Asia, Italy)*

Among the ongoing criminal proceedings were a number relating to policing operations surrounding the mass demonstrations which occurred in Naples in March 2001 and during the G8 Summit in Genoa in July 2001.

\* In July, 31 police officers on duty in a carabinieri barracks used as a detention facility on the day of the Naples demonstration, were committed for trial on charges ranging from abduction to bodily harm and coercion: some officers were additionally accused of abusing their position as state officers and of falsifying records. Their trial opened in December.

\* In December 28 police officers, including several high-ranking officers, involved in an overnight raid on a building legally occupied by the Genoa Social Forum (GSF), the main organizer of the official Genoa demonstrations, were committed for trial. The trial was due to open in April 2005. The charges against the defendants included assault and battery, abusing their powers as state officers and falsifying and planting evidence, apparently in order to justify the raid, the arrest of 93 people inside the building and the degree of force used by officers. 62 of those arrested suffered injuries during the raid, some of them requiring urgent hospitalization and in some cases surgical operations. Criminal investigations against the 93 people, who had been accused of violent, criminal offences, had all been dropped by February 2004. Scores more law enforcement officers involved in the raid, and believed to have participated in physical assaults, apparently could not be identified because their faces were frequently hidden by riot helmets, masks or scarves during the raid and they displayed no other means of individual identification. AI has repeatedly advocated that Italian police practice in such policing

operations should be brought in line with the European Code of Police Ethics and that officers should display prominently some form of identification, such as a service number, in order to avoid situations of impunity.

\* The Genoa Public Prosecutor's Office requested the committal for trial of 12 carabinieri, 14 police officers, 16 prison officers and five prison doctors and nurses who, at the time of the G8 Summit, were on duty inside Bolzaneto temporary detention facility, through which over 200 detainees passed, including the majority of those detained inside the GSF centre. The charges envisaged included abuse of authority, threats, assault, falsification of records and failure to officially report injuries. A judge of preliminary investigation was scheduled to start examining the request in January 2005.

\* In October a police officer became the first law enforcement officer to be sentenced in connection with the G8 Summit policing operation. The officer, who had opted to be tried using a fast track procedure, which allows sentences to be reduced by a third, was given a 20-month suspended sentence and ordered to pay compensation for striking a 15-year-old demonstrator in the face with his truncheon. At the same time, five other officers who were accused of participating in assaults on the boy and six other demonstrators and had opted to be tried using the ordinary criminal process, were committed for trial to answer charges including abuse of authority, threats, assault, perjury and falsification of records. The boy and the other six demonstrators had originally been accused of assaulting officers and resisting arrest, but the boy had already been cleared of the charges by a court of first instance, while the prosecutors had already requested that no further action be taken against the other demonstrators.

### **The justice system**

*Threats to the independence of the judiciary (see previous editions of AI*

*Concerns in Europe and Central Asia, Italy)*

There was continuing tension between the government and many magistrates who argued that proposed reforms to the justice system would undermine their independence. In December the UN Special Rapporteur on the independence of judges and lawyers expressed concern to the President of the Republic that the reforms represented "a worrying limitation" to the independence of the judiciary. He welcomed, therefore, the president's decision, taken earlier in December, not to ratify the reforms and to return the relevant judicial reform bill to parliament.

Among the concerns indicated by the Rapporteur in a December letter to the President were the role of the Minister of Justice in nominating a Chief Prosecutor, paving the way for "possible government interference", and the weakening of the role and powers of the Higher Judicial Council (*Consiglio Superiore della Magistratura*), the independent body in charge of administering and controlling the judiciary. He also expressed concern about new powers "attributed to the Executive over the Judiciary, especially the role of the Minister of Justice in disciplinary proceedings" which "are in conflict with the independence of the judiciary and, in the future, are likely to result in undue Executive interference in the disciplinary process and decisions affecting judges".

The Rapporteur said he was concerned that, "instead of reducing the tensions that have existed since the judiciary began investigating corrupt practices among public officials and prosecuting several politicians" the proposed reforms would have "only further aggravated the situation". He expressed the hope that the President's veto of the proposals would re-launch the reform process, allowing further consultation with all sectors concerned, including experts in constitutional law, "to approve reforms that are consistent with international norms and principles of an independent judiciary".

*Excessive length of judicial proceedings*

In September, in the context of its ongoing monitoring of the excessive length of judicial proceedings in Italy, the Committee of Ministers of the Council of Europe expressed concern that "an important number of reforms" announced since 2000 was "still pending for adoption and/or for effective implementation". It deplored the fact that "no stable improvement" could yet be seen as regards the effectiveness of the measures so far adopted to address the problem and said that, with a few exceptions, "the situation generally worsened between 2002 and 2003 with the increase in both the average length of the proceedings and the backlog of pending cases".

*Continued failure to introduce a crime of torture into the Penal Code*

Italy ratified the UN Convention against Torture in 1988 but legislative initiatives to introduce a specific crime of torture into the Penal Code, at least as broadly defined as in the Convention, and as repeatedly recommended to Italy by a number of UN treaty bodies, continued to suffer delays and setbacks. In April 2004 a plenary session of the Chamber of Deputies had approved an amendment to draft legislation proposing the introduction of a specific crime of torture which, among other things, and in contrast with the definition contained in the UN Convention against Torture, defined torture as existing only in the event of repeated threats or violence. However, the text of the draft legislation was then returned to the Chamber of Deputies' Justice Committee for further review, where it appeared to have made no progress by the end of December.

*International Criminal Court: failure to enact implementing legislation*

The Rome Statute of the International Criminal Court entered into force in July 2002, triggering the jurisdiction of the first permanent international court capable of

investigating and bringing to justice individuals who commit some of the most serious violations of international law: genocide, crimes against humanity and war crimes. 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 December 2004 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 and prosecutions.

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## KAZAKSTAN

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### “War on Terror”

In October the Supreme Court classified the Islamic Party of East Turkestan from China's Xinjiang Uighur Autonomous Region and the Islamic Movement of Uzbekistan (IMU) as terrorist organizations and banned their activities.

In November the National Security Committee (KNC) announced that it had arrested nine Kazak and four Uzbek nationals in connection with a series of explosions and attacks on police checkpoints in March and April and three suicide bombings in July in neighbouring Uzbekistan. Four Kazak women who reportedly trained as suicide bombers were also detained. All detainees were described as members of a previously unknown organization, the Mujahedin of Central Asia, an armed group reportedly with links to the IMU and Al-Qa'ida.

Also in November the KNC announced that Kazakstan had extradited 14 Uighurs to China and Kyrgyzstan in the past six years, notwithstanding the high risks of serious human rights violations they faced in China. They were all reportedly members of the East Turkestan Liberation Party and had been accused of “extremist” activities.

### Freedom of Expression (update to AI Index: EUR 01/001/2004)

In August Galymzhan Zhakiyanov, one of the leaders of the opposition Democratic Choice of Kazakstan (DVK) party, was transferred from prison to a more relaxed regime at a so-called colony settlement in Pavlodar region. He had been sentenced to prison in 2002 for “abuse of office” and financial crimes. He was apparently targeted because of his peaceful opposition activities.

Sergei Duvanov, an independent journalist, was conditionally released in August after having served half of his sentence. Observers believed that the decision to ban him from taking part in public meetings was intended to prevent him from campaigning in the September parliamentary elections. Sergei Duvanov had been sentenced in January 2003 to three-and-a-half years in prison for allegedly raping an underage girl after a trial which according to international observers fell far short of international fair trial standards and may have been politically motivated. On 29 December a court ordered his transfer to a colony settlement which allowed him to work and live at his home.

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## KYRGYZSTAN

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### Human rights defenders

On 16 November Tursunbek Akun, the chairman of the Human Rights Movement of Kyrgyzstan and head of the opposition political movement known as the People's Patriotic Movement of Kyrgyzstan, failed to return home from a meeting in the centre of the capital Bishkek which was allegedly set up by members of the Ministry of National Security (MNS). His relatives and supporters were concerned that his “disappearance” was related to his campaign to call for the impeachment of President Akaev. The MNS publicly denied any involvement in the “disappearance” of the human rights activist. Tursunbek Akun

reappeared two weeks later at a hospital in Bishkek reportedly in a weak and exhausted state. He was released from hospital a day later. He maintained that he was abducted by MNS agents and that he was held in a basement in an unknown location by men he claimed to be affiliated to the Interior Ministry (MVD). The MNS and MVD continued to deny any involvement in his alleged abduction.

### **The death penalty**

A moratorium on executions which came into force in 1998 was extended until the end of December. According to official information, 31 men were sentenced to death between 30 June 2003 and 30 June 2004.

#### *Conditions on death row*

At least 130 men were believed to be on death row. These numbers have steadily accumulated since the moratorium on executions came into force in 1998. This meant that some of those currently on death row have been in a state of continued uncertainty as to their ultimate fate and in very harsh prison conditions for many years, which amounts to cruel and inhuman treatment. Tursunbay Bakir-uulu, the Ombudsman of Kyrgyzstan, reported that conditions on death row in two prisons were problematic with five to six prisoners held in cells meant for two. Dozens reportedly died from illnesses or suicide and some who had been kept in single cells for a long time had lost the ability to move around unaided. He also reported that short visits by relatives and daily 30-minute walks had been banned.

#### *Extradited to execution in the name of the "War on Terror"*

In March, it was reported in the official Chinese media that two men, Rahmutulla Islayil and Arken Yakuf, both Uighurs from Urumqi, had been executed after being extradited to China from Kyrgyzstan in July 2002. They were reportedly sentenced to death in January 2004 after being convicted

of the murder of a Chinese diplomat and his chauffeur in the Kyrgyz capital, Bishkek, in June 2002. Shortly after their arrest in Bishkek, the Kyrgyz Interior Minister reportedly suggested that the crime was not political in nature, but was rather the accidental result of a struggle for power between criminal gangs. However, at the time of their handover to China, it was announced that according to Kyrgyz Foreign Ministry data, the two were "active members" of the East Turkestan Liberation Organization, a group that had previously been condemned by China as a "terrorist organization".

Official Chinese sources indicate that they were "officially arrested" (i.e. charged) in China on 31 October 2002. They were sentenced to death on 12 January 2004 by the Urumqi Intermediate People's Court. Their appeal to the Xinjiang Regional High People's Court was rejected, and the court issued the execution order on 25 March. No further details have been made public about the nature of the evidence against them or the circumstances of their trial.

#### *Risks of extradition to execution*

At the end of the period under review at least eight men were in possible danger of extradition to China and Uzbekistan, where they would be at high risk of torture and execution. AI feared that the formal ratification of an extradition treaty between China and Kyrgyzstan in March increased the risk that Uighurs would be returned to China.

Three Uighurs, Bakhramjan Alimov (or Berhamjan), Askar Tohti (or Askar Tokhti) and Ali Mahsum (or Ali Mansum) were sentenced in March 2001 in connection with bomb explosions which killed four people in the city of Osh, Kyrgyzstan in 1998. Bakhramjan Alimov and Askar Tohti were sentenced to death, but were not executed due to the moratorium on executions. Ali Mahsum received a 25-year prison term. Supporters of the men claimed that they had nothing to do with the bombings, but rather that they had been targeted and prosecuted because of their ethnic origin.

On 31 December 2002 three further Uighurs, Ablimit (full name not known to AI), Tohti Niyaz and Kayser Jalal were reportedly sentenced in Bishkek to 16, 17 and 25 years in prison respectively for forming an "unlawful East Turkestan organization" and "illegal possession of weapons". Their lawyers reportedly claimed that they were convicted on the basis of fabricated evidence.

The two other men feared to be at risk of extradition were Uzbek nationals Nodir Karimov (or Asadullo Abdullayev) and Ilkhom Izattulayev, sentenced to death by the Military court of Kyrgyzstan on 19 February for involvement in violent crimes with a "religious extremist" background. For example, they were reportedly accused of involvement in a bomb attack on the Dordoye market in Bishkek, the capital of Kyrgyzstan, on 27 December 2002, and an attack on a bank in the Kyrgyz town of Osh on 8 May 2003, as result of which eight people were reported to have died and dozens were injured. As of December the two were believed to be in investigation-isolation prison No.1 in Bishkek. If extradited to Uzbekistan they would be at imminent risk of torture and execution. The brother of Nodir Karimov, Azizbek Karimov, who had been sentenced to death in Uzbekistan in February 2004, for his involvement in the above crimes, was secretly executed in Uzbekistan in August 2004, despite an intervention by the UN Human Rights Committee asking for a stay of execution.

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## MACEDONIA

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### Background

In November Prime Minister Hari Kostov resigned and was replaced by Vlado Buchkovski.

In August parliament adopted a new regional law by which the previous 123 municipalities were reduced to 80. The new

internal borders - within which minorities which constitute 25 per cent or more of the population had their language recognized as an official language for that municipality - provoked widespread demonstrations from ethnic Macedonians who saw the new boundaries, especially those relating to Struga and the capital Skopje, as having been drawn to favour ethnic Albanians. However on 7 November a referendum against the new law failed due to insufficient turn-out.

On 6 November armed Albanian militants erected barricades and reportedly took control of the village of Kondovo on the outskirts of the capital Skopje, apparently as a show of strength against the referendum on the new regional law. The occupation lasted until 17 December when it was peacefully resolved after negotiations between the militants and ethnic Albanian party politicians

In October the European Union (EU) formally opened accession talks with Macedonia. The EU, at Prime Minister Kostov's invitation, also extended the mandate of Proxima - the EU police force tasked with advising the country's police force - for a further 12 months from the expiry of its mandate on 15 December.

Unemployment and poverty levels remained high. According to official figures some 400,000 people (out of a total population of 2,002,547 as per the 2002 census) were unemployed and over 30 per cent of the population lived on an income of less than \$US 2.15 per day. Members of the Romani community were especially disadvantaged, usually residing in substandard settlements lacking basic amenities. Roma figured disproportionately highly as unemployed. Furthermore, only one in 10 Romani children completed elementary school: in practice a precondition for registering for health and social insurance.

**Extra-judicial executions at Rashtanski Lozja in 2002 (update to AI Index EUR 01/005/2004)**

On 15 November the trial began of three former police commanders, two special police officers and a businessman accused of the murder of the seven immigrants (six Pakistanis and one Indian) who were killed in March 2002 in Rashtanski Lozja. Former Minister of Internal Affairs Ljube Boshkovski, who was also indicted but had fled to Croatia and remained protected from extradition due to his dual Macedonian/Croatian citizenship, remained in detention in Croatia pending trial there.

### **The "disappeared" and abducted in 2001 (update to AI Index EUR 01/005/2004)**

There was little progress in bringing to justice those responsible for the fate of 20 missing persons - 13 ethnic Macedonians, six ethnic Albanians, and one Bulgarian citizen - who "disappeared" or were abducted during the 2001 conflict between security forces and the ethnic Albanian armed group, the National Liberation Army (NLA). In September the Ministry of Internal Affairs stated that an arrest warrant had been issued in connection with the abducted ethnic Macedonians but that the suspect, a former local commander of the insurgent ethnic Albanians, was in hiding. However, no indictments in connection with the "disappeared" ethnic Albanians had been issued by the end of the year.

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

There appeared to be a drop in the number of alleged instances of police torture or ill-treatment, although cases continued to be reported. The Macedonian Helsinki Committee (MHC) reported that in 2004 it had received information on 18 alleged cases, involving 35 people, of torture, ill-treatment or inhuman or degrading treatment by security officials: in 15 of these cases the police were the alleged perpetrators while the other three cases involved prison guards at Idrizovo prison. The MHC reported that often the victims' complaints were not investigated by an

investigative judge, nor were charges brought against alleged perpetrators

### **CPT report published**

In September the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published its report to the Government of Macedonia after a November 2002 CPT visit. The report deplored the lack of safeguards against ill-treatment. It observed that in certain cases, the severity of the alleged ill-treatment was such that it could be considered to amount to torture, and added that after the November 2002 visit the CPT had continued to receive reports of ill-treatment by law enforcement officials. Moreover, the CPT blamed the inactions of judges, public prosecutors and investigating police officers which it concluded "has fostered a climate in which law enforcement officials minded to ill-treat person have come to believe - with very good reason - that they can do so with impunity".

Pledging that they would act on the CPT's recommendations, the Macedonian authorities committed themselves to: "investigate all cases of ill-treatment or improper behaviour by law enforcements officials identified in the reports...and to take appropriate action." However, AI was not aware that the cases highlighted in the CPT report, or in CPT reports of earlier visits, had been adequately investigated, or its recommendations fully complied with.

### **Violence against women: Domestic violence and the trafficking of women and girls for forced prostitution**

Domestic violence against women remained widespread. Official figures released in November reported 98 criminal charges and 623 misdemeanour charges brought during the year for domestic violence.

The trafficking of women and girls for forced prostitution continued, with Macedonia both a transit and a destination

country. In December the police announced that in the previous nine months they had discovered 39 cases of trafficking for forced prostitution involving 79 victims.

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

There remained some 2,400 registered internally displaced persons after the 2001 conflict in Macedonia, of whom about half were accommodated in collective centres, while the remainder were with relatives. In addition there were an estimated 1,500 refugees from Kosovo, predominantly Roma.

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## **MALTA**

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### **Asylum and immigration**

Hundreds of asylum-seekers and migrants arrived by boat. The government continued its policy of automatically detaining those arriving by sea without authorization, regardless of whether or not they applied for refugee status and holding them until the conclusion of refugee determination proceedings or return to their country of origin. At the end of December, over 800 people, including women and children, were held in detention centres: many were held on grounds, and for periods beyond those permissible under international norms.

AI remained concerned by the continuing reluctance of the government to bring its policy in line with international standards according to which asylum-seekers should be detained only when a legitimate reason for doing so has been demonstrated in the individual case, only when other measures short of detention will not suffice and only for a minimal period.

AI's concern was compounded by continuing reports that inmates were frequently unable to exercise their rights effectively as they lacked access to appropriate legal advice.

Severe delays also continued to affect the decision-making process regarding asylum applications, largely as a result of understaffing in the Refugee Commissioner's Office and the Refugee Appeals Board. The Board was criticized for its systematic confirmation of first instance decisions of the Commissioner's office, usually without any accompanying explanation.

Amendments to the Refugee and Immigration Acts in August provided for an increase to the resources available to the decision-making bodies and for inmates of detention centres to submit a request for conditional release on grounds that continued detention would be "unreasonable as regards duration or because there is no reasonable prospect of deportation within a reasonable time." The legislation set out no criteria for assessing what would constitute an 'unreasonable' length of detention pending the outcome of applications for refugee status. However, during the latter part of the year, individuals whose applications for asylum were still pending a definitive decision after 18 months were generally released.

The government continued to assert that it would not be in Malta's "national interest" to end the detention policy. In December the government said that it had agreed on a policy document addressing all aspects of migration, to be discussed during a national conference on refugees and immigrants in early 2005.

### *Conditions of detention*

The detention centres for asylum-seekers and unauthorized migrants were run and guarded by members of the police and armed forces who lacked relevant training. Conditions of detention in some of the centres continued to fall well below international standards. Following a large number of arrivals by sea between June and September, some centres were severely overcrowded, with many people sleeping on mattresses on the floor and some housed in tents. There were also reports of inadequate diets, sanitary



arrangements and medical attention. Diseases such as tuberculosis and scabies were apparently prevalent. A number of detainees developed mental health problems. Tensions ran high and inmates staged a number of protests. Some detainees, including children, had little access to exercise in the open air or to outside visitors, and had no recreational facilities. Children also still experienced delays in gaining access to education. In the absence of professional social welfare workers visiting the centres, many of the basic material needs of the inmates, such as clothing, continued to be met by local religious and non-governmental organizations, often working on a voluntary basis and dependent on charitable donations.

In July the government announced it was in the process of setting up a centralized social welfare service to address the needs of asylum-seekers and refugees.

The government said its policy document on migration, agreed in December (see above) also included proposed measures to improve accommodation facilities.

*Conclusion of magistrate's inquiry into 2002 refoulement of Eritrean citizens (Update to AI Index: EUR 01/005/2004)*

In September the media reported the publication of the findings of the Board of Inquiry (composed of a magistrate sitting alone) which, according to a government press release, had been entrusted with examining whether the process leading to the deportation of some 220 Eritrean citizens in 2002 was regular and legal, and whether any individuals or authorities had exerted undue pressure for the Eritreans to be returned.

The government had announced the inquiry in May, after the publication of an AI report describing the organization's grave and ongoing concerns about the human rights situation in Eritrea, including the treatment of the Eritrean citizens deported from Malta to Eritrea in 2002 (AI Index: AFR

64/003/2004). Upon its publication, the Maltese government asserted that it had received no information prior to the departure of the Eritreans which indicated that the individuals would be at risk of human rights violations if returned. AI's report provoked public debate in Malta and resulted in calls for an independent commission of inquiry into the government's decision to deport the Eritrean citizens.

In an Open Letter sent in June to the Minister for Justice and Home Affairs and to the magistrate conducting the inquiry (AI Index: EUR 33/002/2004), AI had welcomed the opening of the inquiry and sought the authorities' co-operation in providing it with details of the inquiry's precise terms of reference. It had also made recommendations aimed at ensuring that the inquiry was thorough and impartial. In order to assist the inquiry, AI recalled and attached the detailed correspondence which it had addressed to the Minister both before and after the 2002 deportations, warning that Eritrea could not be considered a safe country for Eritrean asylum-seekers and pointing out specific categories of Eritreans at particular risk of serious human rights violations if returned.

The Board of Inquiry and AI communicated about the possibility of the organization sending a representative to Malta to participate in the inquiry. AI expressed its willingness to co-operate with the inquiry and to send a representative from London to Malta to confirm, under oath, the authenticity of the documents produced by the organization and to answer questions relating to them, with certain basic provisos. AI was eventually unable to participate directly in view of the fact that the Board of Inquiry was not prepared to disclose its precise terms of reference to AI, nor to provide the one assurance which it had requested, namely that the Board would not seek information from the organization the disclosure of which might have had the effect of identifying sources who had given AI information in confidence, some of whom feared for their safety.

The authorities did not provide AI with a copy of the inquiry's eventual findings. According to local media reports, the magistrate apparently criticized the Refugee Appeals Board for failing to supply the reasons for rejecting the asylum applications lodged by some of the deportees, but concluded that this failure did not affect the legality of the whole process leading to deportation and that no undue pressure had been exerted. It was unclear to what extent the inquiry had examined the deportations in the light of Malta's obligations regarding the principle of non-refoulement contained in the UN Refugee Convention and AI's warnings to the government before the deportations were carried out.

### **Violence against women**

Women were frequently subjected to domestic violence which was still not defined as a specific crime in law.

In July the UN Committee on Elimination of Discrimination against Women considered Malta's combined initial, second and third periodic reports on its compliance with the UN Women's Convention. Although the Committee welcomed Malta's efforts in creating awareness on domestic violence and establishing domestic violence services providing support to victims of domestic violence, it was concerned that a Domestic Violence Bill had been under discussion since March 2000 and urged that high priority be given to its adoption. The Committee was also concerned that, under the Criminal Code, "the crime of rape must be associated with violence and that rape as well as violent assault is considered in the Criminal Code under the title 'Of Crimes against the Peace and Honour of Families and against Morals.'" It called, therefore, for the crimes of rape and violent assault to be defined as crimes against the physical and mental integrity of women and "as a form of discrimination that seriously inhibits women's ability to enjoy their human rights and fundamental freedoms on a basis of equality with men".

