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**Serious human rights violations in Libya – inhuman treatment of Bulgarian medical staff**

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**Report**

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Tony Lloyd, United Kingdom, Socialist Group

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*Summary*

Five Bulgarian nurses were arrested by the Libyan police on 9 February 1999. The nurses, together with a Palestinian doctor, were sentenced to death on 6 May 2004. The Libyan Criminal Court found them guilty of premeditated murder by deliberately contaminating some 426 children at the pediatric hospital in Benghazi by injecting them with the Aids virus (51 have died so far). The Libyan Supreme Court, with which an appeal has been lodged, will deliver its judgment on 15 November 2005.

Many human rights violations have been committed against the Bulgarian nurses and the Palestinian doctor: torture, ill-treatment, incommunicado detention, violation of the right to a fair trial, procedural irregularities, etc. Numerous details, medical expertises carried out by independent experts in particular, clearly show that the Bulgarian nurses and the Palestinian doctor should be regarded as completely innocent.

This complex case is a source of tension in Libya's relations with Western countries. Notwithstanding the efforts over the last year to reintegrate Libya into the international community, and the willingness displayed by the Libyan authorities to open up and move closer to Europe, no favourable outcome has yet been found to the plight of the Bulgarian nurses and the Palestinian doctor.

The Parliamentary Assembly consequently calls on the Committee of Ministers to undertake some concrete actions.

**I. Draft recommendation [[Link to the adopted text](#)]**

1. Five nurses of Bulgarian nationality - Kristiana Vulcheva, Nassya Nenova, Valentina Siropoulo, Valya Chervenychka and Snejana Dimitrova – were arrested by the Libyan police on 9 February 1999. They are accused of deliberately causing an epidemic by injecting some 426 children at the Al-Fateh hospital in Benghazi with the AIDS virus. Charged with premeditated murder through having deliberately contaminated the children with the AIDS virus, they were sentenced to death on 6 May 2004, together with a Palestinian doctor, Dr Ashraf al-Hajuj. The Committee of Ministers and the Parliamentary Assembly severely condemned this verdict which is contrary to the fundamental values they uphold. The Libyan Supreme Court, with which an appeal has been lodged on points of law, will deliver its judgment on 15 November 2005.

2. The Parliamentary Assembly is deeply concerned about the fate of the five Bulgarian nurses and the Palestinian doctor, who have spent over six and a half years in Libyan prisons. It categorically condemns the barbaric way in which they were treated in the first few months after their arrest and the torture and ill-treatment to which they were subjected. It considers that

there is no proof of their guilt and that they are being used as scapegoats for a dilapidated Libyan health system. The Assembly is shocked by the attitude of hatred towards them in public opinion, fuelled by certain sections of the Libyan leadership and media which have stirred up public resentment against these five women and this man.

3. The Assembly notes the following:

3.1 distinguished specialists, testifying under oath at their trial, exonerated the nurses and the doctor, showing clearly that the infection had broken out in 1997 at Al-Fateh Paediatric Hospital in Benghazi, in other words over a year before the Bulgarians had come to work there, and that it continued after their arrest; they concluded that there had been a series of accidental nosocomial infections owing to the failure to comply with standards of hygiene, neglect and bad medical practices;

3.2 moreover, one of the nurses never worked at the Benghazi pediatric hospital;

3.3 the experts proved that the storage conditions of the bottles of blood plasma used as prosecution evidence were such as to preclude any conclusive biological analysis;

3.4 the numerous breaches of Libyan law (torture, procedural irregularities, etc.) also militate in favour of the nurses' innocence.

4. The Assembly thus concludes that the Bulgarian nurses and the Palestinian doctor should be regarded as completely innocent.

5. The Libyan authorities, sheltering behind the independence of their country's justice system, take note of the judgments handed down by the Libyan courts, under which the nurses were found guilty of the crimes of poisoning and homicide and convicted, while the Libyans accused of torture were acquitted for lack of evidence. They consider that the payment by Bulgaria of compensation to the families and the provision of free care for the contaminated children in European hospitals are essential prerequisites for any progress on the nurses' case. The Bulgarian authorities have categorically rejected all Libya's financial demands, refusing to buy the release of the nurses by paying compensation to the Libyan victims, as this would be tantamount to recognising the nurses' guilt and, beyond that, the Bulgarian State's responsibility.

6. The matter before the Assembly, which is a source of tension in Libya's relations with Western countries, is complex. But however complex it may be, it first of all involves two painful tragedies: the plight of some 426 Libyan children contaminated with the AIDS virus, 51 of whom have died so far, and the ordeal of five Bulgarian nurses and a Palestinian doctor, who are innocent.

7. The Assembly expresses its compassion for the Libyan children contaminated with the AIDS virus and its sympathy with their families. It welcomes the efforts by the European Union and certain states, foremost among them Italy, which have made it possible to bring under control the epidemic that had broken out in the country eight years previously. It strongly supports the Action Plan launched by the European Commission in November 2004 in view of co-ordinating the humanitarian assistance to the infected children.

8. The sick children are now getting treatment. The death sentence passed on five women who are clearly innocent of the crimes they are charged with in no way relieves the suffering of the children and their families. Libya has nothing to gain by adding a second tragedy to the first.

9. Notwithstanding the efforts over the last year to reintegrate Libya into the international community, the lifting by the United States of the main economic and trade sanctions, the lifting by the European Union in October 2004 of the arms embargo, the signing of agreements on compensation for the victims of terrorist attacks and the willingness displayed by the Libyan authorities to open up and move closer to Europe, as reflected in the visit by Colonel Gaddafi to Brussels in April 2004, no favourable outcome has yet been found to the nurses' and the Palestinian doctor's plight.

10. The Assembly reaffirms its complete opposition to capital punishment which has no place in the penal systems of modern civilised societies. The death penalty, even applied to

persons found guilty of the most heinous crimes, is a serious violation of universally recognised human rights. The Assembly firmly condemns the execution by Libya on 15 July 2005 of two Turkish nationals who had been sentenced to death. It calls on the Libyan authorities to act swiftly to abolish capital punishment and immediately place a moratorium on executions.

