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# Concerns in Europe and Central Asia July to December 2003

## FOREWORD

This bulletin contains information about Amnesty International's main concerns in Europe between July and December 2003. 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: July - December 2002
AI Index EUR 01/016/2003	Concerns in Europe: January - June 2003





# Europe and Central Asia

## Concerns in Europe and Central Asia July - December 2003

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### ALBANIA

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#### ***Ratifications***

In October Albania became the second country to ratify the Optional Protocol to the UN Convention against Torture.

#### ***The introduction of alternative civilian service for conscientious objectors to military service***

According to a press report, in August a new law on military service came into force which enabled conscientious objectors to military service to perform an alternative civilian service or unarmed military service. It appears that a commission, composed of officials from the Ministry of Defence and other ministries and of representatives of religious communities, rules on applications for conscientious objector status. Amnesty International did not have further details of these provisions.

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

Police ill-treatment of detainees, including children, often for the purpose of obtaining a confession of guilt or other information, continued to be widespread. In some cases victims suffered injuries so severe as to require medical treatment or even hospitalization; some incidents amounted to torture.

On 29 November Jaho Smoqi, a businessman, was murdered at his home near Durrës. Over 100 people were reportedly taken in for questioning by police, some of whom later alleged that they were severely ill-treated in order to force them to confess to the murder or provide information related to it. Among them was Mariglen Mema, aged 24, who on 5 December 2003 filed a complaint against the chief of Shijak police station. Others who were also allegedly beaten or otherwise ill-treated included Nuri Kuci, Besnik Fetahu, and two children, Denis Llaftiu, aged 17, and Roland Shahini, aged 12. All the above persons were released without charge.

On 1 November Romeo Nexhipi, aged 26, was detained on the street in Fier by several police officers. When he asked for an explanation, the officers forced him into their car, where they allegedly punched, kicked and beat him. When they saw that he had temporarily lost consciousness they drove him to hospital where he received treatment before being taken to the local police station. He was released the next morning, but was allegedly asked first to sign a statement that he had no complaints to make against the police.

#### ***The investigation of complaints of police ill-treatment***

Investigations into complaints of ill-treatment tended to be lengthy and inconclusive. Prosecutors and judges

usually did not fulfil their legal duty to initiate ex officio criminal proceedings when there were grounds for suspecting that a defendant had been ill-treated. According to one lawyer: "In many cases defendants who are brought to court from the police stations to be remanded in custody have been ill-treated and bear visible marks of ill-treatment... At these court sessions the only witnesses to the injuries are the lawyer, the judge and the prosecutor. The lawyer protests but the others keep their mouths shut."

Even when a formal complaint was filed, prosecutors did not always open an investigation. In July 18-year-old Artan Llango from Çorovodë attempted to file a complaint with the prosecutor of Skrapar district. He alleged that two police officers had beaten him after he intervened when they evicted a friend from a school graduation party. Despite the fact that there were numerous witnesses, and photographs of the alleged victim appeared to show bruising, the prosecutor reportedly declined to investigate, on the grounds that a local medical forensic expert who examined Artan Llango had not found evidence to support the complaint.

#### **Trial proceedings against police officers**

The trial of Edmond Koseni, former chief of police of Elbasan district, and of his relative and driver, Xhaferr Elezi, also a police employee, finished in November (see AI Index: EUR 01/016/2003). They had been accused of beating and injuring a taxi-driver, Naim Pulaku, in December 2001, and of attacking him the following day in hospital. Xhaferr Elezi was convicted of torture and of possessing an unlicensed weapon, and was sentenced to a 10-year prison sentence, which included four years previously imposed, and not yet served, by an Italian court for pimping in Italy. Edmond Koseni, charged with torture, was acquitted. The prosecutor appealed against his acquittal.

In November Vlora district court convicted Alnor Hasa, former chief of Crime Police in Vlora, of "Arbitrary acts" and sentenced him

to two years' imprisonment. In March 2002 Sabaudin Çela had alleged that Alnor Hasa had tortured him in an attempt to obtain information about a murder. According to Sabaudin Çela, Alnor Hasa and three other men had forced him into a car and driven to the outskirts of Vlora where they brutally beat him and burned him with cigarettes. They then drove him back into town and left him unconscious in the street, where he was found by a neighbour and later taken to hospital.

#### **Conditions of detention**

Conditions of detention in police stations, where remand prisoners were often held for up to two years or more, were characterized by overcrowding and by very poor sanitation, hygiene, lighting and diet. Cells lacked beds or other basic furniture, toilets and heating. Detainees had no access to reading or writing materials. In violation of the law, children (aged 14 to 17) sometimes shared cells with adult detainees; convicted prisoners, for whom there was not sufficient accommodation in prisons, were held together with remand prisoners. Medical care was inadequate and there was almost no provision for violent mentally ill detainees.

Mirdita district court set a precedent in August when it ordered Mirdita police station and the General Directorate of Prisons to pay Artan Beleshi 700,000 Albanian leks (about US\$6,000) in compensation for detaining him in inhuman and degrading conditions for over three years and for failing to transfer him within the legal time limit to prison following his conviction.

The remand block in Vlora police station was in August brought under the authority of the Ministry of Justice, as the initial step in a much-delayed plan to transfer responsibility for remand prisoners from the Ministry of Public Order to the Ministry of Justice. In December some improvements were made to conditions there. At the end of November a new prison was opened in Peqin, with capacity for 700 convicted prisoners. This resulted in only a partial and

temporary relief to overcrowding in police stations.