In November UN Committee on Economic, Social and Cultural Rights, after considering Malta's initial report on its implementation of the International Covenant on Economic Social and Cultural Rights, also urged Malta to expedite the adoption of the Domestic Violence Bill.

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## **MOLDOVA**

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### **Torture and ill-treatment (Update to AI Index: EUR 01/005/2004)**

In September 2004 the case against D.V. and L.A.<sup>9</sup> for assaulting police officers was dropped, and a criminal case was started against the police officers who had allegedly ill-treated them. This was believed to be ongoing at the end of the period under review. Both young men were reportedly beaten by police in July 2003 as they were returning home after attending a party in Leova. They were allegedly beaten on the street and then taken to the police station where the beatings continued for several hours.

During the period under review there was no progress in the case of 14-year-old R.S. who was allegedly ill-treated after being detained by police in Cojuşna village in July 2003. He was accused of committing a theft from a house in the village and pressured into signing a statement confessing to the offence. He was reportedly beaten and threatened by police officers and required hospital treatment. The police dropped the charges against him in November 2003, but no investigation into the allegations of ill-treatment was initiated.

### **Self-proclaimed Dnestr Moldavian Republic (DMR) (update to AI Index: EUR 01/005/2004)**

In July tensions escalated further around the issue of Moldovan schools in the DMR

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<sup>9</sup> The full names of these individuals are withheld to protect their identities.

that teach Moldovan/Romanian in the Latin script. On 1 July DMR authorities announced that the schools would be closed and refused to register the schools despite an agreement brokered by the Organization for Security and Co-operation in Europe (OSCE) in mid-2003. Parents, teachers and pupils who peacefully protested against the closure by occupying the schools were harassed by police. On 29 July the school in Rîbnița was cleared of protesters by the police and six parents were given sentences of seven days' administrative detention for disobeying the police and taking part in unsanctioned activities. On 9 August Grigorii Stratulat, the father of a pupil at Rîbnița school, was sentenced to seven days' administrative detention for resisting the closure of the school. AI expressed concern that Grigory Stratulat had been detained for the peaceful defence of his right to freedom of expression (see AI Index: EUR 59/002/2004).

On 22 July the OSCE Permanent Council expressed its "extreme concern over the situation created by the arbitrary actions of administration and law enforcement officials in Tiraspol". On 28 July Jan Petersen, Chairman of the Committee of Ministers of the Council of Europe also expressed concern about the closure of a Moldovan School in the DMR and stated that the closure of the schools was in conflict with European standards on human rights and minority rights. In September the authorities of DMR agreed to register the schools in Tiraspol and Rîbnița for one year, but the students' education continued to be disrupted by repair work that was carried out on the school buildings. There were concerns that the temporary registration offered might make it possible for the DMR authorities to reclaim the buildings.

*The 'Tiraspol Six' (update to AI Index: EUR 01/005/2004)*

In July the European Court of Human Rights ruled that both Moldova and the Russian Federation were responsible for the unlawful detention and torture and ill-treatment suffered by Ilie Ilașcu, Alexandru

Leșco, Andrei Ivanțoc and Tudor Petrov-Popa. The court ruled that all had been detained arbitrarily and that Tudor Petrov-Popa and Alexandru Leșco, held since 1992, were still being detained arbitrarily, in breach of Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

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## POLAND

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### **Concluding observations of the UN Human Rights Committee**

On 4 November the UN Human Rights Committee adopted its concluding observations and recommendations, having considered Poland's fifth periodic report on its compliance with the International Covenant on Civil and Political Rights (ICCPR). The Committee noted improvements made in the area of women's rights and welcomed the appointment of a Government Plenipotentiary on the Equal Status of Women and Men, competent for issues relating to discrimination on the basis of sex as well as on grounds of race and ethnic origin, religion and beliefs, age and sexual orientation. However, the Committee was concerned with the low number of women in senior positions in the public service and the disparities in remuneration between men and women. It recommended that Polish authorities should ensure equal treatment of men and women at all levels of public service and take all appropriate measures to ensure that women enjoy equal access to the labour market and equal wages for work of equal value. The Committee was also concerned that the number of cases of domestic violence remained high notwithstanding a number of programmes intended to deal with the problem. It was also concerned "that measures such as restraining orders and temporary arrests are not widely used, that appropriate protection is not afforded to victims, that shelters do not exist in many places, and that training for law enforcement officers is inadequate". The Committee recommended that Poland

"ensure that law enforcement officers are properly trained and that appropriate measures to address domestic violence cases, including restraining orders, are available as required. The State party should also increase the number of shelters and other means of protection for victims throughout the country."

The Committee was also concerned about the discrimination suffered by the Roma, particularly with regard to access to health services, social assistance, education and employment, as well as people whose rights not to be discriminated on the basis of their sexual orientation had not been fully recognised. The Committee noted that acts of violence against members of the Roma community, against lesbians, gay men, bisexual and transgender people, incidents of desecration of Catholic and Jewish cemeteries, and other acts of anti-Semitism, had not always been adequately investigated and the perpetrators punished.

With regard to prison conditions, the Committee was concerned that many inmates were still held in cells which did not meet the requirements of the UN Standard Minimum Rules on the Treatment of Prisoners. It was also concerned that judges did not make full use of alternative types of punishment available under the law. The Committee recommended that the Polish authorities reduce the number of persons in pre-trial detention and ensure that all persons, including those in detention, have access to legal aid at all times.

The Committee called on the Polish authorities to amend the duration of the 18-month alternative to military service which was considered punitive (military service is 12 months).

The Committee welcomed Poland's commitment to ratify the Second Optional Protocol to the ICCPR and to prohibit the enforcement of death penalty.

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## PORTUGAL

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### **Revision of the Constitution**

In July the Sixth Revision of the Portuguese Constitution entered into force. It included a prohibition on discrimination on the basis of sexual orientation (see AI Index: EUR 01/005/2004).

### **CERD Recommendations**

In August, after considering Portugal's 10th and 11th periodic reports under the International Convention on the Elimination of all Forms of Racial Discrimination, the Committee on the Elimination of Racial Discrimination (CERD) adopted its Concluding Observations (CERD/C/65/CO/6).

AI was concerned that the government's reports under consideration by the CERD contained assertions about the circumstances of the fatal shootings by police, in two separate incidents, of Ângelo Semedo and António Pereira in 2002, which appeared to justify the conduct of the officers involved in the killings. The areas where the killings took place were described as a "marginal neighbourhood[s]", and Bela Vista, in Setúbal, where António Pereira was killed, as "a kind of ghetto, where the police, who feel unwelcome, fear to enter".

Among the CERD's concerns were the lack of statistical data on the ethnic composition of the population, the continuing occurrence of racially motivated acts and incitement to hatred, and the persistence of intolerance and discrimination towards minorities. It recommended the adoption of criminal legislation establishing racist motivations as aggravating circumstances in the perpetration of an offence. Concern was also raised about allegations of police misconduct – including excessive use of force and ill-treatment – towards ethnic minorities or people of non-Portuguese origin. The CERD recommended thorough, impartial and effective investigations of those incidents, bringing those responsible to justice, the provision of remedies and

compensation to the victims, and intensive training for law enforcement officials to ensure they respect and protect the human rights of all, without discrimination. In addition, the CERD expressed concern about the isolation of some groups of immigrants and members of ethnic minorities in areas which it described as "ghetto-like neighbourhoods", and highlighting the difficulties experienced by members of the Romani minority in areas such as employment, education and housing.

Finally, the CERD expressed concern about the non-suspensive effect of appeal in the admissibility phase of the asylum procedure, and recommended that Portugal respect the legal safeguards for asylum-seekers ensuring that its asylum legislation and procedures comply with relevant international obligations.

#### **Prison concerns**

Ill-treatment and other forms of abuse by prison officers were reported in a number of prisons. The office of the Ombudsperson appeared to have insufficient resources to discharge fully and effectively its tasks, including investigating inmates' complaints. An alarmingly high number of inmates, 70 in total and two-thirds of them held on remand, were reported to have died in prison in 2004.

#### *Albino Libanio*

In July AI published the report *Portugal: Attack on a prisoner in a Lisbon Prison* (AI Index: EUR 38/001/2004) in regard to the beating of Albino Libanio in Lisbon Prison in November 2003.

On 11 November 2003 Albino Libânio was beaten by some 10 to 15 prison officers, including trainee prison officers, while detained in Lisbon Prison. AI has had access to a report containing the initial findings of the Portuguese prison service inspectors' inquiry into the attack on Albino Libânio. This report found that he suffered

multiple injuries as a result of a beating amounting to grave physical ill-treatment.

A criminal investigation has been opened following the filing of a report of the incident with the prosecuting authorities by Albino Libânio's lawyer. Disciplinary proceedings involving a number of prison officers have also been opened.

AI is gravely concerned about the findings of the prison service report. The circumstances of the attack as described in this report and the refusal to co-operate with the internal inquiry by virtually all the prison officers of Lisbon Prison give rise to concerns that go beyond the individual case of Albino Libânio. The organization considers that such findings expose systemic failures to ensure the protection of the inmates' human rights in Lisbon Prison.

AI is concerned that the attack on Albino Libânio as described in the prison service report may amount to torture. The organization is further concerned about the failure to provide him with medical assistance, despite the injuries he had reportedly sustained.

AI is also concerned that the prison authorities failed to identify and prevent the potential for abuse of the physical and mental integrity of inmates arising from the use of a cell in Lisbon Prison as described in the above-mentioned report. Problems connected with the lack of a clear distinction between cells for inmates subjected to disciplinary measures and cells for inmates subjected to special security measures in Lisbon Prison had been identified by the Portuguese Ombudsperson since 1998. However, his recommendations on how to address them had not been acted upon as of November 2003.

Moreover, AI is concerned that the conduct of the prison officers of Lisbon Prison in connection with the attack on Albino Libânio and with the prison service inquiry show a lack of the most basic understanding of the duty of care that they owe to inmates, and of the legal obligation upon them to respect

and protect the physical and mental integrity and the human dignity of inmates.

In light of these concerns and of Portugal's obligations under international law and standards to protect detainees from torture and other cruel, inhuman or degrading treatment or punishment, AI urges the Portuguese government to consider and take action on the following recommendations:

- disciplinary and criminal investigations should be carried out thoroughly, promptly and impartially, and any perpetrator should be brought to justice, consistent with international laws and standards

- all prison officers allegedly involved in the attack on Albino Libânio should be suspended pending the outcome of criminal investigations; the findings of the disciplinary and criminal investigations should be made public

- adequate reparations, including compensation, compatible with the findings of disciplinary and criminal investigations should be provided

- a prompt, thorough, impartial and independent inquiry should be established to ascertain whether other similar incidents occurred in the past in Lisbon and other prisons, and to ensure that the appropriate measures are taken to prevent similar incidents from taking place. The inquiry should also be required to examine the effectiveness of existing systems for inmates notifying impartial authorities of alleged criminal conduct by prison officers, and make recommendations for change if necessary. All inmates interviewed in connection with this inquiry should be guaranteed protection from reprisal, including if necessary being transferred to other prisons. The findings, scope and methods of the inquiry should be made public

- the recommendations of the UN Human Rights Committee's Concluding Observations of August 2003 should be implemented

- the Portuguese Ombudsperson's recommendations aimed at protecting the safety of inmates should be implemented in all prisons, including with regard to the installation of video-cameras capable of recording footage

- there should be a review of the use of cells for holding inmates in transit and those subjected to disciplinary or security measures; there should also be a review of the training, selection and supervision of prison officers, to ensure that the requirements of international law and standards are met. The findings of such reviews should be made public

- each inmate should be provided with a copy of the prison rules and of the "Charter of the Rights and Duties of Detainees and Prisoners" produced by the Human Rights Commission of the Bar in May 2004, to ensure that inmates are fully aware of their rights, including in relation to disciplinary proceedings for breaches of prison rules

- the government should ratify and implement the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment at the earliest opportunity.

At the end of 2004, a criminal investigation was pending, and disciplinary proceedings against a number of prison officers had been opened.

### **Policing concerns**

Disproportionate use of force and ill-treatment by police officers continued to be reported. By the end of the year, the authorities had taken no steps to establish an oversight agency, independent of the Ministry of the Interior, with powers to investigate grave human rights violations by law enforcement officials and to enforce disciplinary measures, as recommended by the UN Human Rights Committee in August 2003. AI is not aware of any response to the criticism of police use of firearms by the General Inspectorate of the Internal

Administration (GIIA), made public in November 2003.

Reports continued of policing being carried out in a discriminatory manner in deprived areas, where people belonging to ethnic and other minorities often felt they were being targeted by officers but did not have sufficient trust in the police to lodge a complaint.

In December the trial began in Lisbon of six people, three of them police officers reportedly accused of assaulting the other three defendants in 1995.

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## ROMANIA

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### **Failures to protect the rights of people with mental disabilities**

Numerous new reports about the living conditions and lack of adequate care in psychiatric institutions received in the period under review indicate that measures taken by the Romanian authorities in response to AI's report *Romania: Memorandum to the government concerning inpatient psychiatric treatment* (AI Index: EUR 39/003/2004), published in May (hereafter referred to as AI's memorandum), failed to address its concerns effectively and comprehensively. The placement, living conditions and treatment of patients and residents in many psychiatric wards and hospitals in Romania continued to breach international human rights standards and best professional practice in this field.

The Centre for Legal Resources (CLR), a local human rights organization, whose representatives visited St. Pantelimon Psychiatric Hospital in Braila in June described the conditions and lack of treatment in two separate external wards for 140 adults and 50 children with chronic mental health problems as amounting to inhuman and degrading treatment. The ward for adults was over-crowded, with some patients having to share beds: some

of the beds had no sheets and were soiled. The toilets were dirty and the showers faulty. Residents who needed assistance to feed themselves or to move about did not appear to receive adequate care and spent all day in bed – many of those needing such assistance were young adults with intellectual disabilities, transferred to the ward from institutions for children. All residents had very short hair and were poorly dressed, and only a few had underwear. About 100 residents were placed in dormitories that appeared to be locked all of the time. Agitated residents were immobilized in the bed with leather belts, reportedly because of shortage of staff. In the paediatric external ward many children had their arms and legs tied with straps or string to the sides of the cots. Some of the children had injuries that appeared to have been self-inflicted but for some injuries no plausible explanation about their cause had been given. Most bedridden children had skin rashes, apparently because they were not changed as appropriate. Some of the children in a dark, ground floor dormitory had their legs tied with a piece of string to the beds, seriously restricting their movement. They stood barefoot on the wet floor. At the time of the visit there were a nurse and an educator in this dormitory who did not appear to be engaged in any meaningful activity with the children. In November, following visits to psychiatric institutions in Podriga and Mocrea<sup>10</sup>, the CLR reported similarly inadequate conditions and neglect of patients and residents. New information came to light that in some psychiatric hospitals electroconvulsive therapy is applied without any anaesthetics or muscle relaxants, in violation of international law and best professional practice.

In one hospital some improvement in conditions and care was reported in the period under review. These appeared to result from increased efforts of the hospital

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<sup>10</sup> CLR and AI delegates visited this hospital in western Romania in February 2004 and their findings were reported in AI's memorandum to the Romanian government.

management and possibly more attention given to this problem by the local public health authority following the publicity that AI's memorandum received in the local media, rather than as a result of any concerted government effort.

The authorities' failure to provide adequate care and to put in place legal safeguards to protect residents from abuse exposed patients and residents to a considerable risk of physical and mental abuse, sometimes resulting in death. On 27 September in the psychiatric hospital in Braila, a 66-year-old patient with dementia was placed by an orderly under a scalding hot shower. The patient suffered extensive burns from which he died. On 28 September it was reported that a 22-year-old woman in the psychiatric hospital in Siret had been extensively burned when other patients made her take a scalding bath. The hospital management reportedly confirmed that similar incidents of abuse were not infrequent.

Paul Hunt, UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, visited Poiana Mare psychiatric hospital in August. He is expected to present his report on the visit to Romania to the 61st session of the Commission on Human Rights in March/April 2005.

On 5 November in Bucharest, AI and CLR organized a round table discussion regarding the lack of protection of basic human rights of people with mental disabilities who are placed in psychiatric institutions in Romania. Representatives of non-governmental organizations, the European Union's (EU) delegation in Bucharest, government officials and health experts, as well as people with mental disabilities and their families, discussed a broad range of human rights concerns. Issues discussed included the need for mental health care service reform, particularly for the development of community-based services. It was noted that the role of civil society, including the empowerment of the people concerned and their families, and their involvement in

every stage of the reform process, was of particular importance. The government's response to AI's memorandum was almost unanimously described by the participants as inadequate and lacking in the required political will to deal with the problems effectively. Criticism of the government measures to improve the situation in psychiatric hospitals included statements by hospital directors that no funding had been provided for the ministerial order to increase the daily allocation for food for patients and for staff salaries. A senior civil servant stated that the National Insurance Fund had sufficient resources but that these had been inappropriate diverted by the government for other purposes. Regrettably, Romanian authorities were represented at the event at a very low level. Ovidiu Brînzan, then Minister of Health, declined to meet with the AI delegation during its visit to Bucharest, although he had earlier extended an invitation to the organization to discuss its concerns and recommendations.

The government's commitment to put in place regulations for the implementation of the Mental Health Act before the end of November was not realised by the end of the period under review<sup>11</sup>.

The AI delegation visiting Bucharest in November met with Marcel Sanpetru, First Deputy to the General Prosecutor, and a team of prosecutors who are investigating the deaths of patients in the Poiana Mare hospital<sup>12</sup>. He stated that AI's memorandum on psychiatric hospitals "accurately

<sup>11</sup> An annual report regarding Romania's participation in the WHO and Stability Pact regional project on mental health, posted on the Ministry of Health website on 31 January 2005 (see [http://www.ms.ro/a\\_ms/ms.asp](http://www.ms.ro/a_ms/ms.asp)) states that these rules had been elaborated in the course of 2004. Ministry advisors told an AI delegate in January 2005 that they had been unable to draft the regulations as they lacked the appropriate expertise.

<sup>12</sup> In the Poiana Mare hospital 18 patients died in January and February, reportedly mostly as a result of malnutrition and hypothermia. See *Romania: Patients at the Poiana Mare psychiatric hospital* (AI Index: EUR 39/002/2004).



describes the situation". An investigation into the Poiana Mare deaths, which had been suspended for "lack of evidence", has been reopened and the prosecutors promised to make available to AI information about its conduct and results.

On 16 December, the European Parliament adopted a resolution<sup>13</sup> regarding Romania's progress towards accession to the EU and, *inter alia*, expressed "deep concern at the fact that people with mental disabilities are subjected to arbitrary detention in mental hospitals and at the inadequacy of conditions and lack of appropriate care in many mental hospitals and other residential institutions for people with mental disabilities". The European Parliament called on Romania "to address this situation as a matter of the utmost urgency and to ensure that hospitals and institutions have adequate resources for treatment and living conditions". It also called for "special attention [to] be given to children and young adults leaving institutional care who need to be adequately reintegrated and supported in the community and protected from abuse".

#### **New reports of ill-treatment by law enforcement officers**

Numerous new reports of police ill-treatment were received in the period under review. Some of those who suffered serious injuries as a result of the beatings were not provided with appropriate medical assistance. On 1 September in Constanța, following a dispute with a bar owner, Laurențiu Capbun, Marin Nicolae and Toni Perju were reportedly assaulted by a police officer, the bar owner's friend, and four masked officers of a special intervention unit. Two minors who were with the three men at the time of the police action were also reportedly beaten and then threatened, to prevent them filing complaints. The beating of Laurențiu Capbun reportedly continued in the Fourth Section Police

Station although the officers had been told by the other two men that he suffered from poor health including diabetes. After he was released in the morning without being charged, Laurențiu Capbun was admitted to a hospital where he died five days later, apparently as a result of previously existing health conditions which had been aggravated by the police ill-treatment. Laurențiu Capbun's brother Cristinel Capbun, who saw him in the hospital, stated that his brother had signs of beating, bruising on the chest and contusions on the head, and that the admission file recorded "contusions on the chest and abdomen". It was reported that the police would be disciplined for "not reporting the incident to the Constanța Municipal Police and not having an authorization to intervene" but they were apparently not charged with any criminal offence.

On 3 November, in Galați, Gheorghe Maxim went to his daughter's house, together with his son Laurențiu Maxim, to help her move out after a dispute with her in-laws. Laurențiu Maxim called the police after an argument with her husband's family. Because there had been no violence, the police officers apparently considered this a nuisance call and took Laurențiu Maxim, the complainant, and Gheorghe Maxim to the Fifth Police Station. When Laurențiu Maxim refused to write a statement he was handcuffed with his arms placed behind his back. The officers then reportedly hit him in the face and on the back, and kicked him all over his legs and groin until he lost consciousness. Gheorghe Maxim was reportedly also beaten when he protested about the beating of his son. An officer is also said to have held a gun to Gheorghe Maxim's temple threatening to kill him while another officer slapped him in the face. Laurențiu Maxim was subsequently taken to the Emergency Hospital for treatment. He was apparently ill-treated because he had previously complained about the conduct of a police officer who was disciplined as a result and transferred to another post. An investigation has reportedly been initiated into the incident by the Galați County Police Inspectorate.

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<sup>13</sup> European Parliament Resolution, 16 December 2004, P6\_TA-PROV(2004)0111.

As in the past, a number of victims of police ill-treatment were minors. On 31 October in Iași, 17-year-old A.N.<sup>14</sup> was stopped by the police as he was returning home with friends from a discotheque. A.N. was taken to the Fifth Police Station where he was told that he was suspected of participating in a robbery and two assaults. A police officer then reportedly took A.N. to a toilet and repeatedly hit him on his bare back in order to make him confess to the offences. A.N. was later taken to an office where he was given a pen and a sheet of paper. The same officer who had beaten him in the toilet told A.N. what to write in a statement. When A.N. refused, he was reportedly again beaten and the ill-treatment continued while he wrote a statement dictated to him. After he was released A.N. received treatment in a hospital for multiple contusions. A police statement issued after the incident reportedly denied that any officer had beaten the youth and that any injuries he may have suffered were sustained in the course of an altercation that the police had been investigating.

#### **Unlawful use of firearms by law enforcement officers**

There were new reports of law enforcement officers resorting to unlawful use of firearms, and at least one person was killed in circumstances which are in breach of international standards. On 22 October, police officers of Bahna and Moldoveni, in the Buhusi region, organized an action to apprehend wood thieves. They found 11 Roma men who reportedly assaulted them. Twenty-four-year-old Mihai Nechifor was shot dead. "When they saw us the officer said 'I have been looking for you for a long time'. My cousin who had a chainsaw in his hand was shot five times by the officer without any warning", stated Ilie Ciubotaru. Other reported incidents were described in a report *Romania: Continuing reports of unlawful use of firearms by law enforcement officials* (AI Index EUR 39/001/2005), published in January 2005.

<sup>14</sup> The minor's full identity is kept confidential in order to protect him.