11. The Assembly asks the Committee of Ministers to;

11.1. call solemnly on the Libyan authorities to:

11.1.1. show goodwill and, in a spirit of constructive dialogue, settle the case of the Bulgarian medical team as quickly as possible and in full conformity with the internationally recognised legal norms by which Libya is bound;

11.1.2. release the nurses and the Palestinian doctor or, failing that, implement the judicial procedures through the Supreme Court to guarantee a fair trial so that their innocence is recognised and they be acquitted;

11.1.3. speedily conduct a serious and thorough investigation into the allegations of torture and ill-treatment of the five nurses and the Palestinian doctor;

11.1.4. adhere to the universally recognised fundamental values of protection of human rights and preservation of human dignity and in particular act swiftly to abolish capital punishment and immediately place a moratorium on executions;

11.1.5. sign and ratify the United Nations optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

11.1.6. allow Dr Zdravko Georgiev, Bulgarian doctor and husband of one of the nurses, to leave Libya;

11.2. call on the member states to:

11.2.1. resolutely support the European Union's Action Plan, which is an act of solidarity with the contaminated Libyan children, through financial or material contributions, in order to guarantee the rapid provision of humanitarian assistance in Libya;

11.2.2. establish a clear link between the continuation of the process of Libya's reintegration into the international community and the satisfactory resolution of the Bulgarian nurses' and the Palestinian doctor's fate;

11.2.3. take action in all bilateral negotiations with Libya, including trade negotiations, to facilitate a speedy settlement of the fate of the Bulgarian nurses and the Palestinian doctor;

11.3. encourage the Bulgarian Government to continue the dialogue with the Libyan authorities and the victims' families and urge the newly-created Bulgarian NGO to speed up its work in this regard.

## **II. Explanatory memorandum**

by Mr Tony Lloyd, Rapporteur

### **A. Introduction**

1. At the Assembly's January 2004 part-session, Mr Kirilov and others<sup>[1]</sup> tabled a motion for a resolution in which they expressed their deepest concern about the serious human rights violations perpetrated against six members of a Bulgarian medical team who had been arrested without charges by the Libyan police in 1999 and severely tortured, and had since been in prison for five years.

2. Examining this motion for a resolution at its meeting on 30 January 2004, the Bureau of the Assembly decided, in view of the urgency of the matter, to send a fact-finding mission to Libya and entrusted Máttyás Eörsi (Hungary, Chair of the LDR Group) with this task.
3. Mr Eörsi undertook a visit to Libya from 2 to 4 March 2004[2], during which he was able to meet the imprisoned Bulgarians. Unfortunately, he has been unable to undertake a second visit to the country, as he had intended.
4. On 23 November 2004, the Bureau decided to refer the motion for a resolution to the Committee on Legal Affairs and Human Rights, which appointed me as rapporteur on 16 December 2004.
5. On 27 January 2005 I presented the committee with a memorandum based in particular on information that I had previously requested from the Bulgarian Ministry of Justice, as well as on the documents examined earlier by the Bureau of the Assembly[3].
6. The purpose of this report is to inform the Assembly of the facts of the case as accurately as possible. It is founded largely on interviews and information obtained during the visit which I made to Libya from 22 to 24 August 2005[4]. Mr Abdel Rahman Shalqam, Minister for Foreign Affairs, Mr Nasser Al-Mabruk, Minister of State Security, and Mr Mohammed Zikree, Deputy Minister of Justice, agreed to receive me, and I would again express my gratitude to them. I also met Dr Zdravko Georgiev, a Bulgarian medical practitioner married to one of the nurses, and Mr Omar Bizanti, counsel for the five nurses, whose enlightening observations on Libyan law and judicial procedure were of great service to me. I also discussed the case with H. E. Mr Antony Layden, the UK Ambassador to Libya, whose country now holds the Presidency of the European Union, and H.E. Zdravko Velev, Ambassador of Bulgaria to Libya.
7. In this connection, I would convey my deep gratitude to H. E. Mr Antony Layden, the UK Ambassador to Libya, for his active assistance in organising our programme, to H.E. Mr Velev, Ambassador of Bulgaria to Libya and to the Ambassadors of Libya in Brussels and London who facilitated my visit.
8. I was unfortunately not permitted to meet the nurses. The Libyan authorities have in fact made the stipulation that anyone wishing to visit the nurses must meet the children contaminated with the AIDS virus and their families beforehand. This stance was to my mind unacceptable, firstly because in contrast to the European Union representatives who are working at a general level for Mediterranean co-operation and co-ordination of humanitarian assistance in Libya, the terms of reference assigned to me are more restrictive and solely concern the fate of the Bulgarian medical team. Furthermore, acquiescing to the demand of the Libyan authorities creates a connection between both cases and raises the political stakes, which I definitely cannot support. Finally, making a compulsory visit while being surrounded by local media does not seem to me the best way of showing the children and their families my compassion. Their relentless media exploitation is in my opinion at variance with respect for their rightful discretion and decency.

## **B. Reminder of the facts**

9. According to official statistics, the first case of a child suffering from AIDS in Libya was registered in June 1998[5]. At the end of November 1998, 50 children had been declared HIV positive. The intense distress of the families affected by this tragedy, and the surge of panic in the population of Benghazi, prompted the Libyan authorities to launch an investigation.
10. On 25 January 1999, the police arrested a Palestinian doctor, Dr Ashraf al-Hajuj. His confession seems to have triggered the wave of arrests of Bulgarian medical personnel.
11. On 9 February 1999, 23 members of an international medical team, all Bulgarian nationals, working in different hospitals in Benghazi, including the Al-Fateh children's hospital, were arrested by the Libyan police without being informed of the grounds for their arrest or of the nature of the investigation. Witnesses described the arrests as more akin to kidnappings. The Bulgarian Embassy in Tripoli was officially informed of their detention nine days later. Seventeen Bulgarian doctors were subsequently released (although they were unable to leave Libyan territory immediately because their passports had been confiscated).

12. However, the other six persons – five Bulgarian nurses, Kristiana Vulcheva, Nassya Nenova, Valentina Siropoulo, Valya Chervenychka and Snejana Dimitrova, and the Palestinian doctor – have remained in custody ever since. On 15 May 1999, the case was referred to the People's Prosecution Office, which subsequently brought the following charges against them:

- commission of acts within Libyan territory leading, sooner or later, to the indiscriminate killing of people for the purpose of subversion of the security of the state (a capital offence);
- involvement in a conspiracy and collusion for the commission of the above premeditated crimes;
- deliberately causing an epidemic by injecting 393 children (23 of whom died before October 1999) at the Al-Fateh Hospital in Benghazi with the AIDS virus (a capital offence);
- premeditated murder through the use of substances which cause death, sooner or later, by injecting children with the AIDS virus (a capital offence);
- commission of acts that are contrary to Libyan law and traditions (illegal production of alcohol, drinking alcohol in public places, illegal transactions in foreign currency, illicit sexual relationships).