***Violence against women and children, including trafficking for forced prostitution, begging and cheap labour***

Violence against women and children, particularly in rural areas, was reportedly common; surveys by two independent institutions, published in September and December, found that over 30 per cent of women interviewed said they had been subjected to physical violence at home. No legal provisions specifically prohibited domestic violence, and court decisions did not always reflect the gravity of the offence. In October the National Council of Albanian Women protested at the leniency of a 16-month prison sentence imposed by Tirana District Court in September on Ruzhdi Qinami for the "honour killing" of his 17-year-old daughter. The court ruled that he had committed the murder in a state of severe psychological shock, after his daughter, betrothed by the family to one man, returned home late from a meeting with another.

Poverty, lack of education and family breakdown had a major role in the continued trafficking of women and children, primarily to Italy and Greece, for forced prostitution, cheap labour or as beggars. In July prosecutors reportedly concluded that 80 per cent of prosecutions for trafficking for forced prostitution in the previous six months had failed because victims feared reprisals. In November the government approved a draft law on witness protection. The authorities increased efforts to arrest and prosecute offenders, and victims seemed more ready to report their traffickers to the police, but by the end of the year only a small number of cases had been investigated and brought to trial. Among them were three separate cases, between September and the end of December, in which Fier district court convicted four persons of trafficking women for forced prostitution.

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**ARMENIA**

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***Conscientious Objection (update to AI Index: EUR 01/002/2002)***

Parliament adopted a law in December that provided for unarmed military service of three years or alternative civilian service under the Ministry of Defence for three and a half years for young men objecting to compulsory armed military service on the grounds of their religious beliefs or convictions. These terms are almost double the length of compulsory armed military service. The law was due to enter into legal force in July 2004.

Conscientious objectors continued to be sentenced to prison despite Council of Europe requirements to free all those so imprisoned. By December, prison sentences of between one and two years had been imposed during the year on at least 27 men, all Jehovah's Witnesses, as a result of their conscientious objection. Five more had been arrested and were awaiting trial. A further two had been released on parole.

***Unfair trial concerns (update to AI Index: EUR 01/002/2002)***

In December Nairi Unanyan and five co-accused were sentenced to life imprisonment by a court in Yerevan for their part in the October 1999 attack on the Armenian parliament during which eight deputies and government officials, including then Prime Minister Vazgen Sarkisian and Parliament speaker Karen Demirchian, were killed. There were concerns about the fairness of the trial - which lasted for almost four years - and about widespread support for imposing the death penalty in this case.

Proceedings in the case had been accompanied since the 1999 arrests by concerns about due process and the conditions of detention of those held in connection with the attacks. Such concerns included allegations of torture and ill-treatment, difficulties in access to defence lawyers, lack of access to families, and

denial of access to independent medical practitioners. Widespread public and political support for the death penalty in this case had led to the Council of Europe warning Armenia that it would face suspension from the organization if any of the defendants were executed.

***Death penalty (update to AI Index: EUR 01/002/2002)***

President Robert Kocharian commuted all outstanding death sentences to life in prison by presidential decree on 1 August. A new criminal code adopted by parliament in May banned the death penalty in peacetime but contained an exemption provision that would allow use of the death penalty in the October 1999 parliamentary shootings case (see above). Several of the 42 men who had their death sentences commuted to life imprisonment protested the decision to deny them the right of appeal against their sentences and went on hunger strike. The Council of Europe urged the authorities to review the criminal cases of those men on death row who had asked for a retrial or a change in their sentence. In September a new parliament voted to abolish the death penalty in all cases in peace time and to ratify Protocol 6 of the European Convention on Human Rights, one of the commitments Armenia undertook when it joined the Council of Europe in 2001. However, in November deputies voted unanimously to amend the new Criminal Code to deny the right of parole to criminals sentenced to life imprisonment for grave crimes under six articles, including murder and assassination of a state or public figure. It was widely believed that this amendment was intended to ensure that those sentenced to life imprisonment in the October 1999 parliamentary shootings case were never released.

## AUSTRIA

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

Heinz Kurath, aged 25, was allegedly ill-treated on 13 July by police officers during his arrest and at the police station in Klopeiner See. According to Heinz Kurath and two eyewitnesses, Gerd Kurath and Christian Luschin, at around 1am on 13 July the three men were sitting on a pavement outside a bar in Seelach am Klopeiner See when they were approached by two police officers who brusquely told them to get up. While the two eyewitnesses stood up immediately, Heinz Kurath reportedly explained to the officers that he would need longer to stand up due to severe back pain. There was an altercation and the officers called for reinforcement. One of the officers allegedly dragged Heinz Kurath to the ground and he was then handcuffed. Two more officers arrived and the four of them reportedly pinned him onto the pavement, pulled his hair and pressed his face onto the asphalt which led to severe grazing on his face. They then took Heinz Kurath to the police station St. Kanzian am Klopeiner See. He was reportedly charged with resistance to state authority.