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## **RUSSIAN FEDERATION**

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### **The Chechen Conflict**

Widespread and systematic abuses of human rights continued in the context of the conflict. Reports of "disappearances", torture and killings were frequent. The Memorial Human Rights Centre stated that in 2004 almost 400 people were abducted in Chechnya. It was reported that of those, 189 people were released, 24 were found dead and the whereabouts of 173 people were unknown. Many violations continued to be attributed to Russian and Chechen security forces, including the so-called *Kadyrovtsy*, a Chechen armed security service under the command of Chechnya's First Deputy Prime Minister, Ramzan Kadyrov. Chechen armed opposition groups also targeted civilians, in violation of international humanitarian law. Several thousand internally displaced people from Chechnya remained in Ingushetia, although under pressure from the authorities to return.

#### *Chechen Presidential Elections*

Presidential elections were held in the Chechen Republic on 29 August to replace Akhmad Kadyrov (see AI Index: EUR 01/005/2004). According to the official results, the candidate supported by Moscow, Alu Alkhanov, won with 74 per cent of the votes, and the turnout was 75 per cent. The Parliamentary Assembly of the Council of Europe (PACE) in October stated that it regretted that the circumstances of the elections had not fulfilled the basic requirements necessary in order to qualify as democratic. Human rights organizations also issued statements in the run-up to the elections that the conditions did not exist in Chechnya for ensuring that minimum international standards for holding free and fair elections could be met.

#### *PACE session in October*

In October the PACE called the continuing massive violations in the Chechen Republic by far the most serious human rights issue in any of the Council's member states (Recommendation 1679 (2004)). The PACE strongly condemned the numerous violations of human rights such as murder, forced "disappearance", torture, hostage-taking, rape and arbitrary detention committed by members of different federal and pro-Russian Chechen security forces, as well as killings and hostage-taking by illegal armed formations (Resolution 1403 (2004)). The PACE, among other issues, highlighted new types of violations of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) concerning the people's right to free elections and to freedom of expression; the apparent spread of the climate of impunity to Ingushetia, and little progress in the prosecution of perpetrators of human rights violations by the national law enforcement bodies. The PACE stated it was outraged that serious crimes had been committed against applicants to the European Court of Human Rights and their family members. It stated that such acts were totally unacceptable, as they may deter applications to the Court, which is the centrepiece of the human rights protection mechanism established by the ECHR. It concluded that a climate of impunity was prevailing in the Chechen Republic due to the fact that the Chechen and federal law enforcement authorities were still either unwilling or unable to hold accountable the vast majority of perpetrators of serious human rights violations for their actions.

The PACE urged the Government of the Russian Federation to, *inter alia*, vigorously investigate and prosecute all violations of human rights, without regard to the identity of the perpetrators, and to send a clear signal from the highest political level to all security and law enforcement officials enjoining them to respect human rights in the execution of their duties at all times.

*Abuses by Chechen armed opposition groups – targeting of civilians*

In August, two passenger aeroplanes exploded in mid-air over central Russia killing some 90 people. On 1 September, more than 1,000 people, several hundred of them children, were taken hostage in a school in Beslan, North Ossetia, when armed men and women burst into the school, where children, their parents and teachers had gathered to celebrate the beginning of the academic year. The armed group held the hostages without food or drinking water for over 48 hours. Nearly 350 people were reportedly killed when explosives were detonated in the school and in the ensuing shoot-out between hostage-takers, armed local civilians and security forces. Shamil Basaev, leader of a Chechen armed opposition group, claimed responsibility for the hostage-taking as well as for the explosion of the two aeroplanes. The events triggered fears of spreading instability throughout the volatile North Caucasus region.

AI issued a joint statement with Memorial Human Rights Centre, Moscow Helsinki Group, All-Russia Movement for Human Rights, Human Rights Watch, International Federation for Human Rights (FIDH), International Helsinki Federation for Human Rights and the International League for Human Rights to condemn in the strongest terms the hostage-taking and killing of hundreds of children, parents and teachers (see AI Index: EUR 46/050/2004). There were also concerns that the Russian authorities had covered up the extent of the crisis, including by providing misleading data on the number of hostages.

*Hostage-taking – response of the authorities*

Following the Beslan tragedy, the Procurator General of the Russian Federation, Vladimir Ustinov, suggested on 29 October to the Russian Duma (parliament) that in response to future incidents of hostage-taking by armed opposition groups, the authorities should detain relatives of alleged members of such groups as hostages. Similar statements had been made earlier in the year by the

Deputy Prime Minister of Chechnya, Ramzan Kadyrov.

In his speech, Vladimir Ustinov suggested that the Russian Criminal Code, the Russian Constitution and other norms and declarations were unsuitable instruments in the fight against armed opposition groups, and that emergency measures against relatives of suspected members of these groups – including the confiscation of their property and detaining them as a negotiating tool – should be taken in order to save the lives of civilians.

AI wrote to President Vladimir Putin expressing grave concern that a leading figure of the Russian state, whose role it is to ensure the rule of law, should make a statement such as this, which casts serious doubts on their commitment to, and risks undermining, the rule of law in the Russian Federation. Accordingly, AI urged President Putin to declare publicly that the government of the Russian Federation would not tolerate the taking of hostages by any person within the Russian Federation under any circumstances or at any time. By the end of the year, AI had not received a response to the letter, and nor had President Putin made any public declaration on this issue, to the organization's knowledge.

In its resolution on the human rights situation in the Chechen Republic in October the PACE pointed to what they termed a new, frightening trend of taking relatives of suspected "terrorists" hostage in order to force them to give themselves up, by threatening their relatives with torture and murder. The PACE stated that such methods were totally unacceptable criminal acts that must be stamped out by the federal and Chechen authorities.

*Reported abductions and "disappearances" of Aslan Maskhadov's relatives (See AI Index: EUR 46/004/2005)*

In this context, AI received reports that, following the taking of hostages in Beslan, relatives of the Chechen separatist leader, Aslan Maskhadov, and of other men

suspected of involvement in the hostage-taking had been detained for several days in September, allegedly in order to put pressure on the hostage-takers to release the hostages.

Later in December, eight relatives of Aslan Maskhadov were reportedly arbitrarily detained by Chechen security forces and subsequently "disappeared". According to the Memorial Human Rights Centre and other organizations in the region, five of the relatives were reportedly detained at different addresses and taken away on 3 December. They were: Buchu Alievna Abdulkadirova (aged 67), sister of Aslan Maskhadov; Lecha Alievich Maskhadov (68), brother of Aslan Maskhadov; Lema Alievich Maskhadov (55), brother of Aslan Maskhadov; Ikhvan Vakhaevich Magomedov (35), nephew of Aslan Maskhadov; and Adam Abdul-Karimovich Rashiev (54), a distant male relative of Aslan Maskhadov. Another three individuals were reportedly detained on 28 December. They were: Khadizhat Vakhaevna Satueva (40), niece of Aslan Maskhadov, her husband Usman Ramzanovich Satuev (47), and Movladi Aguev (previously incorrectly reported as Movladi Abdulkadyrov) (35), the husband of Aslan Maskhadov's wife's sister.

The detentions reportedly took place on the evenings of 3 and 28 December, with armed men travelling in large convoys of cars (up to 12 vehicles in some cases). Human rights groups pointed to the fact that only officially-sanctioned large convoys of vehicles have the freedom to travel around Chechnya. Witnesses to the detentions have claimed that the so-called *Kadyrovtsy* were responsible for the detentions, and that during two of the detentions, those of Buchu Abdulkadirova and of Ikhvan Magomedov, the armed men reportedly stated that they were acting on the personal orders of Ramzan Kadyrov. However, officials in Chechnya denied that they had detained the eight individuals.

*The Zelimkhan Murdalov "disappearance" case (update to AI Index: EUR 46/027/2003)*

The trial of Sergei Lapin – a member of the OMON (special police detachment) from the Khanty-Mansiisk region – resumed with delays and postponements, but with some progress. Sergei Lapin was facing charges of causing bodily harm, abuse of office and forging official documents in connection with the "disappearance" of 26-year-old Zelimkhan Murdalov from Grozny in January 2001.

At a court hearing on 15 September at Oktiabriaskii district court in Grozny, Sergei Lapin – for the first time during the trial – appeared in person. According to Stanislav Markelov, the lawyer for the Murdalov family, this was because Sergei Lapin was not able to provide documents for the court proving that he was suffering from the medical conditions that he had earlier claimed prevented him from attending the trial. Sergei Lapin appeared at this and each subsequent court hearing with a large number of armed escorts.

During the period under review, a new procurator took over the case. During hearings held in November, the father of Zelimkhan Murdalov, Astemir, gave evidence over a one-week period. Further hearings were postponed; the next hearing was set for 25 January 2005.

*Trial into the killing of six civilians (update to AI Index: EUR 46/027/2004)*

In August the Military Collegiate of the Supreme Court of the Russian Federation quashed the April verdict of a military court in Rostov-on-Don which had found Captain Eduard Ulman and three other members of a special Russian military intelligence unit not guilty of the murder of six civilians in Chechnya in January 2002. The acquittal had been widely criticized and the victims' families had appealed the decision. The Military Collegiate sent the case back for retrial in Rostov-on-Don but with a different jury. Several hearings were scheduled during the second half of the year, but

some of them were postponed due to the failure of the participants to appear. In November the jury was selected. One of the lawyers for the victim's families reportedly lodged a protest at the composition of the jury as, although members came from different regions of Russia, the majority of them were ethnic Russian.

*Political reforms to counter "terrorism"*

In September, shortly after the Beslan hostage-taking tragedy, President Putin announced a package of reforms which were presented as strengthening the country in the face of international "terrorism". They included the abolition of elections for the governors of the regions, who would in future be nominated by the President, subject to approval by the regional legislatures. The Duma voted in support of this change in December and it passed into law. The package of reforms also included a proposal to remove from the Duma the so-called 'single seat races' – single mandate district representation which accounts for half the seats in the Duma – and instead fill all Duma seats from party lists, through a system of proportional representation. This proposal passed a first reading in the Duma in December. There was widespread criticism that these moves represented a curtailment of civil and political rights.

**Violence against women**

The UN Special Rapporteur on violence against women visited the Russian Federation, including Chechnya, in December. In a subsequent statement the rapporteur highlighted the continuing problem of violence, particularly in the home, stating that it continued to cause injuries and claim the lives of thousands of women annually and that, due to registration procedures restricting individuals' possibilities to move freely and choose their place of residence, and lack of financial means, many women were compelled to share the same housing with a violent partner, even after an official divorce. The situation was further aggravated by the lack of sufficient shelters.

The rapporteur remarked that violence against women and sex discrimination were still low on the State agenda, with the State Duma's failure to adopt a draft domestic violence bill and the abolition earlier in the year of the Women's Commission, responsible for mainstreaming a gender perspective into State policies and programmes.

With regard to the situation in the North Caucasus, the statement acknowledged some positive steps by the Government towards normalization in the region. However, the day-to-day lives of people were far from normal, particularly in Chechnya. The rapporteur stated that during the visit she heard first-hand accounts of women being arbitrarily detained and tortured following targeted operations and from relatives of people who had been subjected to "disappearance", extrajudicial execution, torture, and ill-treatment, allegedly by members of the security forces.

The rapporteur made the following initial recommendations to the Government of the Russian Federation: to prioritize women's rights in judicial and non-judicial mechanisms, policies and programmes; to amend legislation in conformity with international standards, enact legislation specifically criminalizing domestic violence and provide shelters for those in need; to launch gender awareness campaigns and provide training to law enforcement officers and security forces; to support politically and financially civil society initiatives promoting human rights, including through research and advocacy; to ensure that all laws, policies and practices to counter "terrorism" fully meet fundamental principles of international law and international human rights standards; to investigate, prosecute, and punish those responsible for violations of human rights and provide compensation to victims or their families; to ensure safe and voluntary return of internally displaced people, and to establish a protection programme for human rights defenders, witnesses and victims who were at risk of harm.

### **Targeting of Human Rights Defenders**

Members of the security forces continued to target human rights defenders and those pursuing justice for serious human rights violations at the European Court of Human Rights. People were threatened and some were "disappeared" for challenging the climate of impunity and the lack of rule of law in the North Caucasus. AI issued a report highlighting the issue, entitled *Russian Federation: The Risk of Speaking Out* (AI Index: EUR 46/059/2004).

*Raid on the office of the Society for Russian-Chechen Friendship (see AI Index: EUR 46/059/2004)*

The apparent campaign of intimidation of members of the Society for Russian-Chechen Friendship, a non-governmental organization (NGO) reporting on the human rights situation in Chechnya, continued with a police raid on their office in the Ingush town of Karabulak on 12 July, at around 6.30pm. More than 40 police officers, most wearing masks and camouflage uniforms and carrying machine-guns, reportedly searched the office without identifying themselves or showing a warrant. They apparently confiscated six videotapes, four computer disks and files containing testimonies of victims of human rights violations by Russian federal forces in Chechnya, the names of the alleged perpetrators, and details of vehicles used to abduct civilians.

Shortly after that, the police claimed to have found two small plastic bags full of powder in one of the rooms, and reportedly claimed they had found explosives. Khamzat Kuchiev, an activist of the organization, was detained on suspicion of involvement in "terrorism", and was taken to the City Department of Internal Affairs (GOVD) in Karabulak. He was released a few hours later after the intervention of the head of the Presidential Human Rights Commission, Ella Pamfilova.

*Harassment and intimidation of Society for Russian-Chechen Friendship activist Ruslan Susaev (see AI Index: EUR 46/062/2004)*

Ruslan Susaev is the head of the NGO Civilians' Protest. He also assists the Information Centre of the Society for Russian-Chechen Friendship in Chechnya. Ruslan Susaev reportedly collected information about a raid in the early morning of 27 August by the so-called *Kadyrovtsy* on a house in the town of Sernovodsk. During this raid several people were allegedly beaten up, one man was killed and another reportedly "disappeared" after the security forces took him away. Ruslan Susaev took part in a demonstration later in the day on 27 August calling for the man to be released, and told other human rights activists about this event.

The day after the raid several masked men in uniforms of the security forces stormed the house where Ruslan Susaev was living with his family. The men reportedly forced two of the children to lie on the floor, asked where Ruslan Susaev was, fired in the air, searched the house and hit Ruslan Susaev's mother in the face. The men left but, according to his wife Susanna Susaeva, the next day more men came to the house, looking for Ruslan Susaev. This time they took two of the couple's sons with them to a police station in Grozny. The boys were released a couple of hours later. That evening, a car without number plates reportedly stopped in front of the Susaevs' house. Neighbours saw three men in camouflage get out of the car and go into the house; these men reportedly threatened to torture Ruslan Susaev if he did not stop his human rights work. After these incidents, the owner of the house told the family to leave. Since then the Susaevs have been moving from place to place in Chechnya and the neighbouring republic of Ingushetia.

According to reports, on 4 November Ruslan Susaev and his wife were stopped at a police roadblock near the Chechen town of Achkoi Martan. The police ordered them out of the car, threw Ruslan Susaev to the ground and searched him. They took the

couple to the police station in Achkoi Martan, and later to the Sunzhenskii Regional Department of Internal Affairs. The police allegedly tried to make Ruslan Susaev confess to a crime he had not committed, and told him that his family would suffer if he did not sign a confession. He refused to sign, and he and his wife were released the next morning. Ruslan Susaev remained concerned about his family's safety.

*Apparent targeting of applicants to the European Court of Human Rights: Utsaev family (see AI Index: EUR 46/059/2004)*

On 4 July, and again on July 30, a large group of armed military personnel entered the home of Aslambek Salmanovich Utsaev (born 1946) and allegedly severely beat him. Aslambek Utsaev is one of the applicants in the case *Tovmirzaeva and others v Russia* (no. 29133/03) currently pending before the European Court of Human Rights. The case concerns the illegal detention and enforced "disappearance" by federal forces of four residents of Novye Atagi on 2 June 2002, including Aslambek Utsaev's son, Islam Alsanbekovich Utsaev. Satsita Musaevna Utsaeva, mother of Islam Utsaev and wife of Aslambek Utsaev, is also an applicant in the case.

At approximately 4am on 4 July, 36 armed men arrived at the Utsaevs' home in eight armoured personnel carriers (APCs) and four other military vehicles. The servicemen drove two of the APCs through the fence surrounding the Utsaevs' courtyard. Without providing any identification or explanation for their presence, the military servicemen conducted an unsanctioned search of the Utsaevs' home, and allegedly confiscated money, clothing, gold jewellery, a video camera and food, as well as numerous other household items of little or no value.

While in the house, the men forcibly held Satsita Utsaeva and allegedly threatened to shoot her, her daughter-in-law, and her granddaughter. The men allegedly beat and kicked Aslambek Utsaev severely on the head and torso. Aslambek Utsaev is a

pensioner and is disabled; he is blind in one eye. One of the men reportedly struck Aslambek Utsaev in the ear with the butt of an automatic rifle, causing blood to flow from his ear. The blow knocked Aslambek Utsaev unconscious. The men then dragged him into the courtyard and dropped him face down in the garden. They kicked him numerous times in the back and torso before leaving. Satsita Utsaeva witnessed this from the window of the house and begged the servicemen to stop, but they responded by saying, "Shut up, or we'll shoot you."

On the morning of 30 July, armed men in masks, not providing any identification or explanation for their presence, again entered the home of the Utsaevs and, without saying anything, again allegedly beat Aslambek Utsaev on the head, face and torso. Aslambek Utsaev was severely injured after the incident, but has been afraid to seek medical attention. Witnesses confirmed that Aslambek Utsaev was walking with a limp and had wounds and bruises on his head and back.

*Threats and intimidation of Timur Aliev (see AI Index: EUR 46/059/2004)*

The weekly newspaper *Chechen Society* (*Chechenskoe Obshchestvo*) was effectively shut down at the beginning of August, after its editor, Timur Aliev, was "advised" to suspend the publication of the paper, and a printing house was forced to discontinue printing it. Founded in Nazran a year ago, this newspaper gave regular updates on the dynamics of the human rights crisis in Chechnya and was one of the few print media that was considered to be providing objective coverage of contemporary developments in the war-torn republic. It had already been targeted by authorities several times for its coverage of the conflict in Chechnya. The newspaper was still available electronically.

*Bakhrom Khamroev*

In August a Moscow court sentenced Uzbek human rights defender Bakhrom Khamroev to 18 months' imprisonment for the illegal

possession of drugs. There were allegations that the charges had been fabricated. After he was detained for the first time in July 2003 AI had regarded Bakhrom Khamroev as a prisoner of conscience and had launched an appeal for his immediate and unconditional release (see AI Index: EUR 46/070/2003). He was released from pre-trial detention on October 2003, pending trial (see AI Index: EUR 46/076/2003).

Following the Moscow court decision in August he was taken into custody. His lawyers appealed against the decision but the Moscow City Court confirmed the sentence on 24 September. Bakhrom Khamroev was transferred on 12 October to a prison colony in Solikamsk, in the Perm region. Russian human rights organizations and AI called for a review of his case and for his release from custody. On 29 November the Perm regional court changed Bakhrom Khamroev's sentence to a conditional sentence and released him.

*Proposed restrictions to NGO funding*

Draft amendments to the tax code passed a first reading in the Duma on 5 August; the proposals included significant restrictions on sources of financing for NGOs, namely that only Russian and foreign organizations on a government-approved list would be able to give grants to NGOs. Second and third readings of the proposals were delayed into 2005. NGOs remained extremely concerned that the proposed amendments were open to corruption, would delay funding for projects due to extra bureaucracy, and represented an unprecedented level of state control of NGO activity in post-Soviet Russia.

### **Racism**

A high level of racially-motivated attacks continued. The Sova Information-Analytical Centre reported a total of 44 racist murders in 2004. Ethnic and national minority groups, including Meskhetian Turks and Khemshins, were targeted for violent attacks, as were foreign citizens including students and asylum-seekers. Chechens outside of the North Caucasus continued to



be subjected to human rights abuses, including arbitrary detention, ill-treatment and restrictions of the right to freedom of movement, elsewhere in the Russian Federation. Following the events in Beslan, there were reports of increased attacks on Chechens and other North Caucasians by "skinheads" and other members of extremist groups (see AI Index: EUR 46/059/2004). Human rights defenders working to combat racism and intolerance were themselves threatened with violence.

*Murder of Vietnamese student Vu An Tuan in St Petersburg*

20-year-old Vu An Tuan, studying at the St Petersburg Polytechnic University, was stabbed to death on 13 October as he was walking to a metro station in the city. His attackers were reportedly a group of about 18 people with shaved heads, wearing black boots and black clothes. A criminal case was opened under Article 105 part 2 of the Criminal Code (murder carried out by a group). The police were reported to have detained 15 suspects in the case, and released the majority of them following interview. According to the *St Petersburg Times*, the police viewed the murder as being racially motivated, although the deputy city prosecutor, Aleksandr Zhukov, was cited in the newspaper report as stating that investigators had not ruled out other possible motives. Students in St Petersburg organized demonstrations and meetings to protest against what they viewed as the authorities' failure adequately to address the wave of racist violence in the city.

*Death threats against human rights defender Dmitrii Kraiukhin (see AI Index: EUR 46/042/2004)*

Dmitrii Kraiukhin is the head of the NGO United Europe which is based in Orel, western Russia and is particularly well-known for its work to combat racism through opposing the activities of extreme nationalist organizations. In September, a court case began against two members of an extremist organization called Russian National Unity (RNU) who had been

charged with offences under Article 282 of the Russian Criminal Code, "incitement of national, racial or religious enmity". Dmitrii Kraiukhin was the chief witness in the court case. It was on the basis of his complaint in June 2003 to the prosecutor's office in the Zavodskii district of Orel about the RNU's activities in connection with alleged acts of vandalism and the distribution of anti-Semitic material that the criminal investigation had been opened.

In early July 2004, Dmitrii Kraiukhin reportedly received a death threat through the post. The death threat included a photocopy of an article from the Russian daily newspaper *Izvestiya* concerning the murder of the prominent ethnologist and human rights defender Nikolai Girenko (see below) the previous month. The part of the article which spoke about Nikolai Girenko's planned participation in a trial against RNU activists from Nizhnii Novgorod prior to his murder was highlighted. Reportedly, the same threat was sent to a local police official and editors of three newspapers in the region which have been critical of extreme nationalist organizations.

Later in July a photograph and contact details of Dmitrii Kraiukhin were placed on the website "Slavic Union" ([www.demushkin.com](http://www.demushkin.com)) with the caption "Know Your Enemy" emblazoned across the photograph. The website alluded to a court decision in April to deny Dmitrii Kraiukhin witness protection and encouraged its readers to contact him. The RNU also distributed his home address and telephone numbers to their regional network, following which Dmitrii Kraiukhin received numerous threatening telephone calls.

*Investigation into the murder of human rights defender Nikolai Girenko (see AI Index: EUR 46/038/2004)*

There was no information about progress in the investigation into the murder of Nikolai Girenko, a well-known expert on racism and discrimination in the Russian Federation, who was shot dead in June in his home in St Petersburg. Days after the attack an extremist group called the Government of

the Russian Republic had claimed responsibility for the attack on their website. However, by the end of the year, no one had yet been charged with the murder.

Nikolai Girenko had headed the Minority Rights Commission at the St Petersburg Scientific Union and had conducted several studies for the authorities on neo-Nazi and "skinhead" groups and had repeatedly warned that such groups were on the rise. Many people believed his murder was related to his human rights activity and anti-racism campaigning.