13. Doctor Zdravko Georgiev, a Bulgarian doctor and husband of nurse Kristiana Vulcheva, who had returned to Benghazi ten days after her arrest, was in turn arrested and charged with illegal possession of and transactions in foreign currency. Neither Dr Georgiev nor his wife had ever worked at the children's hospital in Benghazi.

14. Although the charges are clearly linked to the AIDS epidemic which had broken out in Libya, the Libyan authorities claimed in the early stages of the affair that the contamination was part of a conspiracy by foreign secret services (in particular the CIA and Mossad). This explains the authorities' decision to have recourse to a special procedure (referred to the People's Prosecution Office, which combines the functions of prosecutor, investigating judge and arraignment chamber; jurisdiction of the People's Court, a special court with jurisdiction in cases affecting national security), in which the rights of the defence are limited to the possibility of having an officially appointed lawyer.

#### ***- proceedings and verdicts***

15. The trial before the People's Court in Tripoli began on 7 February 2000 without the Bulgarian government (and its embassy) having been officially informed (it was informed three days later). The accused were not assisted by a lawyer until after 17 February 2000, ten days after the trial opened. At no time were they able to speak with the lawyer freely, as someone was constantly present during these interviews, which were moreover recorded. All the accused pleaded not guilty. Two years later, on 17 February 2002, the court found that there was no proof of a conspiracy against state security and decided to drop these charges.

16. At the first trial, in June 2001, two of the accused (Kristina Vulcheva and Nassya Nenova) retracted their confessions, saying that they had been extracted from them through torture.

17. In May 2002, the Criminal Prosecution Office, to which the case had now been referred, decided to answer the allegations of torture made by the accused and ordered a medical report. The Libyan doctor appointed found on the bodies of the five nurses marks caused by "physical coercion" or "beatings". The prosecution decided to bring proceedings against eight members of the Libyan security forces who were in charge of the investigation, a doctor and an interpreter.

18. In August 2002, the Arraignment Chamber decided to maintain the charges of murder through deliberate contamination of children with the AIDS virus, economic crime, illegally producing alcohol, drinking alcohol in a public place, and behaviour damaging to public order, and to refer the case to an ordinary criminal court. During this second trial, the prosecution relied on two pieces of evidence: one was the admissions made by one of the nurses – Nassya Nenova – and the Palestinian doctor before the prosecutor, the other the results of the house search at the residence of another nurse – Kristina Vulcheva – leading to the discovery of five contaminated bottles of blood plasma.

19. A new trial opened before the Benghazi Criminal Court in July 2003. During the trial, Professor Luc Montagnier (co-discoverer of the HIV virus in 1983, Director of the Viral Oncology

Unit at the Institut Pasteur in Paris until 2000[6]) and Professor Vittorio Colizzi (who heads the Laboratory of Immunochemical and Molecular Pathology in the Biology Department of Tor Vergata University in Rome) were appointed as experts by the Gaddafi International Foundation (chaired by the son of the Head of State, Mr Saif El Islam El Gaddafi). They were heard by the court in September 2003 and were able to submit the results of a study conducted jointly. This study exonerated the Bulgarian medical team, showing clearly that the infection had broken out in 1997 at Al-Fateh Hospital in Benghazi, in other words over a year before the Bulgarians had come to work there, and that it continued after their arrest; the study concluded that there had been a series of accidental nosocomial infections caused by a very specific and highly infectious virus strain, owing to poor standards of hygiene and neglect [7].

20. In December 2003 the court ordered a further expert report. The study was carried out by five Libyan doctors, who rejected the findings of international experts and found that the AIDS epidemic was not attributable to nosocomial infections or to the re-use of infected medical equipment, but to a deliberate act. The defence called for a further investigation and the appointment of a new team of independent experts. The court dismissed this application.

21. On 6 May 2004, after over five years' custody, the criminal court in Benghazi sentenced the five members of the Bulgarian medical team and the Palestinian doctor to capital punishment for having caused the death of 46 children and contaminated another 380[8]. The accused were also ordered to pay the parents of the contaminated children compensation for material and psychological damage.

22. For his part, Dr Georgiev was sentenced to four years' immediate imprisonment. Having served his sentence, he was released but has not left Libyan territory, never having succeeded in obtaining the exit permit despite repeated requests. He is living in the Bulgarian Embassy in Tripoli pending final settlement of the case.

23. In addition to the Palestinian doctor and the five Bulgarian nurses, nine Libyans who had all been members of the management and the administrative staff of the al-Fateh hospital, including the director, were also prosecuted on the same charges and appeared at the same trial. The Libyans appeared at the trial as free individuals, having been released on bail at the start of the proceedings. They were acquitted. As for the eight Libyans belonging to the security services who were accused of torture, the court relinquished jurisdiction and referred their case back to the prosecutor's office.

24. The accused appealed against the judgment on 5 July 2004. On 31 May 2005 the Supreme Court announced that it was postponing its delivery of judgment to 15 November 2005. Such a postponement is exceptional, and the international observers have interpreted it as a positive sign – unlike the victims' families who tried to take the Court by storm when the postponement was announced!

25. On 25 January 2005, the Tripoli Criminal Court opened proceedings against ten Libyans – eight police officers, a doctor and an interpreter - on charges of torture and ill-treatment. The five Bulgarian nurses sentenced to death entered claims for damages in these proceedings; amounting to one million Libyan dinars (574,000 euros) each for the torture to which they were subjected during their detention.

26. On 7 June 2005 the court acquitted the ten Libyans citing want of evidence[9]. The nurses' defence counsel appealed against the judgment. The Libyan prosecutor also appealed the decision according to the Libyan authorities.

#### ***- conditions of detention and allegations of torture***

27. The verdict was based chiefly on confessions extracted from the nurses through torture. Two of the nurses declared in court that they had been subjected to severe physical torture (electric shocks, being suspended from a height by the arms, beatings, whippings, rapes, sexual abuse, etc) for two months, sometimes on a daily basis, during their questioning by the security services. In April 1999, one of the accused (Nassya Nenova) attempted suicide as a result of the torture to which she had been subjected. Others have said that they were subjected to inhuman and degrading treatment and psychological torture. It is also alleged that they were threatened with reprisals if they told the representatives of the Bulgarian Embassy or the prosecutor about the torture inflicted.

28. During my visit to Libya, I met Dr Georgiev, the husband of Kristina Vulcheva. With great modesty, and managing to overcome his emotion, he told me of the dreadful torments inflicted on his wife as soon as she was arrested but above all while imprisoned in March and April 1999: beatings with cables or sticks on the legs, feet, hands, and breasts; being hung by the hands; electric shocks while stretched naked on a steel bed; stifling by deprivation of air and strangulation; injections of drugs, etc. Nassya Nenova also underwent torture and, like Kristina Vulcheva, still bears the marks.