While in custody, Heinz Kurath was reportedly beaten by several police officers on the back of his head. His requests to go to the toilet or to be allowed to call his lawyer or his father were denied. Heinz Kurath stated that he asked several times for the identification numbers of the officers but in vain. He subsequently refused to sign the statement which had been presented to him by the officers. The handcuffs were only removed when the ambulance team arrived to take him to hospital. He was then reportedly allowed to use the toilet at around 4am after the intervention of the ambulance team. According to the medical report, Heinz Kurath suffered bruising to the head, several scratches on the face and bruising to the lower back. He was bleeding on the left temple and left lower jaw. On 22 December Amnesty International wrote to Minister of the Interior, Ernst Strasser, urging an impartial and thorough

investigation into the incident and requesting to be informed of its findings. The organization also asked to be informed whether Heinz Kurath's request of access to a lawyer during his time in custody had been refused by the police officers.

In early September, Lower Austria's Independent Administrative Tribunal found that the police had violated Article 3 of the European Convention on Human Rights when they raided a building used to house asylum-seekers in Traiskirchen and bound the residents' hands with plastic restraints for several hours without good reason as well as denying them access to toilets and water. The 32 foreign nationals of African origin had lodged multiple complaints about the cruel, inhuman and degrading treatment by police in January 2000.

#### **Death in custody**

Cheibani Wague, a 33-year-old Mauritanian, died in police custody in Vienna in the night of 15-16 July. Police were called to the Afrika-Kulturdorf cultural centre, where he worked as a guide and night watchman, at around 11pm on 15 July after a dispute between him and a colleague was reported. According to media reports, Cheibani Wague had initially reacted calmly to the presence of the police and ambulance personnel. He was reportedly communicative and cooperative and voluntarily stepped into an ambulance where he was handcuffed and strapped onto a stretcher. However, he was later said to have suddenly stood up and then ran out of the ambulance, knocking over a police officer in doing so.

The police officers reportedly caught him and forcefully pinned his face against the ground, causing his nose and mouth to bleed. They then reportedly began to hit him: one officer was reported to have punched Cheibani Wague at least twice on the back of the head while another officer hit him on the back five times. Shortly afterwards, he was reportedly sedated by medical personnel.

Video footage of the incident, which was taken by a local resident, showed six police and medical officials surrounding Cheibani Wague as he lay handcuffed, face-down on the ground, apparently unconscious. One police officer was shown standing on the detainee's leg with one foot while a medical attendant was standing on the detainee with both feet. The video footage also showed a doctor apparently watching Cheibani Wague being treated in this manner. He was restrained in this position for about seven minutes until medical personnel placed him in an ambulance. Cheibani Wague was subsequently taken to Vienna's General Hospital, where he died at around 6am on 16 July. The autopsy report indicated lack of oxygen to the brain and irreversible failure of the circulatory system as the causes of death.

In December, Vienna's Independent Administrative Tribunal examined whether the police officers had acted unlawfully during the incident. However, the officers refused to cooperate with the tribunal during the hearings and refused to make any statements, even though such non-cooperation was illegal.

#### **Refugees**

A new asylum law, which was adopted by parliament in October, was criticized by refugee and human rights organizations as restrictive. It introduced among other things a list of "safe" countries of origin and effectively prevented asylum-seekers from bringing new evidence to the attention of the asylum authorities at a later date. It was feared that cases of refoulement may result from these new procedures.

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## **AZERBAIJAN**

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#### **Election-related abuses**

In August President Heydar Aliyev appointed his son, Ilham Aliyev, as Prime Minister. Two weeks before presidential elections on 15 October he resigned as President and withdrew his candidacy in favour of his son who went on to win the

elections by a large margin, as the sole candidate, for the ruling Yeni Azerbaijan (New Azerbaijan) party. Heydar Aliyev died, aged 80, in the USA, where he had been receiving treatment for congestive heart failure and kidney problems since August.

The pre-election campaign was marked by intimidation of opposition supporters and sympathizers and the reported use of excessive force by police to break up peaceful opposition campaign rallies. The elections themselves were marred by widespread voting irregularities including ballot box stuffing, multiple voting and intimidation of voters and election observers. Scores of election officials who refused to sign flawed election protocols during the vote count were reportedly threatened and detained. International observers were barred from monitoring the activities of the Central Electoral Commission as they compiled votes before the announcement of the final results.

Violent clashes between opposition activists protesting election irregularities and officers from the police and Ministry of internal affairs (MVD) special forces in the centre of the capital Baku on 16 October left hundreds of protestors and dozens of police officers injured, many seriously, and claimed at least one death. Over 50 independent and opposition journalists covering the demonstration were reportedly severely beaten by police and several were detained along with scores of protestors and bystanders. There were credible reports that large numbers of opposition activists or supporters and members of their families were intimidated and dismissed from their jobs following the election because of their political affiliation. The state-run printhouse refused to print opposition newspapers and the offices of the opposition Yeni Musavat newspaper were closed.

#### *Post-election arrest*

In the wake of the violent post-election clashes in Baku hundreds of opposition activists, officials and supporters, - mainly, but not exclusively, of the Musavat (Equality) party - were detained throughout

the country reportedly for "instigating, organizing or participating in violent activities". Most were sentenced to short-term administrative detention but more than a hundred were still in custody awaiting trial by the end of December. Non-governmental sources alleged that a number of detained opposition leaders and activists were tortured by members of the MVD's Organized Crime Unit (OCU) into denouncing 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 was placed under house arrest.