Andrei Zhukov – St Petersburg Deputy Procurator – was reported to have said that investigators believed that Nikolai Girenko's work as a researcher and expert witness in racism trials and investigations was the most likely motive for his murder. However, the Deputy Procurator also reportedly stated that the killing might have been motivated by hooliganism – a claim frequently made by police in connection with alleged race hate attacks.

#### *Prosecutions relating to other hate crimes*

In September, three young men were convicted for the murder of Antoniu Amaru Lima on racial grounds and sentenced to between nine and 17 years' imprisonment. Antoniu Amaru Lima, a 24-year-old medical student from Guinea-Bissau, had been stabbed to death by a gang in the city of Voronezh in February. The conviction was hailed as an important precedent in the fight against racism in the Russian Federation (see AI Index: EUR 46/025/2004).

In December, seven teenagers were given prison sentences of between two-and-a-half and 10 years for the killing of a Tajik girl, Nulufar Sangboeva, in the St. Petersburg region in 2003.

#### **Police brutality in the Republic of Bashkortostan**

Hundreds of people were subjected to arbitrary detention, beatings and ill-treatment in the Republic of Bashkortostan

in December, according to numerous media reports, and testimonies from victims, relatives and eye witnesses and other documentation collected by Russian NGOs and presented in a report 'Special Operation by the Ministry of Internal Affairs of Bashkiriya: Events, Facts, Assessment and Conclusions'. Over a period of four days, from 10 to 14 December, special unit police officers (OMON) armed with machine guns and rubber truncheons and wearing masks, reportedly rounded up hundreds of people in the town of Blagoveshchensk and in the surrounding district from cafes, discos, streets, shops, cars and homes, without producing warrants and without proper explanation. One estimate puts the number of those detained and beaten as high as one thousand. The operation, with the stated aim of 'stabilising the operative situation and the implementation of a range of operative-preventative measures for the prevention and halting of crimes and administrative violations on the streets and public places', was sanctioned by the Minister of Internal Affairs of the Republic of Bashkortostan. OMON officers were accompanied during the operation by police officers from the Blagoveshchensk police department.

OMON officers reportedly entered buildings where groups of teenagers and youths had gathered, such as discos and cafes, and ordered all males present, often including those under 18, to stand against the wall with their hands behind their heads and legs apart. Women and girls were forced to leave, sometimes without collecting their overcoats. Many people reportedly had money and possessions such as jewellery and mobile phones confiscated. Then they would march or run the men and boys into military trucks, beating them as they went. The trucks were usually overcrowded. Some of those held inside were made to lie on the floor, kneel or stand in uncomfortable poses in the trucks, and were forbidden to speak or make any noise. Reportedly people were beaten, kicked and walked on while in the trucks. In some cases, tear gas was used inside the trucks. Individuals and smaller groups would also be picked up, usually with no explanation, and herded into the

trucks. In one case, a man waiting for his wife outside a shop, with their baby in a pram, was reportedly picked up, leaving the baby alone on the pavement. In some cases, local police officers would seek out individuals in their homes, entering without a warrant, and would force people to get into the trucks. The OMON officers took the detainees in trucks to the main police station in Blagoveshchensk.

For example, the NGO report stated that on 11 December, at about 11.30pm, an OMON detachment entered a club in the village of Ilino-Poliana, Blagoveshchensk district, where a disco was ending. The OMON officers reportedly forced the young women to leave without collecting their coats, and forced all young men to stand against the wall with feet spread wide and hands held high against the wall. The OMON officers reportedly beat them on the legs, backs and other parts of the body with rubber truncheons and the butts of machine guns, and also kicked them, searched them and took money from them. According to reports, the local police officer for the area who accompanied the OMON officers on the raid separately entered private houses and detained at least four teenage boys without providing proper explanation. He drove them to the club and handed them over to the OMON where they joined the larger group of detainees.

After about 20 minutes, the OMON forced over 50 of the young men, with their hands behind their heads, to get into a bus waiting outside. The bus reportedly already contained other detainees. The OMON officers, who numbered 15, reportedly continued the ill-treatment in the bus, with officers beating detainees on the head and the body with truncheons and the butts of machine-guns. According to reports, a gas was released into the bus. Some young men were reportedly forced to lie on the floor of the bus and the OMON officers walked on them. The bus arrived at the main police station in Blagoveshchensk just before 1am on 12 December, where the OMON officers reportedly continued to beat the detainees in the basement.

At the main police station in Blagoveshchensk many individuals were held in the basement. They were reportedly made to face the wall with hands behind their head and feet spread wide (the so-called *rastiazhka* position) and were forbidden to make any noise. Those who tried to protest or change position were reportedly beaten by OMON officers with rubber truncheons. They were made to hold this increasingly painful position for lengthy periods of time, in some cases for several hours. Other individuals were held in the cells at the police station. One detainee held in the cells on 11 December reportedly attempted suicide, having been detained and reportedly beaten. OMON officers had reportedly detained him the previous day together with his wife; on that occasion they had both been beaten and had possessions stolen before being released.

Detainees were reportedly only released once they had had fingerprints taken, been photographed and been forced to sign papers, usually without having time to read what was written on the papers. Before being released, many individuals were reportedly asked if they would complain about the ill-treatment and if they answered yes, they were reportedly further beaten until they stated that they would not complain. Everyone had to make their own way home. Many walked home in temperatures of around minus 20 degrees centigrade, in some cases to their villages as far away as 20 or 30 km from the town of Blagoveshchensk.

According to NGOs, the majority of detainees received injuries of varying degrees. Typical injuries were contusions and haematomas to various parts of the body, head injuries and broken bones. Media reports state that some 100 people received medical treatment for their injuries, with a number of them being hospitalized. NGOs state that many of the injured decided not to seek medical assistance for their injuries and convalesced at home.

In the days immediately following the events, individuals who attempted to submit complaints to the Blagoveshchensk

district procuracy were reportedly refused permission to do so. The Republic of Bashkortostan procuracy also reportedly refused to lodge any complaints and told individuals to go back to the district procuracy. There were reports of threats and intimidation by law enforcement officials against those trying to seek redress for violations, including pressuring to change or withdraw witness statements.

Only on 29 December did the Republic of Bashkortostan procuracy open a criminal case under part 3a of Article 286 of the Criminal Code (exceeding official authority with the use or threat of the use of force). This was in relation to four individual police officers who are alleged to have carried out the illegal detentions and beatings.

**Yukos case (update to AI Index: EUR 01/005/2004)**

A rapporteur appointed in March by the Council of Europe's Committee on Legal Affairs and Human Rights released her analysis on the circumstances surrounding the arrest and prosecution of Mikhail Khodorkovskii, former head of the Yukos oil company, Platon Lebedev, a business partner and Aleksei Pichugin, a former security official for Yukos. There were allegations that the trials were politically motivated. The rapporteur pointed to serious procedural violations committed by different law enforcement agencies and questioned the fairness, impartiality and objectivity of the authorities. In particular, the rapporteur pointed to obstructions in the defendants' access to their defence lawyers; interference in the defence lawyers' work including seizure of documents; summons of lawyers for questioning on their clients' cases; alleged eavesdropping against defence lawyers; the closed nature of the court proceedings in the case of Aleksei Pichugin; the denial of access to the court of Platon Lebedev's lawyers during the hearing deciding on his pre-trial detention; the denial of bail, in particular for Mikhail Khordokovskii; allegations of ill-treatment of Aleksei Pichugin, and shortcomings of medical attention to Platon Lebedev and the refusal

of the prison authorities to allow an independent medical examination of Platon Lebedev.

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## SERBIA AND MONTENEGRO

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### Background

Serbia and Montenegro continued to operate in a loose State Union where most competencies remained under the control of the separate republics. The United Nations Interim Mission in Kosovo (UNMIK) continued to administer Kosovo, with the Special Representative of the UN Secretary-General (SRSG) holding executive powers. Elections were held in Kosovo in October. In November former Kosovo Liberation Army (KLA) commander and leading politician, Ramush Haradinaj, was questioned by prosecutors from the International Criminal Tribunal for the former Yugoslavia (Tribunal) in connection with alleged war crimes and crimes against humanity in Kosovo in 1999. He became Prime Minister in the Provisional Institutions of Self-Government on 17 November.

### War crimes

The trial of former President Slobodan Milošević, accused of responsibility for war crimes committed in Croatia, Bosnia and Herzegovina and Kosovo, continued before the Tribunal in the Hague.

The Serbian authorities continued to refuse to transfer Serbian Assistant Interior Minister (dismissed in March) and former Kosovo police chief Sreten Lukić, former Yugoslav army chief Nebojša Pavković, and former commander of Priština Corps Vladimir Lazarević, all indicted by the Tribunal for crimes against humanity and violating the laws or customs of war in Kosovo in 1999. Nebojša Pavković stated that he was willing to be tried in Serbia, as did similarly-indicted Former Chief of Public Security Department Vlastimir Đorđević

who was believed to be in Russia. On 13 July Goran Hadžić, former head of the Krajina Serbs in Croatia, fled his house in Novi Sad a few hours after a sealed indictment for him had been forwarded from the Tribunal to the Foreign Affairs Ministry, and before a warrant for his arrest was issued, giving rise to suspicions that he had been warned of the impending arrest.

In October another indictee, Ljubiša Beara, was transferred to the Hague - the sole transferral throughout the year. The authorities claimed he had surrendered voluntarily. However, the Tribunal stated that he had been arrested, and this only after they had informed the authorities of his exact whereabouts. Some 20 suspects indicted by the Tribunal were believed to remain at large in Serbia and Montenegro.

In November Tribunal President Theodor Meron reported to the UN General Assembly that apart from the case of Ljubiša Beara, Serbia and Montenegro had virtually not co-operated at all with the Tribunal throughout the year. Similarly Tribunal Prosecutor Carla Del Ponte reported to the UN Security Council that Serbia was not willing to arrest indictees, and that networks supporting persons accused of war crimes were so powerful there that they could interfere with judicial proceedings, including by intimidating witnesses, exerting political pressure on judges and prosecutors, or even by threatening the stability of the country. She reported that both in Serbia proper and in Kosovo [see below], aggressive nationalist rhetoric was being used in smear campaigns against the Tribunal and herself.

The trial continued before the special War Crimes Panel within the District Court of Belgrade of six people indicted by Serbia's special war crimes prosecutor in connection with the Ovčara massacre near Vukovar in Croatia in 1991. However, there were concerns about the apparent selective nature of the indictment in that there was no mention of the responsibility of former Yugoslav National Army (JNA) officers in the crime, in spite of the testimony of many witnesses indicating this.

On 27 September the Serbian Supreme Court annulled the 2003 convictions in the 'Sjeverin' abduction case. The court ruled that the trial proceedings had not made explicit the precise role played by each of the accused in the murders and sent the case back for retrial at the Belgrade District Court. Dragutin Dragičević (a Bosnian Serb) and Đorđe Šević had been sentenced to 20 and 15 years' imprisonment respectively while Bosnian Serbs Milan Lukić and Oliver Krsmanović received 20-year sentences in absentia. (Milan Lukić was also accused of leading the paramilitary group responsible for the hijacking of the Belgrade-Bar train at Štrpci in Bosnia and Herzegovina on 27 February 1993, and the abduction and subsequent murder of 20 civilian passengers, and is indicted by the Tribunal for other war crimes). All four were sentenced for the abduction and murder in October 1992 of 17 Muslims, 16 of whom were taken from a bus at Mioče near Sjeverin in Bosnia and Herzegovina.

On 23 December the Belgrade-based Humanitarian Law Center (HLC) reported on the alleged burning of corpses of Kosovo Albanian civilians in the furnaces of the Mačkatica factory in Surdulica on 16 and 24 May 1999. The HLC reported that the alleged incinerations were part of the large-scale operation - which also included the secret burial of hundreds of Kosovo Albanians in mass graves on the Serbian Ministry of the Interior's property at Batajnica and Petrovo Selo - by the Serbian authorities to conceal massive and grave human rights abuses committed by the security forces in Kosovo in 1998/1999. Following the publication of the HLC's allegations, members of the police and the Serbian state security implicated in the HLC report allegedly intimidated and threatened a number of people in Surdulica, Vladičin Han and Vranje so as to prevent them from giving evidence about this matter.

#### **Possible extra-judicial executions**

On 5 October conscript sentries Dražen Milovanović and Dragan Jakovljević died in a shooting at a Belgrade military complex.

The military claimed that one had shot the other and then committed suicide but other reports alleged that both men had been murdered by a third party. In November a military commission of inquiry into the deaths reaffirmed that they had died after shooting at each other after a quarrel. However, a non-military State Commission of Inquiry set up by President Marović to investigate the deaths announced in December that a third party was definitely involved. The contradictions between the findings of the military and civilian investigations remained unresolved by the end of the year.

### **Trials and investigations into past political murders**

The trial of Radomir Marković, former head of Serbian state security, and other serving or former security officials continued. They were accused of involvement in an attempt in 1999, in which four people were murdered, to kill current Foreign Affairs Minister Vuk Drašković, at the time a leading opposition politician, as well as involvement in the murder of former Serbian President Ivan Stambolić in August 2000. The trial of those accused of involvement in the murder in March 2003 of Serbian Prime Minister Zoran Đinđić continued.

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

There appeared to be a drop in the number of alleged instances of police torture or ill-treatment in the reporting period. However, allegations continued and investigations into previous allegations of police torture and ill-treatment remained seriously flawed. In July, Serbia and Montenegro appeared before the UN Human Rights Committee. In its Concluding Observations, the Committee expressed concerns about continued allegations of torture and ill-treatment and in particular, about allegations made in the context of "Operation Sabre" – the widespread clamp-down on organized crime following the assassination of Zoran Đinđić in 2003. During the Committee session the delegation from Serbia and Montenegro

referred specifically to investigations which they stated had been opened into the 16 cases featured by AI in its September 2003 report (see *Serbia and Montenegro: Alleged torture during "Operation Sabre"*, AI Index: EUR 70/002/2004) and implied that these 16 cases were the only recorded incidents of torture and ill-treatment that took place during "Operation Sabre": however, this impression was corrected in responses to questions from the Committee members, and the delegation admitted that some further complaints had been received. Despite claims by the authorities to the contrary, no information was made available on the investigations into the allegations, and in a number of trials testimony allegedly obtained under torture was admitted in court. No proceedings were initiated against police officers reasonably suspected of using torture during "Operation Sabre".

On 20 November the UN Committee against Torture (CAT) found Serbia and Montenegro in violation of Articles 1, 12, 13 and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Their decision was made in the case of Dragan Dimitrijević, a Romani man, who – the Committee found – had been subjected to police brutality amounting to torture after being arrested at his home in Kragujevac on 27 October 1999. The Committee also found Serbia and Montenegro in violation of their obligation to carry out a prompt and impartial investigation into the complaint made to the authorities in January 2000 by Dragan Dimitrijević. Having received no response to his complaint by December 2001, HLC and the European Roma Rights Center filed an appeal with the CAT on his behalf. The CAT also found that, in failing to investigate his complaint, the authorities had denied Dragan Dimitrijević the opportunity to file a civil case for compensation. The Committee requested that Serbia and Montenegro open a proper investigation into Dragan Dimitrijević's complaint and inform the Committee of progress within 90 days.

### **Attacks on minorities**

Attacks and racist actions directed against minorities in the multi-ethnic Vojvodina region by non-state actors continued. There were allegations that the police were not acting with due diligence, especially in connection with the attacks on ethnic Hungarians. These allegations were denied by the authorities who claimed that minor incidents, many of which they claimed were not ethnically motivated, were being politicized. On 16 September the European Parliament adopted a resolution pertaining to the inter-ethnic crisis in Vojvodina, which stated that any escalation in inter-ethnic tension would pose a great danger to regional stability, and resolved to set up an EU parliamentary delegation to investigate the incidents.

**Violence against women and girls – domestic violence and the trafficking of women and girls for forced prostitution**

Domestic violence remained widespread with the majority of victims being women subjected to violence from male partners or former partners. Although there was a rise in the number of proceedings against perpetrators in Serbia since specific criminal legislation was adopted in 2002, the majority of domestic violence cases were not classified as falling within this legislation and were treated as misdemeanours. This was largely due to a narrow definition in the family law of who constituted a "family member", restricting it to members of the nuclear family and excluding unmarried partners, divorced spouses and others emotionally involved outside of the nuclear family.

Serbia and Montenegro remained a source, transit and destination country for women and girls trafficked for forced prostitution.

In November the Montenegrin government appointed a commission to investigate the actions of the police and the judicial authorities in the case of the Moldovan woman known as S. Č., who is believed to have been trafficked into Montenegro and forcibly made to work as prostitute in the

period from 1999 to November 2002. She had been severely tortured, and alleged that Montenegrin politicians, judges, police and civil servants had tortured and raped her and other East European women who like her had been trafficked and held as sex-slaves. The findings of the commission failed to address the issues adequately, portrayed S. Č. as a criminal rather than as a victim of serious human rights violations, made derogatory references to her character in a completely unacceptable manner, and gave rise again to suspicions of an attempt to cover up apparent official complicity in the trafficking of women and girls for forced prostitution in Montenegro.

**Kosovo (Kosova)**

*War crimes*

Arrests, trials and re-trials for war crimes and crimes against humanity continued involving both Kosovo Albanians and Serbs. Those involving ex-members of the KLA continued to provoke mass protests by tens of thousands of Kosovo Albanians, who saw the detainees as 'freedom fighters'.

In October the Tribunal prosecutors stated that prosecution witnesses in the case of ex-KLA members Fatmir Limaj, Isak Musliu and Haradinaj Bala - whose trial on charges of crimes against humanity and violations of the laws or customs of war in Kosovo in 1998 began at the Tribunal in November - were subjected to organized and systematic intimidation. Beqa Beqaj, a relative of Isak Musliu, was indicted by the Tribunal for contempt for attempting to threaten, intimidate, bribe or otherwise interfere with witnesses in the case - the only such indictment issued by the Tribunal to date. Begë Beqaj was arrested in November and transferred to the Hague.

*Trials following the violence of 17 - 19 March 2004*

By October more than 100 trials resulting from the widespread inter-ethnic March violence (see *Serbia and Montenegro (Kosovo/Kosova): The March Violence:*

*KFOR and UNMIK's failure to protect the rights of the minority communities*, AI Index: EUR 70/016/2004) had been completed. 83 people had been convicted, with sentences including fines and imprisonment up to five years, and over 200 cases were still in process. However, UNMIK did not give details of any cases involving alleged Kosovo Police Service (KPS) complicity, despite serious allegations of such complicity in some places.

Apart from the investigations into the March events, UNMIK continued to fail to make any significant progress in investigating and bringing to justice those responsible for many ethnically motivated murders and other violent attacks which occurred since 1999.

*Trafficking of women and girls for forced prostitution*

Trafficking of women and girls for forced prostitution remained a serious concern (see *Kosovo (Serbia and Montenegro): 'Does that mean I have rights?': Protecting the human rights of women and girls trafficked for forced prostitution in Kosovo*, AI Index: EUR 70/010/2004). Arrests and prosecutions of traffickers remained relatively low and measures to ensure witness protection remained to be implemented. The Administrative Directive, implementing provisions of the Trafficking Regulation and ensuring that trafficked women and girls receive access to support and protection, redress and reparation, remained – after over three years' discussion – to be agreed and implemented as did the Action Plan on Trafficking, originally due to be completed by the end of July.

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## SLOVAKIA

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### Ill-treatment of Roma

According to the League of Human Rights Advocates (LHRA), a local human rights organization, on 3 July, in Záhorská Ves,

Stefan and Olga Šarkozi, who are Roma and whose house had been burned down by a mob in December 2003, were preparing to build a small wooden hut on their land when the local mayor reportedly ordered them to leave the village immediately. The mayor later returned with four security guards who carried baseball bats and assaulted Stefan Šarkozi, members of his family and Marian Rehak. In the evening, the Šarkozis took refuge under a bridge. The mayor reportedly arrived in the night with security guards and again assaulted the family. As a result Stefan Šarkozi sustained a broken arm, his daughter Olga suffered injuries to the legs, his son Jozef injuries to the face and chest and his youngest daughter Adriana was thrown into river. The incidents were reported to the Malacky District Police Department and to the Ministry of the Interior in Bratislava, which reportedly initiated an investigation. In the evening of 19 August when the Šarkozi family attempted to place on their land a mobile house, provided by LHRA, the mayor reportedly organised a demonstration by villagers who wanted to expel the Šarkozi family from Záhorská Ves. The villagers prevented the placement of the mobile home and the mayor reportedly called Dr Columbus Igboanusi, LHRA director and a Nigerian national with permanent residence in Slovakia, a "nigger from Somalia".

A shack which the Šarkozis subsequently built on the land which they refused to sell was reportedly demolished on 29 September by the police and private security guards. The family's meagre property and belongings were destroyed and the family was forced to flee to the capital, Bratislava. Earlier, on 24 September, the mayor of Záhorská Ves had filed a criminal complaint against the Šarkozis for "using abusive language against a public official".

### Committee on the Elimination of Racial Discrimination

On 18 August, the UN Committee on the Elimination of Racial Discrimination (CERD),



following a review of Slovakia's fourth and fifth periodic reports, adopted its concluding observations. While CERD welcomed the entry into force of the Anti-Discrimination Law on 1 July, it remained concerned about the occurrence of racially motivated crimes and incidents in the country. CERD encouraged the Slovak authorities "to continue monitoring all tendencies which may give rise to racist and xenophobic behaviour and to combat the negative consequences of such tendencies. The Committee also recommends the State party to intensify its efforts as to ensure to everyone within its jurisdiction effective protection and remedies against any act of racial discrimination, as well as the right to seek just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination. In this respect, the State party should ensure that victims of racist crimes are afforded wider access to free legal assistance." [underlined as in the original, in this and quotations below]

Noting that Slovak authorities had made some efforts in respect of the training of law-enforcement officials, CERD nevertheless expressed "concern about allegations of police discriminatory behaviour towards members of minority groups, particularly Roma, including acts of ill-treatment and violence". CERD called on Slovakia to set up an independent monitoring mechanism to investigate allegations of police abuse.

CERD also expressed concern about the segregation of Roma children in special schools, including special remedial classes for children with mental disabilities; discrimination against Roma in the field of employment as well as the very high rate of unemployment among members of the Roma community; and the isolation of the Roma community in ghetto-like neighbourhoods and their critical situation in respect of housing conditions, especially in the eastern part of the country, where the Roma community is mostly concentrated. Furthermore, CERD was alarmed by the critical health situation of some Roma communities, which is largely a

consequence of their poor and inadequate living conditions.

With regard to allegations of illegal sterilization of Romani women<sup>15</sup>, CERD welcomed assurances given by the Slovak delegation that a draft Law on healthcare would address shortcomings in the system by adequately defining free and informed consent for medical acts as well as by guaranteeing patients' access to medical files. CERD recommended that the Slovak authorities "ensure that just and effective remedies, including compensation and apology, are granted to the victims".

### **Cage beds in psychiatric hospitals – inhuman and degrading treatment**

A television programme filmed in September by the BBC, a UK broadcasting company, documented the use of cage beds as a method of restraining patients in psychiatric hospitals in Slovakia. Cage beds - beds which are fitted with a metal-barred construction above the mattress, or a metal frame covered with netting, designed to enclose a person within their confines - are currently used in Slovak psychiatric facilities under the control of the Ministry of Health. A prohibition on the use of cage beds in social care homes for children and adults with mental disabilities under the authority of the Ministry of Labour and Social Affairs was adopted by the Slovak Parliament in January 2004. The UN Human Rights Committee commented on the use of cage beds in August 2003 during its examination of Slovakia, recommending that their use should immediately cease<sup>16</sup>. A similar recommendation had been issued by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment after a visit to Okoč home for disabled children and adults and Veľký Biel home for disabled women in October 2000.