29. Torture is a serious crime under the Libyan Criminal Code, carrying a ten-year prison sentence. The eight police officers and two other persons (a doctor and an interpreter) accused of torture have admittedly been suspended from duty and prosecuted in the Libyan courts but discharged. Moreover, the Bulgarian authorities are not convinced that a thorough investigation has been carried out. One of the members of the special team appointed to question the Bulgarian medical personnel has admitted, however, that he tortured some of the accused and that some of those charged with him had also tortured them. Another police officer has admitted that he saw his colleagues torture the nurses during their interrogation.

30. As regards the conditions of detention of the six Bulgarian prisoners, they have been very uneven but have gradually improved over the years. In the 14 months following its arrest, the medical team was held in police premises (ie in contact with, and under the authority of, the police officers in charge of the preliminary investigation) and not in prison (which is a violation of Libyan legislation). Valentina Siropoulo was held for a year and a half at the training school for police dogs and joined from time to time by her companions in misfortune. She underwent severe forms of psychological torture with police officers using the dogs to terrify her. Their transfer to a prison was not ordered until April 2000. Dr Georgiev stated at a hearing in December 2001 that he was being held in a cell with another 56 prisoners. After their case had been referred to an ordinary court, the six Bulgarian accused were transferred to house arrest on 4 February 2002.

31. During his visit in May 2004, Mr Eörsi had a two-hour long meeting with the prisoners. He was pleased to note that they were *"in good physical and mental condition, albeit it in a somewhat apathetic mood. The detention conditions appeared acceptable"*.

32. Mr Velev the Bulgarian ambassador to Libya acknowledges that their situation is passable in material terms. The nurses have two rooms between the five of them to live in. The embassy supplies them with food, water, medicines and various equipment and requisites. They receive television broadcasts and have a portable telephone enabling them to stay in contact with the outside world and especially their families. They can take the air outdoors for one hour per day, six days a week. On the other hand they are mentally exhausted and psychologically broken. All are married with children - Kristiana Vulcheva has one child, Nassya Nenova a boy, Valya Chervenychka two daughters, Valentina Siropoulo one son, and Snejana Dimitrova a girl and a boy. The children have been growing up for more than six years without their mothers, whom they have not been able to see for the first three years of their detention. Since 2002 they have been able to travel to Libya and see their mothers on two or three occasions only; the last visit dates back to Christmas 2004.

### **C. Position of the Bulgarian government**

33. As might be expected, this affair has triggered a major wave of consternation and indignation among public opinion in Bulgaria and the announcement of the death sentences handed down against the five nurses was a huge shock.

34. Since their arrest, the Bulgarian diplomatic service has repeatedly approached the Libyan authorities, with varying results. The Bulgarian authorities have continually proclaimed the innocence of their nationals, accusing Tripoli of staging a political trial. In particular, they believe, and rightly so, that the rights of the accused should have been fully respected since the time of their arrest, at all stages of their detention and the proceedings against them. This has not been the case. The Bulgarian authorities criticise the many human rights violations committed against them:

- torture and ill-treatment (see above),
- incommunicado detention (for nearly ten months, the accused were denied access to the outside world, to their families, and to a lawyer; the Bulgarian Embassy was allowed to see them only twice during their first nine months of detention, on condition that no

mention was made of the investigation in progress); unlawful detention in police premises;

- excessive length of proceedings (due in particular to the fact that the case was brought before the People's Court, which, under Libyan criminal law, lacked jurisdiction – the Bulgarian nationals should have appeared directly before an ordinary court -; failure to comply with the statutory time-limits for the pre-trial proceedings);
- violations of the right to a fair trial:
  - the accused were not informed of their rights;
  - they were not assigned a lawyer until 27 February 2000, ie ten days after the start of the trial and a year after their arrest;
  - for over a year, for the entire duration of the police investigation and the pre-trial proceedings, they had no lawyer at all;
  - the nurses' Libyan lawyer stated in May 2000 that he had only been able to speak to his clients once;
  - Nassya Nenova and the Palestinian doctor were not assisted by a lawyer when they made admissions before the prosecutor;
  - the witnesses for the defence were not called to testify at the trial);
  - the accused did not benefit from translation during their trial, including the day when sentence was passed on them – they learned of their death sentence an hour and a half later;
- procedural irregularities:
  - the accused should have been brought before the prosecution service within 48 hours of their arrest, but this was not done until three months later, on 16 May 1999;
  - they were not informed of the charges against them until the start of the trial, on 7 January 2000;
  - the police had no valid mandate to make the first search of Ms Vulcheva's home in February 1999;
  - the second search of Ms Vulcheva's home, during which the police "providentially" discovered five bottles of blood plasma, two of them contaminated – considered to be the main piece of incriminating evidence – was conducted without the presence of the accused or a defence lawyer;
  - the inconsistencies in this "discovery" – particularly the fact that the analyses of the bottles were carried out in March 1999 whereas the search took place a month after, that the prosecution never produced the records of the searches, and finally that the court itself mistook the findings of one search for the findings of the other – go to prove that it was probably completely fabricated).

35. The Bulgarian authorities stress that, in this case, in addition to the fact that Libyan domestic law has not been complied with, especially as regards the acts of torture, the length of detention, the place of detention, and the jurisdiction of the courts, Libya has violated several international conventions to which it is a party : the United Nations International Covenant on Civil and Political Rights, ratified in 1970 (and especially Articles 2-3, 9-2 and 14-3), the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatments or Punishment, ratified in 1989, and the 1963 Vienna Convention on Consular Relations (the embassy having not been informed of the arrest of Bulgarian nationals or of the grounds for their detention, and having not been notified of the charges against them until 27 February 2000, ie ten days after the start of the trial).

36. They note that the prosecution evidence is not cogent: the confessions were extracted under duress or made without a lawyer being present; the analyses of the bottles containing the contaminated blood plasma lack substance (for one thing because the fragility of the AIDS virus – it cannot be kept at room temperature – means that the conditions of storage of the bottles did not allow its identification, and furthermore because at the time, in 1999, Libya did not possess the equipment needed to make such analyses).

37. The Bulgarian authorities have been actively engaged in seeking a diplomatic solution, by maintaining an open and active dialogue with Libya, and have shown their willingness to accept a compromise. They have endeavoured to persuade Libya to release the prisoners or give them a fair trial. They have also called on the support of several Arab, African and Western states. The former Bulgarian Minister for Foreign Affairs, Solomon Passy, made several visits to Libya.