#### Arrest of Musavat activist

On 27 October Rauf Arifoglu, editor-in-chief of the opposition Yeni Musavat newspaper and deputy chairman of the Musavat party, was ordered by a court in Baku to be placed under three-months' pre-trial detention while charges of disturbing the peace and obstructing justice against him were investigated. He faced up to 12 years imprisonment if convicted. The authorities accused him of being one of the organizers of post-election violence and of having used the offices of Yeni Musavat to store weapons used by opposition protesters during the post-election demonstrations. Rauf Arifoglu told members of international organizations who visited him in pre-trial detention in Bailov prison in Baku that he had been held in solitary confinement for 32 days and that he was forced to sleep on the floor of an unheated cell for 18 days. He went on hunger strike on 1 December together with dozens of opposition detainees to protest their arrests, which they believed were politically-motivated.

#### *Allegations of torture*

On 17 October masked OCU officers detained Iqbal Agazadeh, leader of the opposition Umid (Hope) party, his brother Ilham and three others at Iqbal Agazadeh's home. A special session of parliament had stripped Iqbal Agazadeh of his parliamentary immunity earlier that day. According to witnesses interviewed by Human Rights Watch one OCU officer

repeatedly punched Iqbal Agazadeh in the face with a steel-reinforced glove on the way to the OCU offices. At the OCU the detainees were kicked and beaten with rubber truncheons while they were lying handcuffed on the ground in the courtyard. Iqbal Agazadeh was reportedly severely beaten and tortured at the OCU during three days in order to force him to denounce Isa Gambar in a television interview on 20 October, after which he was allowed access to his lawyer. His lawyer told Human Rights Watch that Iqbal Agazadeh's body was covered in bruises and that he had been hit some fifty times on one leg.

#### ***Arrest of human rights defender***

On 17 October police raided the Juma mosque in the old town of Baku during Friday prayers. They were reportedly trying to detain Ilgar Ibrahimoglu, a human rights activist and imam of the Juma mosque 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 escaped arrest; Ilgar Ibrahimoglu was given sanctuary by the Royal Norwegian embassy for three days and Azer Ramizoglu went into hiding.

On 1 December Ilgar Ibrahimoglu was detained after having been summoned in writing to the general procuracy as a witness in a criminal case. On 3 December he was placed in three-month pre-trial investigative detention by a Baku Court on charges of "organizing and participating in mass disorders". He was held at Bailov prison and had been visited by his lawyer and diplomats during the period under review. According to the international religious freedom organization Forum 18, Ilgar Ibrahimoglu consistently denied any involvement in organising or participating in the post-election disturbances, and alleged that his arrest was 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. He was also on the board of the Islam-Ittihad Society, one of the founding members of the opposition electoral bloc Bizim Azerbaijan.

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

In February and March pro-government newspapers accused Eldar Zeynalov, head of the non-governmental Human Rights Centre of Azerbaijan, of supporting Armenia. In February Ilham Aliyev reportedly said Leyla Yunus, director of the non-governmental Institute for Peace and Democracy, and others were assisting Armenia and threatening Azerbaijan's interests by opposing construction of the Baku-Tbilisi-Ceyhan oil pipeline. On 22 April pro-government organizations denounced Eldar Zeynalov and Leyla Yunus as "enemies of the people" on state-run television. Between 23 and 25 April a mob broke the windows and locks of the Human Rights Centre, burned a wooden cross bearing the effigy of Eldar Zeynalov, called on him to leave Azerbaijan and shouted death threats. The police did not interfere. On 28 April, when neighbours assaulted his sister-in-law and his father-in-law, the police reportedly refused to respond to a call for protection. Also on 28 April, 40 Yeni Azerbaijan supporters outside the Institute for Peace and Democracy called for Leyla Yunus to leave the country.

***Amnesty for political prisoners (update to AI Index: EUR 01/007/2002)***

On 30 December President Ilham Aliyev signed a decree pardoning 160 prisoners. Among those subsequently released were a number of political prisoners whom the Council of Europe had required Azerbaijan to release or retry as one of its obligations on joining the organization, including Former Interior Minister Iskender Mejid oglu Hamidov (also known as Iskander Gamidov). The Parliamentary Assembly of the Council of Europe (PACE) had put particular emphasis on his release in 2002. AI had previously raised concerns regarding allegations of ill-treatment, unfair trial, and conditions of detention, including access of relatives, in his case.

***Excessive use of force (update to AI Index: EUR 01/007/2002)***

In November the Supreme Court reduced the prison sentences of two elders from the village of Nardaran near the capital Baku to four-year suspended sentences. Alikram Aliyev, chairman of the Islamic Party of Azerbaijan and Dzhebrail Alizade, chairman of the Union of Baku and Baku Villages had been sentenced to nine and eight years' imprisonment respectively in April for their alleged participation in violent clashes between police and villagers of Nardaran in June 2002 during which one villager was shot dead. The villagers had been staging peaceful demonstrations to protest their socio-economic condition. Other defendants received suspended sentences and were released from the court room. An appeal court had previously reduced Alikram Aliyev's sentence to six years' in prison in June. No prosecutions of law enforcement officers alleged by unofficial sources to have used excessive force to break up the demonstrations in Nardaran were initiated.

In February police once again raided Nardaran, reportedly to detain several villagers wanted in connection with the previous year's demonstrations. At 3am dozens of masked officers in bullet-proof camouflage outfits armed with automatic weapons and batons were said to have

stormed a tent in the central square (erected in protest at the June 2002 arrests and subsequent trial of 15 villagers) where some 50 male villagers were sleeping. The officers reportedly fired at the tent and assaulted the occupants beating them with their batons and the butts of their rifles and injuring about 20. Eight men were detained and charged with resisting arrest and illegal possession of weapons. In March the eight received suspended sentences and were released from the courtroom.