<sup>15</sup> See *Slovakia: Failed investigation into allegations of illegal sterilization of Romani women*, (AI Index: EUR 72/005/2003).

<sup>16</sup> See CCPR/CO/78/SVK

The BBC programme in one scene showed eight patients held in cage beds in Sokolovce hospital. One of them had been restrained in this manner for about five weeks and the staff were unable to explain why the patient had sores and bruises. In the Bratislava University Hospital, in a ward for elderly patients suffering from dementia, the BBC filmed a cage bed fitted with leather straps. Dr Pavel Cernak, chief advisor for psychiatric treatment of the Ministry of Health, interviewed in the programme, stated: "In principle I'm convinced that cage beds are necessary in order to protect the patients themselves, other patients and the staff...Unfortunately there are situations when medication is just not enough. This is when we need to use a form of restraint. We think that from the medical, human and social point of view these beds are safest."

A former patient, interviewed in the programme, described what happened when she sought help at Dr Cernak's hospital after a difficult Caesarean section left her feeling depressed. "They wanted to inject me with medication but I declined. They were going to force me so I threw myself on the floor...they jabbed me with a syringe and put me in a cage bed". She didn't know how long she was sedated but when she woke, she said, the nurses wouldn't let her out. "I was shaking the cage bed and shouting that I wanted to go to the toilet but they refused and as nobody came I ended up urinating in the bed like an animal." Caged beds, she alleged were for the convenience of staff who want to sleep on the night shift and not for the benefit of patients.

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## SPAIN

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### **European Court condemns Spain for failure to hold thorough and effective inquiry into torture allegations**

In November the European Court of Human Rights issued a judgment on the case of 15 Catalans who claimed they had been

physically and mentally tortured while held incommunicado on the eve of the Olympic Games in Barcelona in 1992. Concerning the allegations of torture and ill-treatment, the court held that there had been no violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms. However, there had been a violation of Article 3 on account of the failure to hold an effective official investigation into the allegations.

In the view of the Court the task in assessing whether torture or ill-treatment had taken place had not been facilitated by the "very long period" – 12 years – which had elapsed since the events took place. It noted a contrast between the "exhaustive and precise" account of the treatment to which the applicants claimed they had been subjected and the "far sketchier" statements that had been taken by forensic doctors. The forensic reports did not refer to serious ill-treatment and the Court was, therefore, unable to make any finding on the matter.

The Court was concerned by the way the allegations of torture and ill-treatment had been dealt with by the Spanish courts. It was concerned that, when concluding that no torture or ill-treatment had taken place, the Spanish courts had "relied solely on the reports of the forensic doctors". The judicial investigations had not, in the view of the Court, been "sufficiently thorough and effective for the purposes of Article 3". It was "unfortunate" that the authorities had not taken statements from the arresting officers or custody officers. "Moreover", the judgment added, "the investigating judge had turned down the applicants' request for evidence from proceedings in another case, including statements by police officers, to be added to the case file. Nor did it appear from the file that the investigating judge had taken statements from the applicants. Ultimately, the Court could not but note that the judicial authorities had dismissed all the applicants' requests for evidence to be obtained, thereby denying them a

reasonable opportunity to establish the matters of which they complained".<sup>17</sup>

The applicants were all suspected of belonging to a Catalan independence movement. They complained that, following arrest in 1992, they had received blows to the head and face when blindfolded and were deprived of sleep and food. Some claimed that plastic bags had been placed over their heads to instil a sense of suffocation ("la bolsa"). A Madrid judge investigated the complaints but concluded, on the basis of the forensic doctors' evidence, that there was no proof of torture or ill-treatment. The applicants renewed their complaint at their trial in the National Court (Audiencia Nacional). In July 1995 the court convicted six of the applicants for offences relating to acts of "terrorism". It declined to examine the torture and ill-treatment allegations at the hearing and further judicial investigations failed to find evidence of torture and ill-treatment.

In its submission to the UN Committee against Torture, made in 2002, AI expressed concern at the poor standard of forensic reports.<sup>18</sup> The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has also repeatedly urged the Spanish authorities to improve the quality of forensic reports when recording the results of their medical examinations. In a report published in 2003 the CPT also recommended that persons held incommunicado be allowed access to a second medical examination by a doctor freely chosen by the detained person, as an "additional safeguard against ill-treatment".<sup>19</sup>

In 2004 AI continued to receive allegations of torture and ill-treatment by persons held

incommunicado, including allegations of torture and ill-treatment by a number of persons arrested in Bilbao by the Civil Guard between 2 and 12 November. The majority were released after the maximum period of incommunicado detention had expired. AI was also continuing to follow the case of the young Catalan, Jordi Vilaseca Cantacorps, who alleged he was tortured while held incommunicado under the anti-terrorist legislation by officers of the Catalan autonomous police, the Mossos d'Esquadra, and the National Police in 2003 (AI Index: EUR 01/005/2004).

### **Government fails to respond to Human Rights Committee rulings**

On 13 July the secretariat of the UN Human Rights Committee replied to a request for information from a Spanish lawyer regarding the issues of double jurisdiction (*doble instancia penal*) and continuing lengthy delays in judicial proceedings. According to the Committee, the Spanish government did not respond within the required time limit to the respective rulings which the Committee had issued in October 2002, September 2003 and February 2004. In 2003 the Committee had examined the case of Manuel Sineiro Fernández, who had been sentenced by the National Court to 15 years' imprisonment for drugs trafficking. The Supreme Court had denied his application for a judicial review (*casación*), stating that it was not part of its functions to reconsider the evidence on which the court of first instance had based its conviction. (There is no appeal, except on points of law, from the National Court, which is a special division of the Supreme Court acting as the court of first instance on serious matters such as "terrorism", fraud, major drugs trials, etc., and also in cases involving members of parliament).

According to the Committee, the complainant was denied the full review of his conviction and sentence and, on that basis, there had been a violation of Article 14(5) of the International Covenant on Civil and Political Rights. The Committee noted that the complainant was entitled to an

<sup>17</sup> European Court of Human Rights, Chamber Judgment – *Martínez Sala and others v. Spain*, 538a(2004), 2 November 2004.

<sup>18</sup> *Spain: A Briefing for the UN Committee against Torture: Update* (AI Index: EUR 41/014/2002).

<sup>19</sup> Report to the Spanish Government on the visit to Spain carried out by the CPT from 22 to 26 July 2001, CPT/Inf (2003) 22.

effective remedy and that the conviction must be reviewed in accordance with Article 14(5)<sup>20</sup>. The Committee also condemned Spain for the length of judicial proceedings – in one case of 11 years, in another of five.

### **Excessive use of force and ill-treatment by police officers**

#### *Ill-treatment of Moroccans*

In July an investigating judge attached to the court of Santa Coloma de Gramanet (Barcelona) opened an inquiry into allegations that six Moroccans were ill-treated on arrest and in police custody in Badalona following the fatal shooting of a Moroccan, Farid Bendaomed, on 27 May. Up to 11 members of the Catalan autonomous police, the Mossos d'Esquadra, were placed under investigation for acts of ill-treatment (*lesiones*), illegal detention and harassment. According to reports, the judge was investigating whether police officers had ill-treated five Moroccan detainees when they were being transferred to the police station of Badalona, and during police custody at the station, and a sixth Moroccan, who was subsequently arrested at the police station. The judge was also investigating whether the ill-treatment had been racially motivated. The five Moroccans, whose names were given as Mohamed Blehaji, Mohamed Jelloul, Mohamed Ettalhouai, Said Lechkar and Aloud Hadjamar, were arrested in connection with alleged drugs-related offences. Said Lechkar, who suffers from tuberculosis, was allegedly handcuffed and forced to lie naked on the floor for several hours without any covering. An officer allegedly placed a foot against his neck, threatened him and hit him with a torch or flashlight when he tried to get up. The sixth Moroccan, Frikki Lechkar, was allegedly beaten when he went to the police station to inquire after the situation of his companions.

<sup>20</sup> Communication No. 1007/2001 (CCPR/C/78/D/1007/2001, 19 September 2003).

A separate judicial inquiry was proceeding into the fatal shooting of Farid Bendaomed by a sergeant of the Mossos d'Esquadra in connection with the same anti-drugs operation. The Mossos d'Esquadra officers reportedly claimed that the fatal shot was fired accidentally during a struggle. However, according to the Moroccan witnesses, Farid Bendaomed was shot in the back of the neck while attempting to escape arrest, an allegation which was subsequently reportedly corroborated by a forensic report submitted to the inquiry. Delays in the judicial investigation have been partly attributed to a change of judge. By the end of the period under review, the new judge had not yet interviewed the sergeant who fired the fatal shot, or the other police officers, over six months after the incidents occurred.

#### *Mari Bernasar Triano*

Mari Bernasar Triano, a 39-year-old woman of foreign origin, was arrested and detained by National Police officers at Torremolinos (Málaga) on 16 August in connection with "an attack on a public official" (*atentado contra la autoridad*). The arrest followed a dispute in the Picnic bar in Torremolinos, in which the officers who intervened reportedly asked her for identity papers which she said she had left at home. The officers alleged that she had violently resisted arrest and insulted them. She was sentenced the next day to an eight-month prison term and awarded conditional liberty for two years.

In a complaint lodged on 17 August with the investigating judge of Torremolinos, Mari Bernasar alleged that, while being held in the police station cells, she was beaten and subjected to cruel, inhuman and degrading treatment. Mari Bernasar alleged that she had been repeatedly insulted, and that when she asked for water an officer brought her urine. She claimed that when she protested the officer took her out of the cell and beat her with a baton, and she required subsequent medical treatment. She further alleged that the ill-treatment had caused her anxiety and psychological stress, as well as problems at her place of

work. Medical reports and a sequence of photographs sent to AI appear to corroborate Mari Bernasar's allegations and refer to or show extensive bruising on the buttocks and marks on the knees.

The complaint lodged by Mari Bernasar is ongoing.

### **Unaccompanied foreign children**

In November the Attorney General's office (Fiscalía General del Estado) issued new guidelines (*instrucción*) to juvenile judges (*fiscales de menores*), according to which unaccompanied foreign children should be transferred to reception centres (*centros de acogida*) in Spain and not returned automatically to their countries of origin. In October 2003 the then Attorney General issued an order that children of 16 or over should be returned as a matter of course – an order criticized by AI, among other organizations. However, by the end of 2003 the practice of "repatriating" unaccompanied foreign children of 16 or over without considering their individual circumstances or interests had become the norm, although the Spanish authorities have not released information about the numbers involved.

Since 2001 AI has urged the Spanish authorities to protect the rights of unaccompanied foreign children found on Spanish territory. AI reminded the authorities of their obligation to protect and care for unaccompanied foreign minors in accordance with the UN Convention on the Rights of the Child<sup>21</sup>.

### **Ill-treatment of children**

In December a Madrid Court (Audiencia Provincial de Madrid) acquitted five employees at the Renasco children's detention centre accused of ill-treating a 16-year-old minor, "Younes" in 2002. Two care workers (*educadores*) and three

security guards had been accused of beating him repeatedly and causing him injuries which were estimated to take seven days to heal. The child was reportedly injured in the left eye, head and neck and on the back and right arm. In a controversial judgment, the court found that "Younes" had indeed been beaten by the centre employees, but that the violence used had been "necessary" in view of the aggressive and violent attitude of the minor.

In October AI received allegations that two minors had been ill-treated in police custody in Madrid after attending a gathering in the Plaza de España. The parents of Enrique Rincón Alguacil and the parents of Pablo Armando Castro complained that their sons had been kicked and beaten with batons. The parents claimed that they had not been informed of their children's detention while the children were in police custody.

### **Prison ill-treatment**

There were reports of torture or ill-treatment in various prisons, which were suffering from extreme overcrowding. In September a prosecutor attached to the High Court of the Canary Islands warned the Attorney General's office and the president of the government of the Canary Islands (Canarias) that the situation in prisons such as Salto del Negro (Gran Canaria) and Tahíche (Lanzarote) was "urgent" (*"acuciante"*).

Concern was also expressed about the situation in the prison of Monterroso (Lugo). In September the head prosecutor attached to the Provincial Court of Lugo concluded that, in February 2002, a chief doctor and two prison officers had assaulted a Moroccan prisoner, Magdare Rabay, being held at Monterroso. The prosecutor found that the attack, which occurred after Magdare Rabay had threatened to injure himself if he was not given different medication, was racially motivated. Two guards reportedly beat him until he briefly lost consciousness and the doctor also reportedly ill-treated him. The prosecutor claimed that Magdare Rabay had also been

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<sup>21</sup> See, for example, AI Index: EUR 41/003/2001: "*Spain: 'Street children' have rights too*".

urinated on, racially abused and called a "terrorist". In his judicial complaint, lodged with an investigating judge in 1 July 2004, the prosecutor requested that racism be taken into account in the charges against the accused as an aggravating factor under Article 22.4 of the Spanish Penal Code.

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## SWITZERLAND

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### Asylum

Government proposals for further changes to the asylum law were under parliamentary discussion. Changes to the asylum law which had come into force in April had, among other things, reduced the period within which many asylum-seekers could appeal against the rejection of their initial asylum applications from 30 to five days. The amendment affected those whose initial applications were rejected automatically, without individual examination (*décision de non-entrée en matière*), on grounds that the authorities categorized their country of origin as safe for return. AI and other organizations working for refugees' human rights were concerned that the amendment did not allow rejected asylum-seekers sufficient time to access appropriate legal advice and lodge an appeal.

In July the Office of the UN High Commissioner for Refugees suggested that some of the further changes being proposed were "focused on restricting access to the asylum procedure and to international protection, and risked running counter to the spirit and the letter of the 1951 Refugee Convention." It was particularly concerned that proposed restrictions on access to normal asylum procedures for people unable to submit valid travel or identity documents within 48 hours could lead to breaches of the Refugee Convention. It also expressed reservations on the proposal to grant humanitarian status only to people able to present certain identity documents and said it would prevent deserving asylum-seekers

(including people fleeing war or generalized violence), who do not fall under the strict definition of the Refugee Convention, from receiving adequate international protection. It said the proposal to share data with the asylum-seeker's country of origin after a first instance decision, rather than after the completion of the asylum procedure, including appeals, increased the possibility of the asylum-seeker or his/her relatives being put at risk. In public statements made during an official visit to Switzerland in December the Council of Europe's Commissioner for Human Rights also expressed concern that changes to asylum procedures were putting the rights of asylum-seekers at risk.

### Police racism, ill-treatment and use of excessive force

There were further allegations of ill-treatment, use of excessive force and racist abuse by police officers, on the streets, during identity checks and in police stations. Police accountability mechanisms remained unsatisfactory and such abuses were often committed with impunity. Many detainees were denied some of the fundamental safeguards against ill-treatment in police custody, such as the right to have prompt access to a lawyer and to have relatives informed of their arrest. More cantonal police forces acquired tasers (dart-firing, high-voltage stun guns) and AI continued to raise concerns about the health risks associated with such weapons, as well as their potential for abuse.

### Updated case information

\*In September the Geneva Attorney General found a Cameroonian woman guilty of calumny against the police and sentenced her to six months' suspended imprisonment. The police had lodged a complaint against her after her own complaint accusing them of physically and racially abusing her and strip-searching her in the presence of male officers in 2002 had been dismissed by the Attorney General and by a Geneva court (see AI Index: EUR 01/016/2003). Her lawyer challenged the

September verdict, repeating that her original complaint had been dismissed without her ever being questioned and without any attempt to obtain statements from witnesses supporting her version of events.

\* In December a Geneva court considered Denise Chervet's appeal against a magistrate's decision not to indict the police officer who fired a kinetic impact weapon at her, causing her permanent facial injury, following a demonstration in Geneva in March 2003, and called for him to be charged with causing serious bodily harm (see AI Index: EUR 01/005/2004). The court endorsed the magistrate's decision but indicated that certain aspects of the shooting incident still needed clarification. A decision by the magistrate as to whether or not to pursue further investigation was still awaited at the end of December. The officer who authorized the use of the weapon was also awaiting trial on a charge of causing bodily harm through negligence.

\* There were further developments in connection with incidents which occurred at the Aubonne bridge, on the Lausanne-Geneva motorway, during the G8 summit held in Evian, in neighbouring France in June 2003, and the surrounding demonstrations and relevant cross-cantonal policing operations in Switzerland (see AI Index: EUR 01/005/2004).

Martin Shaw suffered multiple fractures as result of falling some 20 metres from the bridge on 1 June 2003 after a police officer cut the rope from which he was hanging. Martin Shaw and other protestors had undertaken the action in order to block an official delegation travelling to the G8 summit. They stretched a rope across and a metre above the road and warned approaching motorists by stringing a banner across the road on the approach to the bridge. Martin Shaw and a female protestor, Gesine Wenzel, were hanging on either side of the motorway, at the ends of the rope. The police maintained that the rope was cut accidentally. In June 2004, a court in Nyon found Martin Shaw, Gesine Wenzel and Olivier L, a Swiss protestor,

guilty of blocking traffic and thereby endangering the lives of drivers but exempted Martin Shaw from punishment on account of the permanent physical injuries he had sustained.

Following the cutting of the rope and its consequences, a criminal investigation was opened into the incident de officio and in the light of complaints lodged by Martine Shaw and Gesine Wenzel. Their criminal complaints accused the police officer (from the Shaffhausen cantonal police force) who had cut the rope, a second officer (from the Vaud cantonal police force), who had been the second member of their patrol, and persons unknown of causing serious bodily harm through negligence, endangering the life of another person, and failing to provide assistance. In October the relevant investigating magistrate in the Canton of Vaud announced the conclusions of his investigation, ruling that no charges should be pursued against any of the police officers concerned.

The magistrate considered that the demonstrators had failed to take a series of relevant precautions in carrying out their action, had created "chaos" at the moment of the police intervention and that their omissions and actions outweighed the actions of the police when it came to identifying the causes of the accident. He stated that the "temerity" of the demonstrations should be recognized as "the preponderant cause" of the "regrettable accident" suffered by Martin Shaw. Gesine Wenzel and Martin Shaw strongly rejected the magistrate's conclusions and in November entered an appeal against his ruling, asking the court to overturn it, to invite the magistrate to indict the two named police officers on charges of bodily harm and endangering the life of another person, to indict the Vaud police officer on a charge of giving false evidence and to invite the magistrate also to take a series of further investigative steps to establish the facts.

**Use of force during deportations under police escort**

In November the government presented, for public consultation, a draft federal law regulating the use of force by police during deportations and during the transport of detainees ordered by a federal authority. The text largely reflected cross-cantonal guidelines for police on restraint methods to be used during forcible deportation operations, endorsed by the Conference of Directors of the Cantonal Justice and Police Departments in 2002. The Conference had requested legislation to regulate police restraint methods at the federal level (see AI Index: EUR 01/007/2002). AI welcomed the text insofar as it aimed to make a number of essential safeguards for deportees legally binding, and viewed as particularly positive the banning of any police restraint methods restricting breathing, in view of recent deaths attributable to such methods. However, AI was concerned about certain aspects, in particular a provision allowing the use of electro-shock weapons, including tasers. In December the Council of Europe's Commissioner for Human Rights also expressed concern about the use of tasers in the context of forcible deportations.

*Findings of the Council of Europe Committee for the Prevention of Torture*

In December the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published the findings of a visit carried out in October 2003, principally to assess the implementation of measures it had previously recommended concerning procedures and restraint methods applied in the context of forcible deportation operations from Zurich-Kloten Airport. The CPT also reviewed the treatment of foreign nationals detained in the airport's international transit zone and Airport Prison No 2 pending deportation.

The CPT noted "the considerable work" carried out by the authorities to implement its past recommendations. Nevertheless, it

said it had gathered a number of allegations, mainly of racist insults, threats and occasional physical ill-treatment during body searches by police officers responsible for checking passports at the border. According to these allegations, such treatment was aimed at persuading foreign nationals not to enter Swiss territory and return voluntarily to their country of origin, or not to lodge an asylum request in Switzerland. The CPT said that the most "worrying" allegations concerned physical violence inflicted in retaliation for aborted deportation operations. Reportedly, police officers inflicted blows in police vehicles, during transfers back to airport buildings, or in police offices. The CPT pointed out that the majority of such allegations dated back to incidents occurring several weeks before its visit and, consequently, the marks which such blows might have left would probably have disappeared in the interval. It also pointed out that the registers and medical files which it inspected at Prison No 2 were usually very summary. The CPT said the allegations could not be dismissed as being without foundation, in view of the number and consistency of allegations made independently of one another.

It formulated a number of recommendations to address such concerns, emphasizing, amongst other things, the need to remind police officers that allegations of ill-treatment would be properly investigated and, if proven, severely sanctioned; the importance of systematically offering a medical examination, on return to detention, to every foreigner following an aborted deportation operation and of integration into the general police training programme of information concerning the risk of positional asphyxia during the physical restraint of recalcitrant people.

Upon the report's publication, the Swiss authorities stated that they had already taken a number of steps to implement these and other recommendations made by the CPT.



The CPT reiterated the concern it had expressed following its 2001 visit to the airport, that foreign nationals, including asylum-seekers, detained but able to circulate within the transit zone of the airport, were not getting access to exercise in the fresh air, even during prolonged stays. Although the CPT was informed by the authorities that, in the event of prolonged detention, the individuals had the right to a walk in the fresh air every three days, on specific request, it found that the foreigners concerned were not informed of this right. It recommended that foreigners detained in the zone for a prolonged period should have access to at least one hour's exercise in the fresh air daily and be duly informed of this possibility. The authorities subsequently indicated that this recommendation would be implemented from the start of 2005. As in 2001, it also expressed concerns about inadequate medical attention for those held in the transit zone and called on the authorities to take prompt steps to ensure that all those detained there receive a medical examination, if possible, on the first day as their detention and that a nurse regularly visit their detention facilities. The CPT found that people held in the transit zone were also still encountering difficulties in receiving visitors and it reiterated its previous recommendation that steps should be taken to allow them to receive visits, including from representatives of non-governmental organizations (NGOs).

### **Violence against women**

In November the NGO, Solidarité femmes de Suisse et du Liechtenstein reported that 834 women, accompanied by over 800 children, had sought protection against domestic violence in refuge centre during 2003 but that women and children were regularly turned away because of a lack of available places. It said that there were only some 300 places available while a minimum of 700 was needed. It also called for increased financial contributions by the authorities towards the maintenance of such shelters.

The results of a study into violence against women in Switzerland, carried out by Lausanne University's School of Criminal Sciences, were published in December. After asking 1,975 women between the ages of 18 and 70 about their experiences, the authors found that more than a quarter said they had been the victim of sexual violence and one in five said they had suffered other physical and/or verbal abuse. The study also found that 75 per cent of physical attacks on women were carried out by unknown assailants. Partners, and in particular ex-partners, were responsible for the remaining 25 per cent of incidents.

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## **TAJKISTAN**

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

AI continued to receive reports of torture and ill-treatment by police in the period under review. In a large majority of cases there were allegedly no thorough and impartial investigations conducted and the perpetrators enjoyed impunity.