The President of the Republic of Bulgaria, Georgi Parvanov, also visited Libya on 27 and 28 May 2005. When the nurses were condemned to death, the Bulgarian government described the judgment of 6 May 2004 as "unfair and absurd".

38. The Bulgarian Government has consistently refused all Libya's demands for the payment of compensation to the Libyan victims, on the ground that it would be an admission of the nurses' guilt and moreover of the Bulgarian State authorities' responsibility. It has nonetheless decided to take humanitarian action in the hope that opening a dialogue with the families – as it is invited to do by the Libyan authorities – would help break the deadlock. The new Bulgarian Minister for Foreign Affairs, Ivailo Kalfin, has confirmed this approach. Accordingly, it has been decided to set up an NGO dealing with humanitarian assistance in order to come to the aid of the contaminated children, particularly in the medical sense.

#### **D. Position of the Libyan authorities**

39. Libya has an unequivocal official position, namely that it considers the Bulgarian nurses and the Palestinian doctor guilty of the crimes of poisoning and homicide. The ministers whom I met during my visit each spoke to me in exactly the same terms: Libyan justice is independent; the law has been upheld<sup>[10]</sup>; the Libyan courts have ruled, one finding the nurses guilty and convicting them accordingly, the other, by discharging the defendants charged with torture considered the nurses' allegations of torture groundless for want of evidence. The authorities take refuge behind their country's justice and reject all criticism of their courts from abroad. Fortunately indeed, they have not gone so far as to call this justice infallible!

40. The ministers whom I met were also keen to point out that the hearings in the proceedings had been public and that international observers and media had been able to attend freely.

41. To the Libyan authorities, the causal link and the nurses' guilt are proven, and so it logically follows that Bulgaria must pay. Therefore, they have persisted in believing that Bulgaria's payment of financial redress to the families is an indispensable preliminary to any positive development in the nurses' case.

42. Indeed, under Islamic law, death sentences can be set aside if an agreement is reached with victims' families and they withdraw their complaint. That entails the prior conclusion of a satisfactory financial agreement – the 'diya' in Islamic law, or blood money.

43. Tripoli has generally been carrying on a one-way dialogue and continually given conflicting signals since the very start of the affair. On the one hand, the Libyan authorities have been displaying a willingness to open up and move closer to Europe. These efforts are undeniable and I can testify that during my visit my contacts used a highly encouraging rhetoric of openness. However, Libya tirelessly repeats that it refuses to act in response to international pressure.

44. Nevertheless, in this case, which precisely obstructs improved relations, the Libyan authorities have constantly been raising the stakes. Clearly, the case of the Bulgarian nurses is compounded by a financial dispute between Bulgaria and Libya (the latter reportedly owes 55 million dollars). In July 2004, the Libyan authorities said that they were willing to consider quashing the death sentences if Sofia started negotiations with the families concerned and paid them compensation. The Libyan Minister for Foreign Affairs, Abdel Rahman Shalqam, said in December 2004, following a meeting with his Bulgarian counterpart, that there were three cases to be resolved in this affair: that of the families of the dead children, that of the sick children, and that of the Bulgarian nurses, and that the verdict could be reviewed if the families of the victims received compensation and if the sick children were cared for in co-operation with the European Union. More specifically, what is being requested is the payment of substantial indemnities, the care and free treatment of the contaminated children in European hospitals, and the building of a new paediatric hospital. It would be hard not to notice that the astronomical sums demanded by Libya – 10 million euros per child – are equivalent to the compensation paid by Libya to the victims of the Lockerbie bombing! Nor does Libya conceal the fact that it is expecting the European Union, the United Kingdom and the United States to contribute to the financial compromise and to the payment of the compensation.

45. When I met him in August, Abdel Rahman Shalqam maintained this position and again stated the demands of the Libyan authorities for an overall settlement of this affair which would

meet Libya's expectations on each point. He stressed the need to go and meet the families and to heed and respond to their demands in an effort to reach a compromise.

46. Under pressure from the families who demand that the death sentences be carried out, it seems to me that the Libyan authorities have little elbow-room, though.

47. It is interesting moreover to note that the authorities are also in judicial difficulties considering that in February 2005 the parents of twin daughters who died of AIDS after contracting the virus while in hospital in Benghazi in 1998 decided to take the Libyan State and its medical institutions to court, claiming 5 millions dinars in compensation.

48. On 13 January 2005 the Libyan Parliament asked for the most severe penalty to be imposed on the persons responsible for causing an AIDS epidemic at the children's hospital in Benghazi, and emphasised the right of the families to demand proper compensation "for this crime against humanity".

49. I obviously raised the question of capital punishment with my various interlocutors, recalling the very firm position of the Council of Europe in this regard. The news of the execution on 15 July 2005 of two Turkish nationals sentenced to death in 1995 is most disturbing, and I reacted strongly to it. I called to mind the wish of the Libyan Leader Colonel Gaddafi announced in November 2004 to have the death penalty abolished in his country. During my visit, the Minister of Justice explained to me that justice in Libya combined two separate systems – "civil" law and Islamic law. Libya is currently working on reform of its criminal law to abolish the death penalty and introduce life imprisonment. However, Islamic law will continue to apply to Muslims, whether Libyan or foreign.

## **E. Initiatives and actions of the international community**

### **- the European Union**

50. The Bulgarian authorities set out from the very beginning to enlist the help of the European Union and give it the role of co-ordinating the efforts by European governments to seek a favourable outcome. Indeed, the European Union has been unstinting in its efforts. It severely condemned the verdict of 6 May 2004. The appeal by the President of the Commission for the Union to provide humanitarian assistance was widely publicised in the 25 member states.

51. On 11 October 2004, the Council of the European Union adopted some very important conclusions, inviting Libya to accept the offer of integration into the Barcelona process (i.e. to become full member to the Euro-Mediterranean Partnership – EuroMed)[11] and to resolve the case of the Bulgarian nurses. It also decided to end sanctions against Libya and lift the arms embargo. In its conclusions, the Council expressed profound concern about the fate of the five Bulgarians. It also decided that "*an act of solidarity with those infected with HIV at Benghazi hospital*" would be implemented as soon as possible.

52. On that basis, and to meet Libyan expectations, the European Commission in November 2004 launched a Benghazi AIDS Action Plan. The Plan contains the undertakings made by various donors (UnionMemberStates and others such as the United States, Canada, Australia and New Zealand) to help improve the medical standards at the Benghazi. paediatric centre. The Commission is responsible for co-ordinating the Plan. It has been fully approved by the Libyan authorities who for their part have adopted a number of administrative and financial measures (appointment of a national AIDS co-ordinator, medical staff changes, etc.) constituting tangible advances on their side.