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## BELARUS

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***"Disappearances"***

There was no progress in determining who was responsible for the "disappearances" of Yury Zakharenko, Viktor Gonchar, Anatoli Krasovsky and Dmitry Zavadsky, although the authorities reopened the investigations into all four cases during the period under review. After having reopened the criminal investigation into the "disappearance" of Yury Zakharenko in June, the Minsk City Prosecutor decided on 15 July to reopen the criminal investigations into the "disappearances" of Viktor Gonchar and Anatoly Krasovsky. In addition he appointed a new investigator (sledovatel') to lead these investigations. On 29 July the new investigator reportedly refused to meet with Irina Krasovskaya in the presence of her lawyer and she had to leave without being able to hand him documents relating to the case.

On 10 December the General Prosecutor's Office reportedly reopened the criminal investigations into the "disappearance" of Dmitry Zavadsky. His wife Svetlana Zavadskaya reportedly stated: "'However strange it may be, the case was resumed on 10 December, Human Rights Day. I hope that these two events are somehow linked and that my efforts were not in vain, because I have been insisting on resuming the investigation for a whole year.'" It is widely believed that the re-opening of the case was linked to visits to Minsk in November and December by Christos Pourgourides, member of the Parliamentary



Assembly of the Council of Europe. On 5 June 2003 he had been appointed by the Committee for Legal Affairs and Human Rights as Rapporteur to clarify the circumstances of "disappearances" for allegedly political reasons in Belarus.

The Chair of the OSCE Parliamentary Assembly Working Group on Belarus, Uta Zapf, who visited Minsk from 30 October to 1 November, expressed her "deep disappointment that the authorities appear to have completely abandoned the cases of the disappeared political figures without having ever provided any satisfactory answers as to the circumstances surrounding these disappearances".

#### **Long-term prisoners of conscience**

At the end of December, Viktor Ivashkevich, the editor of the newspaper *Rabochy*, was released from detention in Baranovichy, 140km south-west of the capital Minsk. He had been sentenced in September 2002 by a court in Minsk to a two-year term of "restricted freedom" after being convicted of slandering the President in a newspaper article in the pre-election period in 2001. In June 2003 his sentence had been reduced by one year, bringing the date of his release forward.

Professor Yury Bandazhevsky remained imprisoned. He had been sentenced to eight years' imprisonment for alleged bribe-taking in June 2001, but it was widely believed that he was convicted because he had criticized official responses to the Chernobyl nuclear reactor catastrophe of 1986. In a letter to his wife, dated 19 November he stated: "I am enormously grateful I am not forgotten. My state of health is not the best; I am exhausted by depression and have nightmares even while I am awake. The drugs are useless and have a great number of side-effects, including allergies. I don't have any strength left." On 2 October, he had his appendix removed after being on the point of collapse. He was only moved to the prison hospital after his cell mate alerted guards that he was in great pain. In July the UN Commission on Human Rights

reportedly started to consider a complaint by Yury Bandazhevsky.

#### **Freedom of association**

During the period under review human rights defenders continued to be subjected to a pattern of obstruction, harassment and intimidation by closures, and threats thereof, of several non-governmental organizations, including the Independent Society for Legal Research, Legal Assistance to the Population, Spring-96, and the Belarusian Helsinki Committee, who are directly and indirectly engaged in the promotion and defence of human rights in Belarus.

On 24 December the Supreme Court confirmed its decision of 28 October to close down Spring-96, one of Belarus best known human rights organizations. The charges, brought by the Ministry of Justice had included that a number of documents submitted for registration in 1999 were legally invalid, which according to the Ministry were allegedly forged, for example with fake signatures. The Ministry also claimed that the number of members of the Mogilev region was insufficient, that Spring-96 violated legislation on elections and that the organization had violated Article 72 of the Civil Procedure Code, which prohibits the representation of citizens who are not members of the organization. According to Spring-96 these charges were politically motivated, the forged signatures included for example Ales Bialatsky's, the organizations chair's signature. Spring-96 informed Amnesty International in September that it is of the opinion that its persecution by the authorities is in connection with its public activity (monitoring of human rights, support to victims of political repression, monitoring during the elections). The organization considers the closure of human rights and other NGOs a planned campaign of the authorities, aimed at removal of active public organizations from civil society.

On 28 October the Supreme Court upheld the decision of Minsk City Court in early September to close another well-known human rights organization, Legal Assistance

to the Population, whose staff members have been active in determining the fate of Belarus "disappeared" opposition figures, was shut down on grounds equally as spurious. In the month of August alone two NGO resource centres, Civic Initiatives and Ratusha, were closed down by the Belarusian authorities on the basis of warnings by the Ministry of Justice.

The Head of the OSCE Office in Minsk, Ambassador Eberhard Heyken, commented on the predisposition of the Ministry of Justice to issue warnings in an 11 September OSCE press release, which stated: "Closure of non-governmental organizations for alleged violations of the law is a continuing concern for international observers ... The Head of Office is concerned that independent NGOs continue to come under severe scrutiny by the authorities and forced to cease activities by court order." The Head of the OSCE Office added that certain NGOs had received warnings for violations "that cannot be viewed as anything other than negligible" and stated that "[t]hese events, unfortunately, do not seem to be isolated, but rather part of a broader campaign on behalf of the authorities".