#### *Perpetrators of ill-treatment in Nurek police station go unpunished (update to AI Index: EUR 01/005/2004)*

Despite substantial evidence that Vladimir Vasilchikov, Elena Dudenkova and her husband Viktor Dudenkov were ill-treated by police in June, the investigation into their complaints was closed in the period under review. A senior official of Khatlon regional procuracy stated in a letter to Vladimir Vasilchikov and Viktor Dudenkov dated 5 August that the procuracy had found "no signs of a crime" in the activities of the police. In a letter received on 28 October the General Procuracy confirmed the decision of the regional procuracy.

Vladimir Vasilchikov and Viktor Dudenkov, members of the Awakening Baptist Church in the town of Nurek, were reportedly beaten and intimidated by police at the local Department of Internal Affairs between 16 and 23 June. Viktor Dudenkov's

wife was also said to have been insulted, forced to stand up for several hours and denied food and drink during the same period. The three were summoned for investigations into the case of Vladimir Vasilchikov's mother Mariya Vasilchikova, who was last seen in June 2002. While no formal charges were brought, police accused the men of having killed her. The two men consistently maintained their innocence and alleged they were pressurized into signing "confessions". Following complaints by both men to the General Procuracy, they were examined by doctors at the Republican Centre of Forensic Medicine in Dushanbe. On 25 June the experts concluded that both men suffered from concussion and head injury.

#### **Moratorium on death sentences and executions**

On 8 July the Majlisi Milli (upper house of parliament) endorsed the law "on the suspension of the application of the death penalty" and it was signed into force by the President on 15 July. In line with the law no new death sentences were to be handed down and the articles in the Criminal Code that previously carried the death penalty were made punishable by 25 years' imprisonment. In practice the moratorium had been in force since 30 April, when President Imomali Rakhmonov announced at the joint session of both chambers of the Tajik parliament that a moratorium would be introduced in Tajikistan in due course, stating that "[m]an, his rights and freedom are great and inviolable values, and the right to life has a special place among them. In fact, the right to life is natural, and nobody has the right to deprive any other person of this right."

On 30 November the Majlisi Namoyandagon (lower house of parliament) voted in favour of a draft law revising the punishment of five articles of the Criminal Code that had been punishable by death before the moratorium came into force to life imprisonment. The articles were: "premeditated, aggravated murder", "rape with aggravating circumstances",

"terrorism", "genocide", and "biocide". The law had not come into force by the end of the year.

Relatives of those executed before the moratorium came into force still had no right to know the location of the graves. 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". As a result, relatives wishing to visit the graves continued to be subjected to cruel and inhuman treatment.

#### *UN Human Rights Committee ruling on death penalty cases*

The UN Human Rights Committee ruled on 20 and 25 August respectively that serious violations of Tajikistan's obligations under the International Covenant on Civil and Political Rights had occurred in the cases of Gaibullozhon Saidov and Bakhrom Khomidov, in particular that the men's trials were unfair and that their "confessions" had been extracted under torture. With regard to the case of Gaibullozhon Saidov, who was executed on 4 April 2001 despite a request by the UN Human Rights Committee to stay his execution while the Committee was examining his case, the Committee ruled that "a State party commits grave breaches of its obligations under the Optional Protocol if it acts to prevent or frustrate consideration by the Committee of a communication alleging a violation of the Covenant, or to render examination by the Committee moot and the expression of its Views nugatory and futile".

Gaibullozhon Saidov and his co-defendant, Andrey Rebrikov, who was reportedly executed the same day, were sentenced to death by the military board of the Supreme Court of Tajikistan on 24 December 1999, after being convicted of supporting former Popular Front commander and warlord Makhmud Khudoyberdiev who had allegedly tried to seize power in one area in 1998.

Bakhrom Khomidov was sentenced to death by the military board of the Supreme Court

of Tajikistan on 12 September 2001. Bakhrom Khomidov's death sentence was commuted to 25 years' imprisonment by the Supreme Court of Tajikistan on 21 September.

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## TURKEY

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### Law reforms

The second half of the year was characterized by a flurry of activity by the government as it passed legislation in an attempt to meet the criteria to open accession negotiations with the European Union (EU). The so-called Copenhagen Criteria require that applicant states demonstrate "*stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities*".

The Progress Report of the European Commission in October 2004 had highlighted the need for further "strengthening and full implementation of provisions related to the respect of fundamental freedoms and protection of human rights" and drew attention to concerns about the widespread nature of torture. It nevertheless recommended that accession negotiations should begin. On December 17 the European Council endorsed this recommendation, declaring that Turkey had sufficiently fulfilled the Copenhagen Criteria and stating that it intended to start negotiations with Turkey in October 2005, subject to a number of conditions. The Council mandated the European Commission to closely monitor the implementation of the reform program of the Turkish government and "especially the implementation of the zero-tolerance policy relating to torture and ill-treatment".

Among the reforms introduced by the government was a new Law on Associations, a new Criminal Procedure Law, a new Turkish Penal Code, a new Law on the Execution of Sentences, and a new Law on Municipalities. The new laws contained

many positive aspects and were often less restrictive than their predecessors. For example, the new Penal Code removed many gender-discriminatory articles (see below), introduced a definition of torture closer to that laid down in international law, and introduced a higher minimum sentence for individuals convicted of torture and ill-treatment.

However, there remained serious concerns regarding provisions in the new laws which had been carried over unaltered from their predecessors and which had previously been used to restrict fundamental rights unnecessarily. For example, the crime of "insulting or belittling" various state institutions, which had been criminalized in Article 159 of the old Turkish Penal Code, emerged again in Article 301 of the new Turkish Penal Code (TPC). Furthermore, some of the new laws introduced further restrictions. For example, Article 305 of the new TPC criminalizes "acting against the fundamental national interest", the explanation of which, when the draft of the law passed through Parliament, included "crimes" such as "making propaganda for the withdrawal of Turkish soldiers from Cyprus or for the acceptance of a settlement in this issue detrimental to Turkey...or, contrary to historical truths, that the Armenians suffered a genocide after the First World War".

One reason for the continuing problems in this new legislation was the hurried pace of the legislative reforms, which was sometimes apparently exacerbated by the European Commission's insistence that the laws in question had to be passed before accession negotiations were opened. This limited the opportunity for sufficient consultation amongst civil society, including Turkish human rights organizations, and meant that some drafts went through parliament without sufficient scrutiny.

Where consultation took place, the results were positive. For example, the women's movement in Turkey had mobilized itself in response to the draft of the new TPC and initiated a concerted and highly successful lobbying campaign against potentially

retrograde amendments. Subsequently, some 30 of the 35 amendments put forward by the platform of women's organizations working in this area were implemented. These included the abolition of the possibility of a reduction, postponement or eradication of sentence for rapists who marry their victims; the explicit recognition of marital rape as a crime; the redefinition of rape closer to international standards; the definition of sexual assault within marriage as a crime; the definition of sustained and systematic violence in the family as "torture"; and the moving of sexual crimes to the section on "crimes against the individual". The reforms were a significant step forward in improving the legal protection from violence for women in Turkey; most provisions will go into force on 1 April 2005.

On the other hand, Article 122, which forbids discrimination on the basis of "language, race, colour, gender, political thought, philosophical belief, religion, denomination and other reasons" was amended at the last moment so that "sexual orientation" was removed from the draft; discrimination on the basis of sexuality was therefore not criminalized in the new TPC.

On 4 December Law No 5271 on Criminal Procedure was passed by Parliament. It will enter into force on 1 April 2005. The law introduces a number of positive reforms to regulations on the investigation of crimes and detention and prosecution of suspects. According to the new law, the length of police or gendarmerie detention will not exceed more than 24 hours from the time of apprehension, although, where crimes have been perpetrated by several individuals, this period may be extended by 24 hours on the written order of the prosecutor up to a maximum of three days. In addition, police officers are required to notify suspects of their rights – including the right to a lawyer and the right to silence – at the time of their apprehension; searches of premises are only permitted with the written order of a prosecutor or decision of a judge; limits are placed upon the use of handcuffs on detainees; the

number of circumstances in which individuals could be imprisoned on remand, and the amount of time they can be held on remand, will be reduced; and a system of bail instead of detention on remand is introduced for crimes carrying a maximum sentence of three years or less.

The new law also introduces changes which purport to improve police accountability. Article 92 requires prosecutors to carry out inspections of places of detention. AI considered that such inspections would be an effective measure against torture if the inspections were to be carried out on both a regular and an ad hoc basis and the subsequent findings and recommendations made public. The draft of the law had also envisaged the creation of a "judicial police" which would be under the command of the State Prosecutor and which would be responsible for investigating crimes and gathering evidence. Human rights lawyers had been proposing such a change on the basis that it could potentially guarantee that investigations into crimes alleged to have been perpetrated by the security forces such as torture and ill-treatment would be carried out by officials independent of the units allegedly involved in the crime and therefore less likely to be partial. However, representatives of the police force forcefully objected to this proposal, as an apparent result of which significant changes were made to the draft. The idea of a "judicial police" was retained in the law but did not seem to signify any substantive change – Article 164 of the new Law on Criminal Procedure states that "...the term 'judicial police' denotes those members of the security forces who carry out investigations [as already laid down in the various laws regulating the activities of the various arms of the security forces]". The only real change appeared to be the introduction of a new term to refer to already existing structures. Outside of their duties in carrying out such investigations, the judicial police would otherwise be under the command of their superior officers in their respective force. AI believed that steps should be taken to ensure that investigations into serious human rights violations by security forces such as torture,

extrajudicial executions, ill-treatment and deaths in custody be independent and impartial. Thus it considered that any "judicial police" should be independent from the security forces; and its personnel should be ex-police officers not on secondment alongside civilians.

Human rights groups also expressed their concerns about the rights of prisoners in relation to the provisions of the new Law on the Execution of Sentences, as well as about the Law on Compensation of Losses Resulting from Terrorism and the Struggle with Terrorism. The latter law aimed to recompense individuals forcibly displaced from their homes in the 1990s during the conflict between the State and the Kurdistan Workers' Party (PKK). Human rights groups expressed concern about the low level of compensation envisaged and suggested that the law was designed to limit applications to the European Court of Human Rights.

#### **Lack of monitoring mechanisms**

The implementation of the legislative changes was often uneven and sometimes apparently resisted by state officials who found new laws to target dissident opinion. One reason for this was a continued absence of mechanisms and institutions that would effectively scrutinize the implementation of the reforms and human rights violations deriving from non-adherence to them. Legislation was in the process of being drafted for the creation of a Human Rights Ombudsperson and a Human Rights Commission that might be able to carry out such duties. However, non-judicial responses to allegations of human rights violations were generally poor and independent reporting made more difficult by political pressure to present Turkey as having fully met the Copenhagen Criteria.

Various bodies – established by the previous government – were held up as evidence of an effective structure of human rights monitoring by the authorities. Among these were the Provincial and District Human Rights Boards attached to the Prime

Ministry as well as the Human Rights Advisory Board.

The former bodies were established in order to carry out research and make recommendations about local human rights issues, as well as conducting public awareness campaigns regarding human rights in 81 provinces and 831 districts. The statistics they provided were cited by the government as credible evidence of the extent of human right violations. However, a number of factors, including the lack of independence of the boards (being attached to the Prime Ministry, and the members being elected at a local level by the governor and having to include police and gendarmerie chiefs), their limited powers (the boards are only able to act upon and document direct complaints of human rights violations and not reports) and their repeated failings to respond in a satisfactory way to complaints cast serious doubts upon their effectiveness.

AI's concerns were shared by Turkish and international human rights non-governmental organizations and even by the Special Representative of the UN Secretary General on Human Rights Defenders, Hina Jilani when she visited Turkey in October and concluded that: "...initiatives like the Human Rights Board at the local level need to be reviewed...as they are currently structured this independence can not be assured, there must be independence with regard to the composition, the determination of the agenda of the board and at the moment, as I have observed the functioning of the boards, they have not been very successful in addressing human rights concerns".<sup>22</sup>

Meanwhile, a controversy developed after the Human Rights Advisory Board – established under the structure of the Prime Ministry in order to independently issue regular reports and make recommendations for the improvement of human rights in Turkey, and made up of representatives from the government ministries as well as

<sup>22</sup> Press statement by Hina Jilani, 20 October 2004

civil society organizations – issued a report on minority rights in Turkey as an appendix to its regular report on human rights. The report questioned the application of the Treaty of Lausanne and whether minority rights in Turkey met international standards. The report was seized upon by the nationalist press in Turkey as evidence of the government's "betrayal" of Turkey. The government swiftly disowned the report and the authors of the report were subjected to huge pressure, including threats and investigations by prosecutors. Human rights organizations alleged that the government had failed to respond to any of the reports of the Board, that the State Minister for Human Rights had not attended any of its meetings and that an effort had been made to make the board ineffective by appointing to it representatives of organizations whose commitment to human rights values was questionable. Most notably, this included the reported appointment to the Board of journalist Fatih Altaylı, who had said in a column in 2002, in reference to a lawyer working against sexual assault of female detainees in police custody: "If I do not sexually assault...[the lawyer] at the first opportunity, I would be a coward."

Both the Provincial and District Human Rights Boards and the Human Rights Advisory Board fell short of the requirements of a National Human Rights Institution that Turkey so urgently needed.

Meanwhile, non-official monitoring mechanisms also had pressure placed upon them. On 7 December, the newly-elected President of the Izmir Bar Association took the decision to dissolve its Torture Prevention Group (IOG). The Torture Prevention Group had been engaged in ground-breaking work since December 2001 by providing legal aid to the victims of torture. In a press statement, the President of the Bar Association declared that he was closing the Torture Prevention Group because one of its projects was receiving funds from the European Commission which he claimed was on a mission to divide Turkey and to damage its national interest, including through the creation of "an independent Kurdistan". He also criticized

the Group's co-operation with international organizations, understood to include AI.

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

One reason for the urgent need for independent monitoring and investigative mechanisms was illustrated by the furore that broke out after the visit of the then EU Enlargement Commissioner Günter Verheugen to Turkey in September, as to the extent of torture in Turkey and whether it was or was not "systematic". The figures cited by the government as evidence of the improved situation were comprised of complaints of incidents of torture and ill-treatment to the Provincial and District Human Rights Boards and were very low in comparison to those collected by independent human rights organizations. Nevertheless, when questioned about the issue of torture in the Parliamentary Assembly of the Council of Europe in October, Prime Minister Tayyip Erdoğan stated categorically that there was no systematic torture and then went on to say "...however those, with ideological approaches, who say that there is still these type of torture... is from people who have connections with terror organizations. I especially want to present this for your information". While the government's failure to sufficiently scrutinize and investigate the extent of torture makes any assertion regarding its extent dubious, the unsubstantiated comment targeted at independent human rights groups working against torture in Turkey is clearly in breach of Turkey's obligations under the UN Declaration on Human Rights Defenders.

Nevertheless, as a result of the government's policy of "zero tolerance for torture", detention regulations that provided better protection for detainees led to an apparent reduction in the use of some torture techniques, such as suspension by the arms and falaka. However, these regulations, such as those that provide for the right of access to a lawyer, were often not implemented, and cases of torture and ill-treatment of individuals in police or gendarmerie custody remained a serious concern. Human rights groups documented

many cases of torture and ill-treatment, including beatings, electric shock, stripping naked, sexual harassment and death threats against detainees.

Aydın Ay was detained on suspicion of theft at Carsı Police Station in Trabzon on 27 October and alleged that he was subjected to torture including being stripped naked, having his testicles squeezed and being forced to sign documents the contents of which he did not know and which were not read to him.

On 17 November, transgender sex worker "Hülya" was reportedly threatened at gunpoint in Istanbul by a man who allegedly identified himself as a police officer and ordered her to perform a sexual act. When she refused, the man took her to police officers who beat and detained her. She continued to be subjected to beatings, including with clubs, at the police station, as a result of which she suffered two broken arms. Despite this, she was charged with resisting police officers and remanded to prison.

Non-marking methods of torture or ill-treatment apparently designed to circumvent new detention regulations were widely reported. Despite the issuing of a circular by the Minister of the Interior outlining the prohibition of the use of techniques in places of detention such as deprivation of food, sleep and access to the toilet as well as being forced to stand in uncomfortable positions, these continued to be reported. In addition, abuses were carried out outside of official detention settings: these included beatings and other ill-treatment of individuals during apprehension, as well as abductions, in which individuals were taken around in a car or brought to a deserted place for questioning, with no subsequent records that the person had ever been detained.

A high proportion of complaints of ill-treatment related to the use of disproportionate force by security forces in the policing of demonstrations, including beatings with truncheons, use of pepper gas and dogs. Despite the issuing of a

circular by the Minister of the Interior which requested that officers made sure not to use disproportionate force, such incidents continued to be reported – for example, in the demonstrations that took place in many cities in Turkey against the NATO Conference held in Istanbul on 28 and 29 June, and against the Higher Education Council on 6 November. These complaints were often responded to by "counter charges" against the complainant for "resisting a public official by force and violence or threats" or violating Law No 2911 on Meetings and Demonstrations.

### **Killings in disputed circumstances**

There were several cases of civilians being shot dead by security forces, mostly in the south-eastern and eastern provinces. In some incidents, the security forces alleged the victims were members of an armed group and had fired upon them after they were called on to stop. This was frequently contradicted by eyewitnesses who alleged extrajudicial executions. Concerns were cited that trials opened by prosecutors only took into account the accused officers' testimony.

Police officers shot dead Mehmet and his 12-year-old son Uğur Kaymaz outside their house in Kızıltepe on 21 November. The authorities claimed that they were armed members of the armed group Kongra Gel and that they had shot at police officers, who returned fire. Witnesses alleged that it was an extrajudicial execution and that weapons were planted on the two victims after they were killed. A case was opened against four police officers for use of excessive force, but the lawyers of the Kaymaz family complained that the indictment was partial in favour of the defendants and omitted vital information that supported claims of an extrajudicial execution. The police officers were released to await trial. They remained on active duty but were appointed to other postings. Requests from the Parliamentary Human Rights Commission for copies of the autopsy and the indictment were refused by the Mardin prosecutor on the grounds of "secrecy".

On 30 November 2004, Fevzi Can, a shepherd, was killed by a gendarmerie officer in Şemdinli district of Hakkari, after he was shot allegedly for not obeying a warning to stop. Human rights organizations alleged that he was unarmed.

### **Impunity**

As discussed above, there remained an absence of mechanisms that would effectively monitor the implementation of detention regulations and investigate patterns of abuse by security forces. Investigations into allegations of torture and ill-treatment by prosecutors were rarely adequate and usually resulted in a decision not to prosecute. The lack of thoroughness of such investigations brought into question their impartiality. Decisions were often based upon medical examinations of detainees which were themselves insufficient and often carried out in the presence of members of the security officials, despite regulations forbidding this. In this context, human rights groups expressed concern at the lack of independence of the Forensic Medical Institute and its monopoly on providing expertise confirming that torture had occurred, since detained persons were unable to apply for a doctor for examination on demand and courts were reluctant to accept reports from other sources, such as doctors at high quality university research and teaching hospitals, as evidence of torture.

On 2 December, the trial of four police officers for the torture, including sexual torture, of two high-school students in March 1999 in Iskenderun was postponed yet again. The trial was begun in April 2000 and has been postponed some 30 times. The court has been waiting for more than three years for approval by the Forensic Medical Institute of medical and psychiatric reports into the allegations of torture. Meanwhile one of the students, Fatma Deniz Polattaş, remained in prison for membership of the PKK on the basis of statements allegedly extracted under this torture.

Investigations, and any subsequent trials, generally did not examine the chain of command, and responsible officers were not suspended from active duty pending such proceedings. Trials of individuals accused of torture and ill-treatment were usually slow, with proceedings in some torture trials dropped through reaching the statute of limitations. The statute of limitations in torture cases was retained in the new TPC. Sentences against torturers were often inadequate, with sentences being reduced for a number of reasons – for example, the “good behaviour” of defendants. Individuals remained imprisoned or under prosecution on evidence alleged to have been extracted under torture.

On 10 November the Court of Appeals upheld the conviction of police officer Mehmet Yutar for involvement in the death of trade unionist Süleyman Yeter, who died in police custody as a result of torture in March 1999. The court had reduced his 10-year sentence to four years and two months’ imprisonment because of the “good conduct” of the defendant. According to the Law on the Execution of Sentences, Mehmet Yutar will only have to serve one year and eight months’ imprisonment. A third police officer was acquitted on the grounds of insufficient evidence. Meanwhile, legal proceedings against nine police officers on allegations of having tortured Süleyman Yeter and 14 other detainees in another incident in 1997 were dropped as they reached the statute of limitations on 11 November. On 30 September another court in Istanbul acquitted police officers on charges of torturing three individuals detained at the Anti-Terror Branch of Istanbul Police Headquarters in November 1998, on the basis that there was “insufficient evidence”. This was despite the existence of expert, independent medical forensic reports that confirmed the detainees’ allegations that they had been subjected to torture techniques while in detention, including being beaten, suspended from the arms, and given electric shocks.



AI considered that any new national human rights institutions such as, for example, the proposed Human Rights Ombudsperson and Human Rights Commission, should have as part of their remit the ability to consider serious violations by law enforcement officials, including incidents of torture, ill-treatment and disputed killings.

### **Legacy of the past**

New evidence came to light in relation to serious human rights violations perpetrated by the security forces during the conflict with the PKK in the 1990s. This included the discovery of clandestine graves believed to belong to individuals extrajudicially killed or "disappeared" by the security forces.

In September, DNA tests by the Forensic Institute confirmed that remains of a body found in a shallow grave in a remote spot near Körtük village in Silopi in April 2004 belonged to Murat Aslan, who had reportedly "disappeared" after being detained by members of security forces in Diyarbakir in 1994. The autopsy stated that he had died as a result of being shot. The body had been located after Abdulkadir Aygan, who identified himself as a "confessor" (former members of the PKK who worked with the security forces) and had been part of the notorious Gendarmerie Intelligence and Anti-Terror Unit (JITEM), gave interviews in the print and broadcast media in which he gave details about his involvement, together with members of the Turkish security forces, in some 28 extrajudicial executions and "disappearances" during the conflict with the PKK. He had claimed that Murat Aslan had been taken from the street and taken first to the JITEM headquarters in Diyarbakir and then to those in Silopi, where he was tortured, and afterwards taken to a place near Körtük village where he had been shot and his body set on fire. Despite Abdulkadir Aygan's knowledge of the location and other factors about the killing, no investigation was apparently opened by the authorities into his allegations of state collusion in gross human rights violations.

On 4 November a delegation led by representatives of the Human Rights Association (IHD) discovered the remains of several bodies in the district of Kulp in Diyarbakir province. They were believed to have belonged to eleven villagers who had been detained by soldiers from the Bolu Commando Brigade after a raid on their village in 11 October 1993. The European Court of Human Rights has ruled in this case that the Turkish state was responsible for violating the right to life – however, no one has been brought to justice for the "disappearance". It is reported that the Kulp State Prosecutor informed relatives and members of the IHD delegation that they should "bring the bones to me" on being informed about the discovery of the remains. AI considered that such a response, together with the repeated failing of the justice system to bring to justice members of the security forces who ordered and carried out such violations, makes an independent and impartial investigation into these incidents essential.