53. Some Union Member States – chiefly Italy, which has regularly taken in many children, but also Belgium, the Netherlands and the United Kingdom – are involved in the Plan to varying degrees. Germany, France, Spain, Greece, Malta, Norway, Slovenia and Switzerland have offered to participate financially or on the operational side. The Commission however, which already funds certain missions in the plan from its own resources, would like to be able to rely on other firm commitments.

54. Benita Ferrero-Waldner, European Commissioner for External Relations, visited Libya on 24 and 25 May 2005 to assess in particular the progress made in implementing the Action Plan.

The UK Presidency, for its part, announced its determination to promote the plan and achieve a settlement in this affair.

**- *the Council of Europe and the Parliamentary Assembly***

55. On 3 February 2004, the Secretary General of the Council of Europe, Mr Walter Schwimmer, wrote a letter to the Libyan leader, Colonel Gaddafi, urging him to see to it that the case was settled as quickly as possible and in full conformity with recognised international standards.

56. As mentioned above, Mr Eörsi, Rapporteur for the Bureau of the Assembly, undertook a visit to Libya from 2 to 4 March 2004, during which he raised the question of the fate of the Bulgarian nurses with the Libyan authorities. He put forward in particular the idea of a legal arrangement, under which the Bulgarian accused would be found guilty of negligence and handed over to the Bulgarian authorities to serve the remainder of their sentence in their own country, in pursuance of existing bilateral agreements. This solution seems no longer relevant, in view of the death sentences that have since been handed down against the accused. He was unable to secure any firm commitment from the authorities to settle the issue in a mutually satisfactory manner. Mr Eörsi also met the families of the children contaminated. He believes that the Council of Europe could play a role in co-ordinating Europe's medical assistance to Libya. His subsequent attempts to visit Libya again, in May 2004, then again at the end of June 2004, all failed.

57. On 6 May 2004, the day on which the members of the Bulgarian medical team were sentenced to death, the President of the Assembly and the Secretary General of the Council of Europe issued statements denouncing the verdict.

58. In the context of the Islamic Conference of Ministers for Foreign Affairs held in Istanbul (14-16 May 2004), the Secretary General met the Libyan Minister for Foreign Affairs, Mr Abdul Rahman Shalqam. Following a discussion in the Bureau, the President of the Assembly wrote to the heads of national parliamentary delegations on 25 June 2004 asking them, as Mr Shalqam had suggested, to consider the possibility of having several of these children suffering from AIDS treated in their respective countries.

59. The Secretary General of the Council of Europe adopted a similar approach and, on 7 July 2004, asked the Ministers for Foreign Affairs of the member states to ask the member states to give their full support so that the Libyan children infected with HIV could be provided with medical treatment.

60. Replies have been received from several member countries to the letters sent to them, but few have responded to the appeal sent out and made a serious offer of co-operation as part of this process. Germany (which has received groups of Libyan children from 1999 onwards), Armenia, Bulgaria, Russia and Ukraine have expressly stated their interest in co-operating. Austria, Denmark and Sweden have signified their desire to join in the European Union's action. The appeal issued in 2004 will have remained without any tangible outcome because of the Committee of Ministers' failure to regard the affair as high priority for the Council of Europe.

61. It can now be asserted that all the contaminated Libyan children are receiving treatment. The striking attitude of certain countries, Italy foremost among them, is to be commended. Since June 2000, some 200 Libyan children accompanied by their parents have been cared for and treated very discreetly in the hospitals of Milan and Rome. France, Germany, Serbia and Switzerland have taken in other groups of children; Spain is expected to receive still another group shortly.

62. During my visit to Libya, the Minister for Foreign Affairs, Abdel Rahman Shalqam, asked me to put to him any proposal that might end the present deadlock. I put forward the idea of breaking out of the vicious circle of acknowledgement of responsibilities by setting up an international compensation fund supplied by voluntary contributions from States – Libya included – to provide financial assistance for the young victims, whether living or dead, and their families.

**F. Present state of judicial proceedings**

63. In this affair the judicial aspect is fundamental, chiefly because for over six years the Libyan authorities have constantly advertised their confidence in the national judicial system and asserted that the solution is in the hands of Libyan justice. They reject any attempt by international observers to discredit it. During my visit, the ministers whom I met assured me that the Supreme Court would surely discern the slightest breach of law, procedural shortcoming or defect in the case file that might occur.

64. On 15 November 2005 the Supreme Court of Libya will deliver its judgment. I have of course spoken with my various informants about the judicial outcome of the case. It should be pointed out that the Court does not have jurisdiction to review the case on the merits; it settles questions of law and determines whether the rules of law and the procedure have been complied with. Two possibilities are contemplated at present.

65. If the Court upholds the initial ruling – the death sentence – the nurses can only be saved by obtaining a pardon. The application for pardon is made to the Minister of Justice who then instructs the Judicial Service Commission to examine the request. It is extremely doubtful that the five judges who would be appointed for this, standing alone against public indignation, would agree to such a request and commute the death penalty to life imprisonment.

66. On the other hand, if the Court sets aside the judgment, the case will be tried afresh by a criminal court. It is in the remit of the Minister of Justice to designate the court to which the case is referred. I strongly impressed upon the Libyan authorities the need to offer Libyan justice the facilities to re-try this case dispassionately, away from any popular pressure, so as to lower the temperature of the debate. This presupposes in particular that the case should not be referred to the Benghazi criminal court.

67. The nurses' defence counsel, though not overtly optimistic about the final outcome, considers that there are serious grounds that could be admitted by the Court for quashing the judgment of 6 May 2004. On at least two counts – the admissions made by the Palestinian doctor and Nassya Nenova to the prosecutor; the evidence collected when Kristina Vulcheva's home was searched – the existence of procedural irregularities should prompt the Court to conclude that this evidence must not be admitted at the hearing.

68. In so doing, the proceedings may be protracted indefinitely and drag on for years ... new trial, new appeal, etc.

69. As regards the civil proceedings, apparently only two families have brought an action. So far the court has postponed the case pending the judgment of the Supreme Court. The appeal proceedings brought by the Libyan police officers accused of torture will not open until the Supreme Court has delivered judgment.

## **Conclusions**

70. The case brought to the attention of the Parliamentary Assembly is complex. It reflects the extreme complexity that marks a country opening up to the Western world after more than 25 years of isolation, and likewise marks its leader's complex personality. Complexity aside, it is above all the scene of two painful tragedies: the calamity that befell 426 Libyan children contaminated with the AIDS virus, 51 of whom have died so far; the ordeal undergone by five Bulgarian nurses and a Palestinian doctor, all innocent. The members of the Bulgarian medical team have spent six and a half years in prison. The Libyan Supreme Court will hand down its verdict on 15 November this year. As far as the international community is concerned, there is no doubt about the innocence of the five Bulgarian nurses sentenced to death. Many countries have called for their release and have expressed their willingness, together with the European Union, to deliver humanitarian aid to Libya and to provide assistance for the children suffering from AIDS.