#### **Arbitrary detention of peaceful protesters**

The Belarusian authorities continued to resort to repressive measures to stifle peaceful protest and numerous people were deprived of their liberty solely for exercising their rights to freedom of expression and assembly. According to statistics collected by ZUBR (a non-registered youth organization for democracy and human rights), in the period between January 2001 and December 2003 more than a 1000 incidents occurred during peaceful public actions, mainly involving arrests, fines and sometimes short-term detention of ZUBR members.

On 24 November the unregistered youth organization Maladi Front (Young Front) organized an unauthorized protest "NO – We are against a third referendum" in the centre of Minsk, to commemorate the 7th anniversary of the referendum that

prolonged President Lukashenko's stay in power. It was reported that 21 activists were arrested by police, among them 12 minors. On 25 November the protest organizer, Maladi Front member Dmitry Dashkevich, and a member of the unregistered Belarusian Party of Freedom, Vasil Parfyankov were sentenced to 15 days' administrative detention. Another action participant, Alyaksandr Zapartyka, was sentenced to five days' detention. Amnesty International considered them prisoners of conscience.

On 13 November another Maladi Front activist, Artur Finkevich, was sentenced to 15 days administrative detention for violating article 167.1(2) of the Code of Administrative Infringements for the distribution of leaflets encouraging people to join the protest on 24 November. Upon his release on 27 November, he was detained and sentenced the same day for the same violation to 15 days' administrative detention. According to Spring-96 this is an unprecedented case, where someone has been sentenced twice for the same offence. Amnesty International considered him a prisoner of conscience.

Artur Finkevich, Minsk, January 2004. ©AI

On 30 October the chair of the Belarusian Automobile and Agricultural Machinery Workers' Union, Alyaksandr Bukhvostov, was detained by police in central Minsk for staging a peaceful protest action against the government's alleged interference in the trade union's internal affairs. It was alleged that the Ministry of Industry had ordered enterprise managers to exert pressure on the local trade union structures of the Automobile and Agricultural Machinery Workers' Union in order to force them to leave the union and affiliate with a government-sponsored trade union, the Belarusian Trade Union of Industry Workers. Alyaksandr Bukhvostov organized the picket, which he saw as the only remaining option to protest against these alleged actions. On 30 October Tsentralny District Court in Minsk convicted Alyaksandr Bukhvostov in a closed hearing under Article 167 (1) of the Code for Administrative Infringements for staging an unsanctioned demonstration and sentenced him to 10 days' imprisonment. Amnesty International considered him to be a prisoner of conscience.

#### ***Violation of trade union rights***

The International Labour Organization (ILO) criticized repeated violations of workers' rights throughout 2003. As a result of the ongoing complaints and the lack of progress in resolving them, in the period 2000 - 2003 the ILO sent three delegations to Belarus in order to meet government and trade union representatives, the most recent being in mid-September 2003. On 19 November it announced the establishment of a Commission of Inquiry into allegations of abuses of workers' rights in Belarus, a procedure used only in the most serious cases. Independent trade unionists complained that they were imprisoned, harassed and dismissed, that their right of association was severely restricted, and that the state interfered in the internal affairs of several trade unions and of the national trade union federation.

On 18 September Leninsky District Court in Minsk sentenced the President of the Belarusian Congress of Democratic Trade Unions, Alyaksandr Yaroshuk, to 10 days'

imprisonment, provoking widespread protest in the international labour movement. The court found him guilty of contempt of court in violation of Article 166 (1) of the Belarusian Administrative Code. The alleged offence related to an article which Alyaksandr Yaroshuk had written in the independent newspaper, *Narodnaya Volya*, on 21 August in which he criticized the decision of the Belarusian Supreme Court to close down the Trade Union of Air Traffic Controllers of Belarus. The offending article entitled "A Pyrrhic Victory or the Chronicle of a Freefalling Trade Union" cast doubt on the Supreme Court's impartiality, stating that the court hearing was "a show whose outcome was known in advance". Amnesty International considered him a prisoner of conscience.

#### ***Press freedom***

The Belarusian authorities continued to stifle freedom of expression not only through its virtual monopolization of the press and tight control of domestic television and radio, but also by keeping the independent press in check through a campaign of harassment and intimidation. One of the highest profiled independent newspapers *Belaruskaya Delovaya Gazeta* (BDG) remained closed until 3 September. The authorities had suspended its publication on 29 May for three months after BDG had received three warnings for alleged violations of the press law (see AI Index: EUR 01/016/2003). The newspaper was alleged to have slandered President Alyaksandr Lukashenka and have reportedly commented on the ongoing trials of several businessmen in a series of articles.

More independent newspapers came under close scrutiny from the authorities after printing material by BDG journalists, among them the independent trade union paper *Salidarnasts*. In October 2003 the Committee of State Control sequestered the newspaper's assets in order to secure payment of a fine equivalent to US\$2000, which had previously been imposed on the newspaper. The fine followed an inspection of the newspaper by the Committee of State Control in June 2003, during which it

was discovered that the newspaper had not provided any information [on its front cover] about the size of its circulation and the date it was founded, which was fined by the Committee of State Control. Salidarnasts' editor, Alyaksandr Starykevich, had previously been dismissed as editor for another trade union paper in August 2002. His dismissal was said to have been motivated by his support for the former leader of the Belarusian Free Trade Union, Vladimir Goncharik, in the September 2001 presidential elections. Alyaksandr Starykevich appealed against the fine, the outcome of which was reportedly not known at the time the newspaper's assets were seized by the Belarusian authorities. On 27 November the Supreme Economic Court rejected his appeal.