### **Freedom of expression and human rights defenders**

Peaceful expression of non-violent opinion continued to be subjected to investigation and prosecution, although the Court of Appeals and some lower courts issued landmark judgements which upheld the right to freedom of expression. Cases were opened under Article 159 of the Turkish Penal Code (TPC) which criminalizes "insults" to different state bodies; Article 312/2 of the TPC which criminalizes incitement to enmity and hatred; and Article 7 of the Anti-Terror Law. Many other laws were used to punish opinion under various pretexts. In some cases these resulted in prison sentences. Very severe fines were handed out under both the old Press Law and its successor to newspapers and journalists. Politicians were prosecuted for carrying out election campaigning in languages other than Turkish.

Journalist Hakan Albayrak was released from prison in Ankara province in November having served six months of a

15-year prison sentence for being in contravention of Law No 5816 on Crimes perpetrated against Atatürk in an article in which he commented on the funeral rites of Mustafa Kemal Atatürk, the founder of the Turkish Republic.

On 30 December a court in Ankara continued to hear the case against the writer Fikret Başkaya for having intentionally "insulted or derided the Turkish state" in his book, *Against the Current*. He faced a prison sentence of up to three years' imprisonment if convicted.

The Special Representative of the UN Secretary General on Human Rights Defenders visited Turkey between 11 and 20 October. She expressed her concerns at the opening of large numbers of cases against human rights defenders and recommended that all pending cases be reprocessed and reviewed. Individuals who participated in human rights activities were often subjected to professional sanctions, for example the dismissal or suspension of academic staff or students from university.

On 10 December, the second trial against the largest trade union in Turkey, the Education Worker's Union (Eğitim Sen) at Ankara Labour Court No. 2 began. The closure of the union was sought because of a statement in its statute that it would work for "...the defence [of the right] of individuals to receive education in their mother tongue", which it was claimed was contrary to Article 42 of the Turkish Constitution which declares that "No other language than Turkish may be taught in educational and teaching facilities to Turkish citizens as their mother tongue". In a previous trial opened on the same grounds, the court agreed to close the case in a landmark decision which stated that such a declaration was guaranteed by the rights to freedom of association and expression as laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms. However, the Court of Appeals overturned this ruling in November in a surprising decision which claimed that such rights could be restricted with the vague

justification that it was necessary "...to prevent activities contrary to the unitary structure of the country as a compulsory precaution with the aim of protecting national and public security, and protecting public order".

Meanwhile, peaceful protests against the court case were obstructed. Police reportedly used disproportionate force, including beatings and tear gas, to disperse a demonstration by supporters and members of Eğitim Sen in Istanbul on 8 December. Another case was initiated on 27 December at a court in Ankara against the board of Eğitim Sen for staging an unauthorized demonstration against the trial on 13 July.

### **Violence against women**

The human rights of hundreds of thousands of women in Turkey continued to be violated as a result of violence in the family. There were reports of beatings, rape and murder or enforced suicide. State officials failed to take steps to protect women adequately. Investigations into reports of family violence were often inadequate and the perpetrators were rarely brought to justice.

However, the government did begin to take steps to address the problem, including adopting the changes proposed by the women's movement to the draft of the TPC (see above). In response to complaints regarding the extremely small number of shelters available to women at risk of violence, the government included in the Law on Municipalities, which passed into law on 24 December, the requirement that municipal authorities provide shelters in towns with populations of more than 50,000. In addition, a law passed on 6 November gave legal status to the Directorate on the Status of Women attached to the Prime Ministry, which, although in existence for several years, had been without official legal status. While these new laws were welcome steps, the need for effective and resourced implementation in co-operation with the women's movement was key.

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## TURKMENISTAN

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

Speaking before the Third Committee of the UN General Assembly on 9 November, Rashid Meredov, Deputy Prime Minister and Minister of Foreign Affairs of Turkmenistan, urged Member States to vote against a draft resolution on the human rights situation in Turkmenistan that was being debated by the Third Committee. He stated there "were no cases of arrest or conviction on political grounds or for religious beliefs" and that Turkmenistan had "created guarantees for the realization of personal, political, economic, social and other rights of its citizens".

However, on 20 December the General Assembly adopted the resolution on Turkmenistan reiterating concerns raised in its 2003 resolution as well as in resolutions adopted by the UN Commission on Human Rights in 2003 and 2004. The resolution "express[ed] its grave concern at the continuing and serious human rights violations occurring in Turkmenistan". It specifically highlighted "the persistence of a governmental policy based on the repression of all political opposition activities, the continuing abuse of the legal system through arbitrary detentions and imprisonment of persons who try to exercise their freedoms of expression, assembly and association and continued restrictions on the exercise of the freedoms of thought, conscience, religion and belief". The General Assembly urged the authorities to immediately release all prisoners of conscience and to ensure that public organizations including non-governmental organizations could operate without hindrance.

By the end of the period under review none of the UN's human rights experts had been allowed to visit Turkmenistan, despite requests by many of them. The resolutions

on the human rights situation in Turkmenistan adopted by the UN Commission on Human Rights in 2003 and 2004 had called on the UN special procedures to seek invitations to visit Turkmenistan.

In its new strategy on Turkmenistan adopted in July, the European Bank for Reconstruction and Development voiced concern about the "deterioration of the situation with regard to the protection of human rights and the rule of law".

### **Continued pressure on religious minorities**

Harassment and intimidation of registered and unregistered religious minorities continued. In many cases religious gatherings in homes were raided; the participants were temporarily detained and often given hefty fines.

Both the Adventist and the Hare Krishna communities were reportedly not allowed to meet publicly for worship. These groups as well as the Baha'i had gained registration earlier in the year in a move by the authorities to avoid being classified as a "country of particular concern" under the USA's International Religious Freedom Act. Such a classification could lead to the USA taking steps ranging from diplomatic protest to targeted trade sanctions.

On 5 September two female Jehovah's Witnesses - Gulkamar Dzhumaeva and Gulsherin Babakulieva - were reportedly held incommunicado overnight at a police station in Gagarin district in the town of Turkmenabad to punish them for peacefully exercising their right to freedom of religion. A procuracy official reportedly called Gulsherin Babakulieva to his office at around 11pm and harassed her sexually. When she refused to comply with his demands he reportedly threatened to rape her and then hit her several times. Another man who introduced himself as an investigator was also said to have threatened her with rape. Reportedly, another procuracy official who was present

throughout did not come to her aid but continued to play a game on the computer.

### **Prisoner of conscience Gurbandurdy Durdykuliev**

During the period under review Gurbandurdy Durdykuliev remained forcibly confined to psychiatric hospitals to punish him for exercising his right to freedom of expression, where he has been held since February 2004. He had sent a letter to President Niyazov and the Balkan region governor in January that year, urging them to authorize a peaceful demonstration and to refrain from using force against participants. He had earlier criticized President Niyazov's policies in interviews with Radio Liberty and had openly spoken about the need for an opposition political party. AI adopted Gurbandurdy Durdykuliev as a prisoner of conscience and is calling for his prompt and unconditional release.

When his wife travelled to the hospital in Garashsyzyk district in the eastern Lebap region at the end of October she was not allowed to meet with him. She had previously visited him in April. During the visit, one doctor, reportedly referring to instructions by the authorities, told her that if she passed on information about her husband's case to media outlets abroad she would not be allowed to visit him again.

Gurbandurdy Durdykuliev was believed to be in a poor state of health. AI learnt in October that he had a high temperature and was suffering from severe stomach ache. He continued to suffer from the aftermath of a heart attack he had had before his confinement to the psychiatric hospital.

Reportedly, the authorities disconnected his family's telephone line several times during the period under review in an attempt to prevent information from reaching international human rights organizations and international media.

### **Imprisoned conscientious objectors**

At least one conscientious objector was imprisoned during the period under review bringing the number of young men serving prison terms for their conscientious objection to military service to at least three. AI regarded them as prisoners of conscience and called for their prompt and unconditional release.

Atamurat Suvkhanov, an 18-year-old Jehovah's Witness, was sentenced to 18 months' imprisonment for "evading regular call-up to active military service" (Article 219 of the Turkmen Criminal Code) on 17 December. He served his sentence in the women's prison colony in the eastern town of Seydi.

Six Jehovah's Witnesses imprisoned as a result of their conscientious objection to compulsory military service had been released in June. This move was believed to be part of measures taken by the authorities of Turkmenistan to avoid being classified as a "country of particular concern" by the USA. The Jehovah's Witnesses Mansur Masharipov and Vepa Tuvakov were arrested in May and sentenced on 28 May and 3 June respectively to 18 months' imprisonment for refusing military service on religious grounds. It is believed that these two men were not released along with the other six conscientious objectors because the international community was not aware of their cases at the time.

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## **UKRAINE**

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### **Presidential elections**

Presidential elections at the end of the year provoked mass protests against allegations of widespread ballot rigging, and proved a catalyst for calls for reform. The first round of elections on 31 October produced no clear winner, leading to a second-round run-off on 21 November between the government candidate, Viktor Yanukovich, and the leader of the opposition, Viktor Yushchenko. Official results declaring Viktor

Yanukovich the winner were widely dismissed as fraudulent, and led to mass demonstrations by supporters of both sides which virtually paralysed the country until an unprecedented third round – ordered by the Constitutional Court – took place on 26 December. Viktor Yushchenko was declared the winner and subsequently inaugurated as President. The mobilization of large parts of civil society behind him became known as the “Orange Revolution” from the campaign colour sported by him and his supporters.

During the initial stages of the election, particularly in the run-up to the first and second rounds, AI expressed concern at a number of incidents (see below) which appeared to indicate that the authorities were following a deliberate policy of sentencing opposition activists to short periods of administrative detention to hamper their campaigning. At the outset of the mass demonstrations, which proved to be overwhelmingly peaceful, AI had also urged the Minister of Internal Affairs to ensure that law enforcement officers fully respected the rights to freedom of expression and assembly, and the principle of the proportionality of force.

### **Freedom of expression**

Members of the youth opposition group Pora (It is time) were arbitrarily detained and harassed during the election period. Aleksander Tsitsenko, for example, was detained by masked police on 21 October in Kirovograd as he was collecting leaflets and stickers for distribution. He was released without charge on 25 October. Twenty-year-old Andriiy Kulibaba was detained on 20 October in Vinnytsya and sentenced to 10 days' administrative detention according to the Code on Administrative Infringements for “intentionally disobeying police orders”. The sentence was later reduced to a fine and he was released on 23 October. Aleksander Pugach, aged 18, was detained in Vinnytsya on 21 October for refusing to give his name to the police, but was acquitted of that offence. Minutes later as he stood on the steps of the courthouse, he was detained again for

“hooliganism”, but after four hours he was released and the charges were subsequently dropped.

In November a group of election monitors and members of the public were sentenced in Sumy in north-east Ukraine for demanding to know the results of presidential elections in their district. A group of people had gathered at a polling station in Sumy on the night of 31 October to ask for the results of the vote count for the presidential elections to be displayed according to the regulations. According to reports, election officials refused to post the results and called the police. Ten people were charged on that night with insubordination to the police and were released shortly afterwards. Then on 13 November police detained all 10 people again, and six were sentenced to 10 days' administrative detention. Lawyers and families of the accused were not admitted to the trial and were not told where the detainees were taken to serve their sentences. AI was concerned that the six people had been arbitrarily arrested for exercising their right to freedom of expression. Authorities in Sumy also violated international standards by refusing to admit lawyers and families of the accused to the trial and by failing to inform them of the detainees' whereabouts.

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

In December the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published the report of its visit to Ukraine in 2002. This report repeated the conclusions of previous ones that “people deprived of their liberty by the police run a significant risk of being physically ill-treated at the time of their apprehension or while in custody”. The CPT also reported that overcrowding remained a problem, and described conditions in temporary holding facilities (known as ITT from the acronym in Ukrainian) run by the Ministry of the Interior as “intolerable”.

In October AI expressed concerns at the alleged ill-treatment of Beslan Kutarba and

Revaz Kishikashvili, who had been detained in August by police officers from the Nakhimovsky police station in Sevastopol, on the Crimean peninsula. They were accused of petty theft and of breaking and entering, crimes to which they reportedly confessed. Their lawyers were concerned that these confessions had been extracted under torture. The two men reportedly received no medical attention and had limited access to families and lawyers. They remained in the ITT in Sevastopol at the end of the year, but one of the men's lawyers reported that as a result of interventions from AI their conditions had improved and they were no longer being ill-treated. The local Procurator and the office of the Ministry of the Interior in Sevastopol have replied to the office of the Ukrainian Parliament Commissioner for Human Rights and to local human rights groups denying the allegations.

On 28 July, 10 young members of a revolutionary communist group who had been arrested in December 2002 were found guilty of involvement in an attempted coup, banditry and attempted murder and sentenced to between six and 14 years' imprisonment. The defendants alleged that they were tortured during the criminal investigation. One member of the group, a 17-year-old girl, was reportedly beaten and raped in detention. An 11th member of the group died in suspicious circumstances in November 2003. A medical certificate issued by a forensic specialist at the hospital where Sergey Berdyugin died concluded that he had sustained internal abdominal injuries including a ruptured liver, and a haematoma behind the intestinal membrane, injuries that would be consistent with having been beaten. However, this report was overturned by a forensic commission which came to the conclusion that Sergey Berdyugin died of a cancerous tumour that spread to his liver and spleen. The Commission allegedly came to this conclusion without examining the body. A criminal case was opened on 22 November 2003 by the Odessa Procuracy and was closed in February 2004 having found no evidence of ill-treatment or

torture (see also AI Index: EUR 01/001/2004).

### **"Disappearance" of Georgiy Gongadze (update to AI Index: EUR 01/001/2004)**

In the period under review there was no progress in identifying those responsible for the "disappearance" of the investigative journalist Georgiy Gongadze. In August the Prosecutor General's office admitted that the allegedly leaked documents that had been published on a website and in the UK-based newspaper *The Independent* in June were in fact genuine. The documents had allegedly been leaked by officials who were concerned that the Prosecutor General might try to destroy them in an attempt to cover up the involvement of officials in the murder. The documents consisted of key witness statements and forensic reports. At the end of the year an investigation was ongoing into how the documents had been leaked. In September the Ministry of Justice announced that tape recordings which had been made public in late 2000 and allegedly incriminated government officials, including President Leonid Kuchma, in the "disappearance" were forgeries.

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## **UNITED KINGDOM**

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### **Internment in the UK (Update to AI Index: EUR 01/005/2004)**

In the reporting period, AI continued to be concerned about serious human rights violations that have taken place in the UK in the context of the UK authorities' response to the 11 September 2001 attacks in the USA.

By the end of December, 11 foreign nationals continued to be interned under the Anti-terrorism, Crime and Security Act 2001 (ATCSA) – legislation adopted in December 2001. Most had been detained for more than three years in high-security facilities under severely restricted regimes.

They were detained in two high security prisons (Belmarsh and Woodhill) and a high security mental hospital (Broadmoor). A twelfth person, an Algerian former torture victim, known only as "G", continued to be held under strict bail conditions amounting to house arrest.

In July an AI delegate observed the judicial proceedings before the Court of Appeal of England and Wales brought by eight individuals against the confirmation of their certification, as "suspected international terrorist" under the ATCSA, handed down by the Special Immigration Appeals Commission (SIAC) in October 2003. One of the main planks of these appeals was the admissibility of, and reliance on, evidence extracted under torture in the proceedings before the SIAC.

On 11 August the Court handed down judgment dismissing all grounds of appeal, including by ruling that "evidence" obtained by torture of a third party would be inadmissible only if it had been directly procured by UK agents or if they had connived in its procurement. Otherwise, "evidence" obtained through torture would be admissible and could be relied upon. An appeal against this judgment was set to be heard in 2005 by the Appellate Committee of the House of Lords.

AI strongly criticized the judgment (see AI Index: EUR 45/019/2004), expressing concern that it effectively encouraged torture at the hands of agents of foreign states.

Reliance on such "evidence" by the authorities, and its admission by the courts, undermine the rule of law and the very prohibition of torture. AI was concerned that the Court of Appeal had shamefully abdicated its duty to uphold human rights and the rule of law.

On 13 October an AI delegate attended the launch of a report compiled by 11 Consultant Psychiatrists and one Consultant Clinical Psychologist about the serious damage to the health of eight of the internees detained under the ATCSA. The

report highlighted the impact that detention under the ATCSA had had on eight detainees and three of their spouses: progressive deterioration in the mental health of all those detainees and their families was observed. The report concluded that such damage was inevitable under a regime which consisted of indefinite detention. It described how "their detention has had major adverse consequences for their mental health" and "a severe adverse impact on the mental health of all detainees and the spouses interviewed. All are clinically depressed and a number are suffering from PTSD [post-traumatic stress disorder]. The indefinite nature of detention is a major factor in their deterioration." These conclusions were based on a series of reports originally commissioned for legal purposes from the doctors over two-and-a-half years by the internees' solicitors.

Also in October, an AI delegate monitored proceedings before the SIAC concerning a review of the bail arrangements imposed on the internee legally known as "G", who had been released on bail under very strict conditions amounting to "house arrest" in April 2004. At the end of the hearing, the SIAC relaxed some of the bail conditions. In December the application of Mahmoud Abu Rideh, a Palestinian refugee and torture victim, to be released on bail from detention under the ATCSA was adjourned indefinitely. At the end of 2004, he continued to be held in a high-security psychiatric hospital.

#### *Law Lords' judgment*

In October AI delegates observed the proceedings before a panel of nine Law Lords (the Appellate Committee of the House of Lords) in the case of *A & others v Secretary of State for the Home Dept*. The case concerned the powers of the Home Secretary to certify – and subsequently indefinitely detain without charge or trial – non-deportable foreign nationals as "suspected international terrorists" and "national security risks" under the ATCSA.

Given the paramount importance of this case to human rights protection in the UK,

AI took the extremely rare decision of lodging written submissions (an *amicus curiae* brief) with the House of Lords (see AI Index: EUR 45/027/2004). An *amicus curiae* brief was also lodged by Liberty – a domestic human rights organization – which was also granted permission to make oral submissions.

In its *amicus curiae* brief, AI invited the nine Law Lords hearing this appeal to find that indefinite detention under Part 4 of the ATCSA was of a criminal nature: that it, as such, violated the most fundamental fair trial rights guaranteed in international standards, including treaty provisions by which the UK is bound. In addition, AI argued that the admissibility of, and reliance on, evidence obtained as a result of torture or other ill-treatment (of a third party) in proceedings before the SIAC was in violation of the UK's obligations under international law.

On 16 December, the nine Law Lords ruled in an eight-to-one judgment that a key provision (i.e. section 23) of the ATCSA was unlawful. The Law Lords declared that these powers were discriminatory and disproportionate, and therefore incompatible with human rights law. The Law Lords ruled that the powers of indefinite detention without charge or trial contained in the ATCSA were unlawful, given their discriminatory nature. The judges declared that these powers were incompatible with the appellants' rights under the European Convention on Human Rights (ECHR), specifically the right to liberty and security of person and the right to be free from discrimination. As the Law Lords made clear, they did not, in giving this judgment, have powers either to free those detained or strike down the legislation. It was for the executive and parliament to consider the Law Lords' judgment and to take remedial action.

In the immediate aftermath of the judgment, AI urged the UK authorities to repeal this legislation and to release all detainees immediately unless they were charged with a recognizably criminal offence (see AI Index: EUR 45/032/2004

and AI Index: EUR 45/033/2004). Noting that the Law Lords had not come to any conclusion as to the admissibility of evidence obtained through torture in SIAC proceedings, AI also continued to urge the UK authorities to comply fully with the international prohibition of torture, including the use of "evidence" obtained through torture or other ill-treatment, in any proceedings, including judicial ones, except against a person accused of torture.

However, immediately following the Law Lords' judgment, in a statement to the UK Parliament, the newly appointed Home Secretary stated, amongst other things, that "[t]he Part 4 provisions [of the ATCSA] will remain in force until Parliament agrees the future of the law. Accordingly I will not be revoking the certificates or releasing the detainees...I will be asking Parliament to renew this legislation in the new year but in the meantime we will be studying the judgment carefully to see whether it is possible to modify our legislation to address the concerns raised by the House of Lords."

#### **UK's fourth periodic report examined by the Committee against Torture**

On 17 and 18 November the Committee against Torture (CAT) examined the UK's fourth periodic report on the measures taken to implement the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). An AI delegate attended the session and participated in briefing CAT members together with other non-governmental organizations. AI had prepared a written briefing which had been made available to CAT members and to the UK authorities in advance of the session (see AI Index: EUR 45/029/2004). The briefing outlined AI's concerns on some of the serious human rights violations that have taken place in the context of the UK authorities' response to the 11 September 2001 attacks in the USA. AI's briefing also outlined concerns about army deaths in disputed circumstances, child soldiers, violence against women, the treatment of asylum-



seekers and refugees, the UK role in Iraq, and the UK authorities' duplicitous role in the detention, without any legal basis, of UK residents and nationals – and possibly others – at Guantánamo Bay, Cuba, in US custody (see below).

On 26 November 2004, following its examination of the UK's report, the CAT issued its Conclusions and Recommendations. The CAT expressed concern that UK domestic legislation had been "interpreted to exclude the use of evidence extracted by torture only where the State party's officials were complicit". With respect to this, the Committee recommended that the UK authorities should not "rely on or present in any proceeding evidence where there is knowledge or belief that it has been obtained by torture". The CAT also recommended that the UK authorities should "provide for a means whereby an individual can challenge the legality of any evidence in any proceeding plausibly suspected of having been obtained by torture". In addition, the CAT expressed concern about: potentially indefinite detention under the ATCSA; the strict detention regime under which some internees were held at Belmarsh prison; and "reports of incidents of bullying followed by self-harm and suicide in the armed forces, and the need for full public inquiry into these incidents and adequate preventive measures". In respect of the conduct of UK army personnel in Iraq, the CAT reminded the UK authorities that "the Convention protections extend to all territories under the jurisdiction of a State party and considers that this principle includes all areas under the *de facto* effective control of the State party's authorities".

### **Guantánamo Bay**

The UK authorities continued to play a duplicitous role in the detention, without any legal basis, of UK residents and nationals at Guantánamo Bay, Cuba, in US custody. UK intelligence officers had taken advantage of the legal limbo and the coercive detention conditions at

Guantánamo Bay to conduct interrogations and to extract information to use in proceedings under the ATCSA.

In June, the UK authorities for the first time admitted that a number of the "detainees questioned by UK intelligence personnel have complained about their treatment in detention. All complaints made by detainees interviewed by British Intelligence officers were passed onto the US authorities, who are responsible for the treatment of those detained in Guantánamo Bay." In subsequent parliamentary exchanges, the authorities refused to provide any further detail about these complaints.

In August Shafiq Rasul, Asif Iqbal and Rhuheh Ahmed – who had been transferred back to the UK in March 2004, together with Tarek Dergoul – released through their London-based solicitor a detailed report providing a graphic first-hand account of their treatment at Guantánamo Bay. In this report they alleged that UK officials had threatened that they would be sent to a maximum security prison in the UK. Rhuheh Ahmed alleged that while he was being interrogated by a UK officer "one of the U.S. soldiers had a gun to his head and he was told that if he moved they would shoot him".