71. The nurses are innocent, and the proof of their innocence is manifold:

- distinguished specialists, witnesses for the defence, have clearly established under oath that the AIDS epidemic broke out at the Benghazi hospital in 1997, that is before the nurses took up their duties; they have categorically rebutted the official allegations concerning the way in which the virus spread in the hospital, and have concluded that

the contamination of the children was due to bad medical practice (re-use of one-way products and deplorable conditions of hygiene;

- one of the nurses, moreover, never served at the Benghazi paediatric hospital;
- the experts have proved that the circumstances under which the bottles of blood plasma taken as prosecution evidence had been stored precluded any conclusive biological analysis whatsoever;
- the numerous breaches of Libyan law (torture, improprieties in the judicial procedure, etc.) also militate in the nurses' favour.

72. However, notwithstanding the efforts over the last year to reintegrate Libya into the international community, the lifting by the United States of the main economic and trade sanctions, the lifting by the European Union in October 2004 of the arms embargo, the visit by Colonel Gaddafi to Brussels in April 2004, the visit by President Chirac to Libya in November 2004, and the signing of agreements on compensation for the victims of terrorist attacks, no favourable outcome has yet been found.

73. The present situation seems to be completely deadlocked. On the one hand, the Libyan authorities stand firm on their demand for financial compensation of the families and reiterate that there will be no step forward in the criminal proceedings until a compromise with them has been found. The Bulgarian authorities have no intention of giving in to these escalating demands and have stated that they refuse categorically to buy the release of the nurses, which would be tantamount to recognising their guilt.

74. On 15 November the Supreme Court of Libya will deliver its judgment. The acquittal of the Libyan security officers charged with torture, and the execution of two Turkish nationals sentenced to death, sound a warning knell, which according to some observers could herald the Supreme Court's confirmation of the initial verdict. I refuse to envisage the worst and to believe that the Supreme Court and the Libyan authorities would accept an utter denial of justice.

75. It is quite clear that the international community wants the initial judgment quashed and the case referred to a new court. This is the message that I plainly delivered to the Libyan authorities during my visit: if the Supreme Court decided to set the first judgment aside, it ought not to be regarded as a disavowal of the judges by the supreme judges but on the contrary as proof of the proper functioning of the Libyan judicial system. It would then rest with the Libyan Minister of Justice to order the referral of the case which has been indicated as a possible way out.

76. From a political and diplomatic standpoint, the European Union, through its various institutions and its nine member states which have an embassy in Tripoli, has already made major efforts. I do hope that the Council of Europe can act even more effectively on this issue.

## APPENDIX I

### **Libya: the death sentence passed on the Bulgarian nurses in no way relieves the tragedy of the children contaminated with the Aids virus**

STRASBOURG, 26.08.2005 - After a three-day visit to Libya, Tony Lloyd, (United Kingdom, SOC), the Parliamentary Assembly's rapporteur, spoke with satisfaction of his high-level meetings with Abdel Rahman Shalqam, Minister of Foreign Affairs, Nassar Al-Mabruk, Minister of Public Security, and Mohammed Zikree, Deputy Minister of Justice, concerning the fate of the five Bulgarian nurses who have been sentenced to death.

"Europe has shown very clearly that it is not indifferent to the appalling tragedy which has struck 426 Libyan children contaminated with the Aids virus and their families. Here we must pay tribute to those of our member states which have been discreetly providing the resources needed to accommodate, take care of, and treat groups of children. Whatever happens to the nurses, the sick children are already getting the treatment they need. The death sentence passed on five women who are clearly innocent of the crimes they are charged with, and have now been in prison for six and a half years, in no way relieves the suffering of the children and their families. Libya has nothing to gain by adding a second tragedy to the first", said Tony Lloyd.

Tony Lloyd told the Libyan authorities of his deep disappointment at not being allowed to meet the five nurses. In his view, there is no doubt that the court proceedings since 1999 have had numerous flaws and many grey areas. "I cannot say that my talks brought clear answers to some of my questions, particularly those concerning the serious allegations of torture, which the nurses reportedly suffered during their first few months in prison."

The Libyan Supreme Court will be giving judgment on 15 November. "It's the last-chance verdict. I hope that the Court will overturn the judgment and refer the case to a new court, which can judge it impartially – and above all calmly," said Tony Lloyd.

## **APPENDIX II**

### **Peter Schieder devastated at death sentences in Libya**

Strasbourg, 06.05.2004 - Council of Europe Parliamentary Assembly President Peter Schieder said today that he was devastated at the news from Tripoli that a court of law has sentenced to death a number of international medics - five of whom are Bulgarians and therefore nationals of a Council of Europe member State.

"I hope that an appeal will be made and that the court ruling will be reversed. I do hope that goodwill will prevail in Tripoli, which has just reopened its dialogue with Europe," he said.

"Throughout Europe, capital punishment has long been abolished or no longer used, and we would expect Libya to subscribe to this fundamental value," he said.

Members of an international medical team based in Benghazi have been in a Libyan jail for over five years now, and were charged with deliberately infecting more than four hundred Libyan children with HIV.

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## **Committee of Ministers Session - 12-13 May 2004**

### **Chairman statement on the medical staff sentenced to death in Libya**

Strasbourg, 13.05.2004 - The Committee of Ministers expresses its grave concern over the recent verdict by a Libyan court providing for capital punishment of foreign medical staff, five of which are nationals of Bulgaria, a Council of Europe member state. It recalls that throughout the European continent the 45 member states of the Council of Europe have rejected the death penalty as incompatible with human rights and dignity and have either abolished it or renounced to carry it out.

In view of the recently expressed desire by the Libyan authorities for improving their relations with Europe, the Committee of Ministers calls for the immediate review of the verdict in this case. It also urges Libya to reconsider the issue of the death penalty in general.

In this context the Committee of Ministers regrets the decision of the Libyan authorities to cancel the second visit to Libya of the Parliamentary Assembly envoy and expresses its expectation that this mission will be accomplished as soon as possible.