In reaction to the support of other newspapers, who printed articles by BDG journalists, the editor of BDG, Svetlana Kalinkina and the owner of the publishing company, Petro Marov, reportedly received personal warnings from the Prosecutor General's office in July for "illegal production of a mass medium ... under different titles after the decision to suspend it". In support of BDG a Russian newspaper, Novaya Gazeta, issued a special edition of BDG as part of a number of its issues in July and August.

Apart from the system of official warnings, administered by the Ministry of Information, regularly used to keep in check the independent media, the mainly state owned print and distribution system reportedly discriminated against papers that voiced dissenting opinions. A number of independent papers had major difficulties finding printing facilities, which seemed related to the heightened scrutiny by the authorities. These included, for example, the above mentioned Salidarnasts and the satirical weekly newspaper Navinki.

Previous to the heightened scrutiny of the Belarusian authorities Salidarnasts had reportedly faced recurring difficulties in finding a publishing house willing to print the newspaper. The Red Star publishing house in Minsk reportedly refused to print the newspaper in mid-June 2003 shortly

after it had included material from the suspended newspaper BDG in one of its editions. After a gap of several months the newspaper resumed publication in early October 2003 with an edition devoted to the work of the ILO. Shortly afterwards, its assets were seized by the authorities but the newspaper managed to continue its publication, until its printing house Svetoch announced on 17 December 2003 that it could no longer print the paper due to lack of capacity.

In May Navinki's publication had been suspended after it had received two warnings by the Ministry of Information. Its appeal to overturn the warnings proved to be unsuccessful and the publication was closed down for three months. One of the warnings was reportedly issued after the newspaper had printed a caricature of President Alyaksandr Lukashenka earlier in the year. After its suspension had ended the paper was unable to find a publishing house to resume its publication on 16 October. Its original printing house reportedly refused to continue the publication, reportedly stating that because it had not printed Navinki for a longer period of time it had therefore not included it in its plans, even though its editor had announced in September that he intended to restart Navinki's publication.

#### **Death penalty**

On 4 November Belarus' parliament forwarded a request to the Constitutional Court to assess if the death penalty is in line with the Belarusian Constitution and international standards. A member of parliament, Andrei Nairenko, initiated this request on 30 October referring to previous decisions by the Hungarian and Lithuanian Constitutional Courts, which ruled that the death penalty was unconstitutional and not in line with international standards. On 6 November it was reported that the request was granted by the Constitutional Court, who reportedly intends to consider the question in a public court hearing.

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## BELGIUM

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### ***Unsatisfactory investigation of police ill-treatment***

On 30 June, following criminal proceedings lasting some 10 years, Brussels appeal court found a law enforcement officer guilty of assaulting and racially insulting Rachid N, a Tunisian national. It sentenced the officer (at the time of the incidents a member of the *gendarmerie* force, since integrated into the new federal police force) to eight months' suspended imprisonment and ordered him to pay damages. The court cited as factors contributing to its decision, the consistency of Rachid N's account of events over the years and the fact that he had twice picked the accused out of a group of officers, identifying him as the officer who had assaulted and insulted him. The verdict overturned that of a first instance court which had acquitted the officer in 2002.

In a criminal complaint lodged following his release from custody in Brussels in July 1993, Rachid N said that, after obeying an order to strip to his underpants he had then been ordered to strip naked in the presence of 10 gendarmes and assaulted and insulted when he tried to refuse. A medical certificate issued within hours of his release from custody the next day recorded multiple bruises. However, the proceedings suffered repeated setbacks and delays. For example, Rachid N was not given an opportunity to identify his alleged assailants until a face-to-face meeting (*confrontation*) took place in February 1996.

In December 2002 the first instance court had commented that -- although it appeared "incontestable" that Rachid N was searched and assaulted in an area of the gendarmerie office through which numerous gendarmes passed -- at the same time, for various reasons, "not one of these made a coherent statement about the facts which caused the injuries". The court stated that such behaviour "by representatives of public order charged with maintaining respect for the law" was "unacceptable in a

state of law". However, while not disputing that Rachid N had suffered injuries in detention, the court ruled that there was insufficient evidence that the officer committed for trial was the actual perpetrator.

There appears to have been no attempt by the authorities to bring to justice any senior officer in overall charge of the conduct of the gendarmes in their offices on the night in question. It is also highly debatable as to whether the case would have resulted in a conviction unless domestic non-governmental organizations had made regular interventions in the case over the years and constituted themselves civil parties to the proceedings, along with Rachid N, in the hope of obtaining eventual justice and redress for the victim. For further details - see *Belgium before the UN Committee against Torture* (AI Index: EUR 14/001/2003).

### ***Forcible deportations by air: death of Semira Adamu***

On 12 December a Brussels court of first instance 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 on 22 September 1998. She had resisted five previous attempts to deport her following the rejection of her asylum application.

Before take-off the officers employed the so-called "cushion technique", a restraint method authorized by the Ministry of the Interior at the time but subsequently banned, which allowed officers, practising caution, to press a cushion against the mouth, but not the nose, of a recalcitrant deportee to prevent biting and shouting. Semira Adamu, with her hands bound behind her back and her feet shackled with plastic strips, had her head and upper body forcibly bent over into the lap of an escorting officer seated next to her on the plane, while a cushion was pressed against her face, including her mouth, for over 10

minutes. She fell into a coma as her brain became starved of oxygen. Resuscitation attempts were made before her transfer to hospital where she died of a brain haemorrhage hours later. The court sentenced the three escorting officers 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.