Also in August, Tarek Dergoul's lawyer made available to AI a witness statement from her client. In it Tarek Dergoul alleged that he had been interrogated by two UK officials while being held in US custody in Afghanistan. "The British interrogators also interrogated me with a soldier in a corner with a gun. They saw that I was shaking and shivering and what a bad state I was in medically. However, they did nothing for me. They just asked me all the standard questions and then left." In his statement Tarek Dergoul also referred to his interrogations at Guantánamo Bay: "British interrogators also came and showed me an article from a newspaper about British citizens being sent to Cuba. I told the British interrogators on at least five occasions every detail of what was going on in Guantánamo Bay, including the beatings."

In November, upon its examination of the UK's report, the CAT recommended that the UK government "should ensure that the conduct of its officials, including those attending interrogations at any overseas facility, is strictly in conformity with the requirements of the Convention [against Torture] and that any breaches of the Convention that it becomes aware of should be investigated promptly and impartially, and if necessary the State party should file criminal proceedings in an appropriate jurisdiction".

At the end of 2004, four UK nationals and at least five UK residents remained in US custody at Guantánamo Bay. These included Bisher al-Rawi, an Iraqi national legally resident in the UK, and Jamil Al-Banna, a Jordanian national with refugee status in the UK. The UK authorities may have played some part in their unlawful rendering to US custody, and refused to make representations on their behalf to the US authorities.

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

There were allegations of unlawful killings, torture, ill-treatment and other violations of international human rights and humanitarian law by UK forces at the time when the UK was recognized as an occupying power in Iraq. The UK authorities tried to circumvent domestic and international human rights obligations by asserting that human rights law did not bind UK armed forces in Iraq. AI urged the authorities to establish a civilian-led mechanism to investigate all allegations of serious violations of human rights and humanitarian law by UK armed forces.

In July an AI delegate observed part of the proceedings before the High Court of England and Wales concerning the deaths of some six Iraqi civilians killed at the hands of, or in the custody of, UK troops in Iraq at the time when the UK was recognized as an occupying power in the country. The deaths were said to have occurred in the course of UK operations such as policing, patrolling, arrest and detention (e.g. see below, Baha Mousa's

death). The families of six victims challenged the UK government's decision not to hold an independent inquiry into the deaths. The claimants asserted that the UK Ministry of Defence had refused to carry out an investigation/inquiry as required by the ECHR and the Human Rights Act 1998 (HRA). In five cases, the claims were made under Article 2 (enshrining the right to life) of the ECHR. A sixth case, concerning the death in UK custody of Baha Dawood Salem al-Maliki (Baha Mousa), entailed a claim under both Articles 2 and 3 (enshrining the prohibition of torture or other ill-treatment) of the ECHR. Baha Mousa was among eight Iraqi hotel workers arrested and reportedly beaten in September 2003 by UK soldiers in Basra, Iraq. Three days later Baha Mousa's father was handed his son's body, severely bruised and covered in blood. Another detainee, Kefah Taha, was admitted to hospital in a critical condition.

The Ministry of Defence claimed that neither the ECHR nor the HRA was applicable to Iraq at the time of the deaths, because Iraq was outside Europe and was not a party to the ECHR.

In its Conclusions and Recommendations upon its examination of the UK's report, the CAT expressed concern at "the State party's limited acceptance of the applicability of the Convention [against Torture] to the actions of its forces abroad, in particular its explanation that 'those parts of the Convention which are applicable only in respect of territory under the jurisdiction of a State party cannot be applicable in relation to actions of the United Kingdom in Afghanistan and Iraq'". In this connection, the CAT noted that "the Convention protections extend to all territories under the jurisdiction of a State party and considers that this principle includes all areas under the *de facto* effective control of the State party's authorities".

In light of its concerns, the CAT recommended that the UK authorities "should make public the result of all investigations into alleged conduct by its forces in Iraq and Afghanistan, particularly those that reveal possible actions in breach

of the Convention [against Torture], and provide for independent review of the conclusions where appropriate".

In November the Ministry of Defence wrote to AI informing the organization that it was conducting a "policy review on the restriction of vision during arrest and transit", which AI understood to mean the practice of hooding of detainees. AI had opposed such practice carried out on detainees by UK army personnel in Iraq.

In December the High Court of England and Wales ruled in the above-mentioned case concerning the deaths of six Iraqi civilians, including Baha Mousa, in Iraq. The High Court found in favour of Baha Mousa's family, holding that both the ECHR and the HRA applied and that inquiries conducted so far into his death had not satisfied the requirements of the ECHR. However, AI considered disturbing the High Court's finding in relation to the other five cases. Although the UK had at the relevant time effective control over the Iraqi territory in which the deaths took place, the High Court held that neither the ECHR nor the HRA were applicable. AI expressed the view that such ruling was inconsistent with the UK's obligations under international law.

### **Prisons**

In November a public inquiry opened into the killing of Zahid Mubarek by his cellmate, a known racist, at Feltham Young Offenders Institution in March 2000.

In December the parliamentary Joint Committee on Human Rights found that more people than ever were held in custody, and for longer periods. It found that many of them should not have been there, in particular the mentally ill. It expressed concern about overcrowding, unsatisfactory detention conditions and the extreme paucity of prosecutions of police and prison officers involved in custodial deaths. It concluded that the authorities were failing "properly to protect the lives of vulnerable people in the state's care". It found that "someone is either killed, kills themselves or dies in otherwise questionable

circumstances every other day" in prison. It expressed deep concern at the number of people dying in custody and at the rate of self-harm incidents, especially among women.

Official statistics released at the end of the year showed that there were more than 100 self-inflicted deaths in prisons during 2004. Fourteen or 15 were women. Although women comprised only 5 to 6 per cent of the prison population, they accounted for 13 to 15 per cent of self-inflicted deaths.

### **Death in police custody**

In November the verdict of unlawful killing returned by a jury in October 2003 following the inquest into the death of Roger Sylvester in January 1999 was quashed (see AI Index: EUR 01/001/2004).

### **Police shootings**

In October an inquest jury returned an unlawful killing verdict following a second inquest into the 1999 fatal police shooting of Harry Stanley. Although the prosecuting authorities were still considering whether to charge the officers involved, in December they were allowed to return to work on "non-operational duties"(see AI Index: EUR 01/016/2003).

In December an inquest jury returned a lawful killing verdict following an inquest into the fatal police shooting of Derek Bennett in 2001(see AI Index: EUR 01/016/2003).

### **Army deaths in disputed circumstances**

In November the CAT expressed concern about "reports of incidents of bullying followed by self-harm and suicide in the armed forces, and the need for full public inquiry into these incidents and adequate preventive measures" (see AI Index: EUR 01/005/2004).

In December, the authorities appointed a human rights lawyer to review four deaths of young soldiers at Deepcut Barracks (update to AI Index: EUR 01/005/2004).

### **Freedom of expression (update to AI Index EUR 01/005/2004)**

In December the Court of Appeal of England and Wales upheld judgment in a case concerning three coachloads of anti-war protesters who were stopped from reaching the Royal Air Force base at Fairford – used by US B52 bombers to fly to Iraq – and forcibly returned to London in March 2003. The court found that detaining Jane Laporte to forcibly return her to London was unlawful and violated her right to liberty under the ECHR. However, AI expressed concern about the chilling effect on the rights to freedom of assembly, peaceful protest and expression, as the Court of Appeal upheld the lower court's ruling that preventing the coaches from reaching Fairford was lawful, and that, as a result, the police had not violated Jane Laporte's right to freedom of peaceful assembly and expression.

### **Refugees and asylum-seekers**

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

### **Northern Ireland**

In July AI wrote to the authorities to express concern about some aspects of the statement made to Parliament on 8 July by the Northern Ireland Secretary of State concerning the "Guiding Principles" in relation to the soon-to-be-established public inquiries into the allegations of state collusion into the killing of human rights lawyer Rosemary Nelson in 1999; the 1997 sectarian killing of Robert Hamill, a 25-

year-old Catholic man, and the 1997 killing of Billy Wright, a leading Loyalist paramilitary, shot dead in the Maze prison. The letter also reiterated AI's outstanding concerns in relation to the killing of human rights lawyer Patrick Finucane in 1989, in particular, the failure of the UK authorities to commit themselves to establishing an inquiry. AI also urged the authorities to ensure that the inquiries into the killings of Rosemary Nelson, Robert Hamill and Billy Wright be established at the earliest opportunity; that each public inquiry be charged with pursuing the accountability of all those responsible; that the UK authorities commit themselves to the implementation of any recommendation which the public inquiries may make, and that enlisting the support and co-operation of the families concerned, and the confidence of the general public, be central to the inquiries and their establishment.

In September an AI delegate observed part of the criminal trial of Kenneth Barrett, a former loyalist paramilitary, who had been charged with, *inter alia*, the 1989 murder of Patrick Finucane. Kenneth Barrett pleaded guilty to 12 counts, including the murder of Patrick Finucane. This meant that no significant information about alleged state collusion in the killings of Patrick Finucane or about the alleged subsequent cover-up emerged in court. Kenneth Barrett was convicted of and sentenced for the murder of Patrick Finucane (and other offences). For the murder he received a mandatory life sentence, of which a tariff was set at 22 years, to be served concurrently with the terms of imprisonment imposed for the other offences of which he was convicted. However, he was likely to qualify for the early release scheme operated under the Good Friday Agreement under which he would be freed shortly.

In the aftermath of Kenneth Barrett's conviction for the murder of Patrick Finucane, AI, together with British Irish Rights Watch, the Committee on the Administration of Justice and Human Rights First (formerly the Lawyers Committee for Human Rights) called for the immediate

announcement of a public independent inquiry into the killing of Patrick Finucane).

Shortly after the Barrett trial, the UK authorities finally announced an inquiry into the murder of Patrick Finucane. However, the authorities further delayed the establishment of an inquiry into the killing by asserting that the inquiry would need to take place under new legislation which would take into account "the requirements of national security". In this connection, AI expressed concern that the authorities' announcement failed to state that the inquiry would be a public one. The organisation also articulated its suspicion that the authorities were using "national security" as a way to curtail the future inquiry's ability to shed light on state collusion in the killing of Patrick Finucane, as well as on allegations that his murder was the result of an official policy, and that different government authorities played a part in the subsequent cover-up of collusion in his killing.

In September, AI co-signed, with British Irish Rights Watch and the Committee on the Administration of Justice, a letter to Prime Minister Tony Blair about the announced judicial public inquiries into the killings of Rosemary Nelson, Billy Wright and Robert Hamill. Among other things, the letter urged Tony Blair to ensure that at least one member of each Tribunal be a non-UK national. At the end of the year, those public enquiries had not yet commenced.

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

Despite a significant decrease, high levels of paramilitary violence continued, particularly by Loyalist groups. Three killings were attributed to members of Loyalist groups and one to Republicans during 2004. There were on average two shootings and two to three assault victims every week.

The Independent Monitoring Commission reported that members of Loyalist paramilitary organizations were responsible for a series of violent racist attacks in

Belfast. According to the Police Service of Northern Ireland the number of racist and homophobic incidents recorded had more than doubled from 226 and 35 respectively in 2002/03, to 453 and 71 in 2003/04. In December, however, the authorities reported that the rate of increase in racist attacks was slowing down.

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## UZBEKISTAN

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### **Human Rights Defenders**

*The case of Ruslan Sharipov (update to AI Index: EUR 01/016/2003, EUR 01/001/2004 and EUR 01/005/2004)*

Ruslan Sharipov, a 26-year-old correspondent for the Russian news agency PRIMA and Chairman of the unregistered human rights organization Grazhdanskoe sodeistvie (Civic Assistance), who was convicted on charges of homosexuality and having sex with minors in August 2003 and sentenced to five-and-a-half years' imprisonment was granted political asylum in the USA in October. In an open letter he explained that he fled Uzbekistan in June with the tacit agreement of the Uzbek authorities during his transfer from Tashkent to Bukhara. He claimed that he was given the choice between leaving the country or being sent back to prison.

### **"Terrorism"-related arrests and trials (update to AI Index: EUR 01/005/2004)**

A series of suicide bombings against the US and Israeli embassies as well as the State prosecutor's office killed four people and injured at least nine others in the capital Tashkent on 30 July. These followed a series of explosions and attacks on police checkpoints that took place in Tashkent and the city of Bukhara between 28 March and 1 April, which left over 40 people - mostly police officers and alleged attackers - dead. Uzbek authorities blamed the violence on "Islamic extremists" including the banned

armed Islamic Movement of Uzbekistan (IMU) and the Islamic opposition party Hizb-ut-Tahrir, whom they accused of intending to destabilize the country. Hizb-ut-Tahrir denied involvement in any of the violence.

On 9 April the General Prosecutor announced that over 700 people had been questioned in connection with the March-April violence and that 54 suspects had been arrested, of whom 45 had been charged with terrorism, including 15 women. He also blamed the bombings on a previously unknown Islamist group called Zhamoat (society). Eighty people, including 17 women, were detained in connection with the July bombings. However, human rights organizations continued to report sweeping arbitrary detentions, throughout the country, of men and women said to be either devout Muslims or their relatives.

The authorities also linked the attacks to Uzbekistan's participation in the US-led "war on terror" and claimed that members of Hizb-ut-Tahrir and Zhamoat had undergone training in neighbouring Kazakhstan and in al-Qa'ida camps in Waziristan, Pakistan. A special commission headed by President Karimov himself was overseeing the investigations into the violence. In November the National Security Committee of Kazakhstan announced that it had arrested nine Kazak and four Uzbek nationals in connection with the violence in March and April and the three suicide bombings in July. Four Kazak women reportedly trained as suicide bombers were also detained. All detainees were described as members of a previously unknown organization, the Mujahedin of Central Asia, a terrorist group reportedly with links to the IMU and al-Qa'ida.

On 26 July a first group of 15 defendants went on trial at the Supreme Court in Tashkent charged with anti-state offences, terrorism and membership of illegal religious groups in relation to the March-April violence. Although President Karimov had pledged that the "terrorism" trials would be open and conform to international fair trial standards, the Procurator General

published a letter on the same day declaring all 15 defendants guilty as charged, thereby denying them presumption of innocence. Attendance at the trial was by prior arrangement only. As the majority of the defendants' relatives reportedly had not been informed of the start date of the trial, they were consequently not allowed into the courtroom. According to independent observers, evidence used to convict the defendants was based solely on their confessions and was not cross-examined in court. Although the defendants in this first trial did not raise torture allegations in court, pleaded guilty and asked for forgiveness, this was not the case in most subsequent trials, where those accused of terrorism refused to plead guilty or retracted their confessions in court, claiming that they had been extracted under duress. Most of the over one hundred defendants had not been granted adequate access to a lawyer in pre-trial detention and several, including women, had been held incommunicado for a period of time. All were presumed guilty before the start of their trials and the majority reportedly were not offered adequate defence.

*Trial and sentence of Nilufar Khaidarova  
(update to AI Index: EUR 01/005/2004)*

Nilufar Khaidarova, 26, went on trial in Tashkent on 6 September as part of a second group of 15 people, including seven other women, accused of participation in the March-April violence. Along with most of the defendants, she pleaded not guilty to all the charges. She stated in court that during a recess of the trial she had been visited in the investigation-isolation prison (SIZO) in Tashkent by officers of the Ministry of Internal Affairs (MVD) who threatened her with violence if she disclosed that she had been beaten and ill-treated while held incommunicado in pre-trial detention in April. The court, however, did not investigate any of the allegations of torture and ill-treatment and found all of the defendants guilty. In October Nilufar Khaidarova was sentenced to six years' imprisonment. In November her sentence

was reduced on appeal to four years. Concerns about her health and access to appropriate medical care were continuing, despite assurances by the authorities that she was receiving adequate medical care.

AI was concerned at allegations that Nilufar Khaidarova had been detained because her two brothers and husband, all devout Muslims, were serving long prison sentences for "anti-state" activities and membership of banned religious organizations.

### "Disappearances"

In the wake of the March-April violence and the July suicide bombings several devout Muslim men reportedly "disappeared" in Tashkent. Relatives and unofficial sources feared that they had been arrested because of their religious beliefs, their education, their affiliations with particular institutions or their family connections. In relation to the latter, for example, one of those allegedly "disappeared" was Husniddin Nazarov, the eldest son of independent imam (Islamic leader) Nazarov, whom the Uzbek authorities have accused of wanting to establish an Islamist state in Uzbekistan. By the end of the year relatives had been unable to establish the whereabouts of the "disappeared".

#### "Disappearance" of Farukh Khaidarov

Farukh Khaidarov, 31, an Arabic language specialist who had attended university in Saudi Arabia on an Uzbek government grant and who taught Arabic language at the Egyptian Cultural Centre in Tashkent reportedly "disappeared" on 25 June after he dropped his son and his father off in town. He failed to return to pick them up as agreed. Law enforcement officials told his wife that he had fled the country and in August she received a letter postmarked in Afghanistan purporting to be from Farukh Khaidarov in which he allegedly claimed to have joined the IMU. However, there was concern that the letter was fabricated in order to implicate him in the March-April violence. Two of the young women alleged

to have participated in the March-April attacks had been Arabic language students at the Egyptian Cultural Centre.

#### *Abductions of imam Mannopzhon Rakhmatullaev and Ruvazhdin Rakhmanov*

Uzbek national Mannopzhon Rakhmatullaev was abducted from his house in the town of Marx in the Russian Federation, where he had worked as an imam at the mosque, on 21 July. It was feared that the men who abducted him were working on the instructions of the Uzbek authorities and that he could have been returned to Uzbekistan and held in incommunicado detention, where he would be at risk of torture.

Mannopzhon Rakhmatullaev, who had lived in the Russian Federation since 1995, was first detained in October 2002 after the Uzbek authorities requested his extradition. The Uzbek authorities accused him of "religious extremism" and "attempting to overthrow the constitutional order of Uzbekistan", as well as possession of firearms. His supporters insisted the accusations were groundless and that the case was politically motivated. He was released a year later, in October 2003, after the Russian authorities refused to hand him over to their Uzbek counterparts. He applied for Russian citizenship, but a decision had not yet been taken on this at the time of his abduction.

In the morning of 21 July three masked men arrived at Mannopzhon Rakhmatullaev's house in a white car. They reportedly hit him and his wife several times and pushed him into their car without saying who they were, or where they were taking him. When his lawyer made inquiries later that day, the regional authorities said they had not received a fresh extradition request from the Uzbek authorities.

According to the director of the Central Asia department of the Moscow-based human rights organization Memorial there was a real danger that he could be taken to

Uzbekistan; Mannopzhon Rakhmatullaev's son-in-law Ruvazhdin Rakhmanov had been abducted in Russia in 2003 and reportedly tried in Uzbekistan in January 2004. He had been living in the Russian Federation and was detained in May 2003 after the Uzbek authorities sought to extradite him for "religious extremism". The Russian authorities refused to extradite him. On the day of his release in July 2003 he "disappeared" and was later found to be in the custody of the National Security Service's Andizhan Regional Department in Uzbekistan.

### **Death penalty**

Death sentences continued to be passed within a criminal justice system seriously flawed by widespread corruption and the failure of courts to investigate allegations of torture. Relatives and death row prisoners themselves continued not to be informed of the date of execution in advance. The location of the burial sites of executed prisoners remained secret, subjecting relatives to cruel and inhuman treatment. Prison conditions on death row continued to fall far short of international standards. There were allegations that death row prisoners were regularly beaten and not allowed any outdoor exercise.

In violation of Uzbekistan's international obligations, comprehensive statistics on the numbers of death sentences and executions remained secret. According to a statement by President Islam Karimov on 2 December, between 50 and 60 people were sentenced to death that year.

#### *President Islam Karimov on the death penalty*

At a press conference on 2 December President Karimov stated that, according to his "personal opinion ... we should stop handing down death sentences". He dismissed the introduction of a moratorium as "just a game" pointing out that "one should issue not a moratorium but a decision on abolishing the death penalty". However, he added that in his view the

abolition of the death penalty would be premature stating that the large majority of the population in Uzbekistan was in favour of the death penalty. "We need to work on public opinion and we need to work with the population in order to ... give up handing down the death sentence."

AI believes that governments should lead public opinion in matters of human rights and criminal policy. Historically it has almost always been the case that the death penalty has been abolished by governments even though the majority of the public favoured its retention. In addition, it is important to recall that the Uzbek authorities have on many occasions taken measures to prevent an informed debate about the death penalty, for example, when stopping an NGO-organized conference on the death penalty in December 2003 from taking place (see AI Index: EUR 01/001/2004). Moreover, in Uzbekistan anti-death penalty activists have been harassed and intimidated on many occasions. In addition, the authorities have withheld vital information about the application of the death penalty in the country, an important factor to enable an informed public debate.

#### *Harassment and intimidation of anti-death penalty activists*

Anti-death penalty activists and their relatives continued to be harassed and intimidated by the authorities.

At 6am on 29 September an investigator from Mirobad district procuracy in Tashkent came to the house of the mother of Tamara Chikunova, director of the human rights group Mothers against the Death Penalty and Torture. The investigator told the 78-year-old woman, who is confined to her bed, that he had an arrest warrant for her daughter on accusations that she had carried out pickets which led to unrest in the Ferghana valley and in Tashkent. There were strong indications that the authorities targeted her mother to put pressure on Tamara Chikunova, who was in the Netherlands at the time on a lobbying tour



organized by AI in co-operation with other non-governmental organizations.

On 21 December Erkin Khudoberganov, the father of anti-death penalty activist Dilobar Khudoberganova, received a phone call from a man who introduced himself as a "National Security Service official". He said that Dilobar Khudoberganova "talks too much" and warned that Erkin Khudoberganov should "think about the consequences her activities could have for his family". The caller specifically criticized Dilobar Khudoberganova for giving interviews to the BBC and Radio Liberty, which, he said, the National Security Service had recorded, and for raising human rights issues on the lobbying tour in European countries that took place from September to December (see above).

*Executed despite intervention by UN Human Rights Committee (update to AI Index: EUR 01/005/2004)*

In August Azizbek Karimov was executed in secret despite an intervention by the UN Human Rights Committee on 3 June urging the Uzbek authorities to stay his execution while the Committee was considering allegations that his arrest and sentencing violated key principles of international law.

On becoming a party to the first Optional Protocol (Optional Protocol) to the International Covenant on Civil and Political Rights, Uzbekistan recognized the competence of the (UN) Human Rights Committee to consider communications from individuals subject to Uzbekistan's jurisdiction who claimed to be victims of violations of rights set out in the Covenant. In November Tukhtapulat Riskiyev, the Ambassador of Uzbekistan to the United Kingdom, informed AI that taking into account the "seriousness of crimes [committed by Azizbek Karimov the] Court decided [to] implement [the] death penalty". The execution of a death row prisoner, while the (UN) Human Rights Committee is considering the case, is a grave breach by a State party of its obligations under the Optional Protocol.

By failing to consistently adhere to its commitments as a party to the Optional Protocol, Uzbekistan continued to deprive its citizens of this crucial mechanism to seek redress in cases where a death row prisoner has allegedly fallen victim to the flaws of Uzbekistan's criminal justice system. The execution of Azizbek Karimov brought the number of death row prisoners executed despite interventions by the (UN) Human Rights Committee to at least 14.

Azizbek Karimov was sentenced to death by the Supreme Court in February 2004 on charges including "terrorism" and setting up or participating in a religious extremist organization. His family was reportedly not permitted to see him for several months after his arrest. It was also alleged that he was tortured and ill-treated while kept in the detention facilities of the Security Service in Tashkent.