## **APPENDIX III**

### **Programme of the visit to Libya of Mr Tony Lloyd, Rapporteur**

**(22-23 August 2005)**

***Monday 22 August 2005***

16.00 Meeting with **H.E. Mr Anthony Layden**, British Ambassador to Libya

18.00 Meeting with **H.E. Mr Zdravko Velev**, Bulgarian Ambassador to Libya

**Tuesday 23 August 2005**

09.00 Meeting with **Dr Zdravko Georgiev** (Bulgarian doctor and husband of nurse Kristiana Vulcheva)

10.00 Meeting with the nurses **Libyan lawyer, M<sup>e</sup> Osman Bizanti**

12.00 Meeting with **Mr Mohammed Zikree**, Deputy Minister of Justice

**Wednesday 24 August 2005**

10.00 Meeting with **Mr Nassar Al-Mabruk**, Minister of Public Security

12.00 Meeting with **Mr Abdelrahman Mohamed Shalgam**, Minister of Foreign Affairs,

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*Reporting committee:* Committee on Legal Affairs and Human Rights

*Reference to committee:* [Doc 10057](#), Reference 3012 of 23 November 2004

*Draft recommendation* unanimously adopted by the Committee on 16 September 2005

*Members of the Committee :* Mr Serhiy **Holovaty** (Chairperson), Mr Jerzy **Jaskiernia**, Mr Erik **Jurgens**, Mr Eduard Lintner (Vice-Chairpersons), Mrs Birgitta Almqvist, Mr Athanasios **Aletras**, Mr Gulamhuseyn Alibeyli, Mr Rafis **Aliti**, Mr Alexander **Arabadjiev**, Mr Miguel Arias, Mr José Luis Arnaut, Mr Giorgi Arveladzé, Mr Abdülkadir **Ates**, Mrs Doris Barnett, Mr Jaume **Bartumeu Cassany**, Mrs Meritxell Batet, Mrs Soledad **Becerril**, Mrs Marie-Louise Bemelmans-Videc, Mr Sali Berisha, Mr Rudolf Bindig, Mr Erol Aslan **Cebeci**, Mrs Pia **Christmas-Møller**, Mr Boriss **Cilevics**, Mr András Csáky, Mr Marcello Dell'Utri, Mr Martin Engeset, Mrs Lydie **Err**, Mr Jan **Ertsborn**, Mr Václav **Exner**, Mr Valeriy Fedorov, Mr György Frunda, Mr Jean-Charles **Gardetto**, Mr József Gedei, Mr Stef **Goris**, Mr Valery Grebennikov, Ms Gultakin Hajiyeva, Mrs Karin Hakl, Mr Nick Harvey, Mr Michel **Hunault**, Mr Sergei **Ivanov**, Mr Tomáš Jirsa, Mr Antti Kaikkonen, Mr Hans Kaufmann, Mr Nikolay Kovalev (alternate: Mr **Sharandin**), Mr Jean-Pierre Kucheida (alternate: Mr **Pozzo di Borgo**), Mrs Darja Lavtižar-Bebler, Mr Andrzej Lepper, Mrs Sabine Leutheusser-Schnarrenberger, Mr Tony **Lloyd**, Mr Humfrey Malins, Mr Andrea **Manzella**, Mr Dick Marty (alternate: Mr **Gross**), Mr Tito Masi, Lord McIntosh of Haringey, Mr Murat **Mercan**, Mr Philippe **Monfils**, Mr Philippe Nachbar, Mr Tomislav Nikolic (alternate: Mr **Jovašević**), Ms Ann Ormonde, Ms Agnieszka Pasternak, Mr Ivan Pavlov, Mr Piero Pellicini, Mrs Sólveig Pétursdóttir, Mr Rino Piscitello (alternate: Mr **Budin**), Mr Petro Poroshenko, Mrs Maria Postoico, Mr Christos **Pourgourides**, Mr Jeffrey Pullicino Orlando, Mr Martin Raguž, Mr François Rochebloine, Mr Armen Rustamyan, Mr Adrian Severin, Mr Michael Spindelegger, Mrs Rodica Mihaela **Stanoiu**, Mr Petro Symonenko, Mr Vojtech **Tkác**, Mr Egidijus **Vareikis**, Mr Miltiadis Varvitsiotis, Mr José Vera Jardim, Mrs Renate **Wohlwend**, Mr Vladimir Zhirinovskiy (alternate: Mrs **Narochitskaya**), Mr Zoran **Žižic**, Mr Miomir Žužul

N.B.: The names of the members who took part in the meeting are printed in **bold**

*Secretariat of the Committee:* Mr Drzemczewski, Mr Schirmer, Mrs Clamer, Mr Kotliar

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[1] [Doc 10057](#).

[2] See AS/Bur (2004) 34 of 26 March 2004, report on a fact-finding mission to Libya and the situation of the imprisoned medical staff, presented by Mr Eörsi.

[3] AS/Bur (2004) 34 of 26 March 2004, mentioned above, and AS/Bur (2004) 82 of 6 October 2004 [Secretariat memorandum on Council of Europe action in connection with the case of an imprisoned international medical team in Libya].

[4] See press release in Appendix I.

[5] The affair was revealed by an article published in November 1998 in the Libyan magazine "La". Libyan journalists who had conducted an investigation in Benghazi reported the outbreak of the AIDS cases and exposed the failings of the pediatric hospital which were to blame. The authorities banned the publication and had all the copies of the magazine seized.

[6] In July 2004, Professor Montagnier wrote a letter to Colonel Gaddafi, the Libyan Head of State, calling upon him to pardon the six convicted persons.

[7] Further studies carried out either previously or subsequently by several Swiss, Italian and American specialists on the HIV virus stating the same conclusions were submitted by the defence. Professor Luc Perrin, Head of the Virology Laboratory at the cantonal university hospital in Geneva, examined 40 of the children concerned and concluded that their contamination was attributable to bad medical practices, especially as half of them had also contracted hepatitis C and a third hepatitis B. The court refused to hear Professor Perrin as a witness. The article published in November 1998 in the Libyan magazine "La" clearly indicated the failings of the pediatric hospital, viz. shortage of single-use products, repeated use of disposable instruments, lack of HIV tests, and failure to comply with standards of hygiene.

[8] See the reactions of the Council of Europe in Appendix II.

[9] The court rejected the expert medical opinion produced by the defence which it had not been possible to perform until three years after the material facts, on the ground that a Libyan doctor officially appointed as an expert considered that the investigation had not been conducted in accordance with the protocols, that traces of torture were undetectable and that at all events the torture alleged left no marks after two or three weeks!

[10] The ministers recalled for instance that the criminal law provisions to the effect that anyone who has caused the death of more than two persons incurs the death penalty appear in a body of legislation dating back to 1967, ie earlier than the present system.

[11] Libya has observer status since 1999.