In its judgment the court concluded that numerous external factors had contributed to Semira Adamu's death. Amongst these were the 'Guidelines for the execution of repatriations', authorized by the Ministry of Interior, which were in force at the time of Semira Adamu's death and issued to relevant officers of the *gendarmarie* (the force providing deportation escorts at that time) and which the court said were "manifestly inadequate" and "highly dangerous".

Noting that the guidelines had been drawn up on the advice of a working group set up under the Ministry of Interior to examine the issues surrounding the use of the cushion technique, the court observed that the working group "went to work superficially" and that "It was with reprehensible indifference that the working group passed over the specialist medical literature which warned of the risks of positional asphyxia phenomena ... The risk of suffocation was barely mentioned".

The court stated that "the inadequate nature of the guidelines was accompanied by the absence of practical training in the use of these guidelines. During the meetings of the working group additional "Repatriation techniques" training was planned. In practice such plans remained a dead letter ... The training of the escorting gendarmes fell below every standard".

Following the verdict, and protests by a large number of police officers engaged in deportation operations, the Minister of Interior asked an independent commission, led by Professor Vermeersch, a moral

philosopher, which had first been mandated to evaluate instructions and techniques relating to forcible deportations immediately after Semira Adamu's death 1998, to reconvene and carry out a re-evaluation of the techniques used in forcible deportation operations. The Vermeersch commission issued the findings of its 1998 evaluation in January 1999 and many of its recommendations, including a ban on the use of certain restraint methods during forcible deportations, in particular "anything obstructing normal respiration", including a cushion on the mouth, were largely reflected in new guidelines issued to escorting officers. The Minister stated that the Commission would start its work in January 2004 and was expected to submit a preliminary report at the end of March 2004. For further background information see *Belgium before the UN Committee against Torture*, AI Index: EUR 14/001/2003.

#### **Unaccompanied child asylum-seekers**

During the period under review there was continuing concern that the treatment of unaccompanied minors in detention and during deportation operations was not in line with relevant international standards on the treatment of minors. In June 2002 the UN Committee on the Rights of the Child had recommended, among other things, that Belgium should: ensure that unaccompanied minors be informed of their rights and have access to legal representation in the asylum process; create a guardianship service ensuring the appointment of a fully independent guardian for unaccompanied minors from the beginning of the asylum process; and expand and improve follow-up of returned unaccompanied minors. (For further details see AI Index: EUR 14/001/2003).

In November 2003 a Brussels court ruled that no unaccompanied minors should be expelled from Belgium or subject to refoulement, unless the Belgian State had specific guarantees that the child would be appropriately received and protected in the receiving country, and as long as a law of December 2002, establishing a guardianship service was not in operation.

Legislation promulgated in December 2002 had provided for a guardianship service *in principle*, attached to the Ministry of Justice, but this had not come into being in practice by November 2003, as the necessary enabling legislation was still lacking. However, in December 2003 the Council of Ministers gave its approval to a draft royal decree establishing the details of a guardianship service in practice. The service was expected to come into operation within the first half of 2004. Under its provisions guardians are, amongst other things, to ensure that all unaccompanied minors, whether classified as asylum-seekers or as unauthorized migrants, have legal representation concerning their rights of asylum and residence in Belgium as well as their social rights, and that they have adequate and appropriate accommodation: they are also to ensure oversight of their social, psychological, medical and educational well-being.

***Universal jurisdiction over genocide, crimes against humanity and war crimes (update to AI Index: EUR 01/016/2003)***

Legislation enacted in 1993 and amended in 1999 made provision for Belgian courts to exercise universal jurisdiction over genocide, crimes against humanity and war crimes in international and non-international armed conflict, wherever the crimes were committed and whatever the nationality of the accused and victims. By 2003 criminal complaints had been lodged directly with investigating magistrates against people from over 20 countries, all residing outside Belgium, in addition to complaints against people found in Belgium. Those facing complaints included past and present heads of state and lower level officials.

Amendments were made to the law in April 2003 which allowed victims to lodge complaints directly with an investigating magistrate *only* if the case had a direct connection with Belgium, through the victim or the accused, otherwise complaints were to be presented to the federal prosecutor for consideration and possible further action.

It also allowed the government to refer certain cases to other countries, if those countries were deemed to offer a fair and effective avenue to justice.

In July, apparently responding to political pressure exercised predominantly by the US authorities, the government proposed legislation, approved by parliament in August, allowing Belgium to pursue complaints of genocide, crimes against humanity and war crimes only in cases presenting a direct connection with Belgium through the accused (that is, the accused should be Belgian or have their main domicile in Belgium) or through the victims (that is, the victim should be Belgian or have been living in Belgium regularly for at least three years at the time the crimes were committed). This meant that further action on many criminal complaints lodged in Belgium was effectively blocked.

The government gave specific assurances that pending criminal proceedings relating to crimes committed in Rwanda, Guatemala and Chad, all of which included Belgian victims, would continue in Belgium. The proceedings relate to complaints lodged in Belgium in connection with the Rwandan genocide of 1994, complaints lodged against former Minister of Defence General Anibal Guevara and former Minister of Interior Donaldo Alvarez Ruiz of Guatemala in connection with the killing of two Belgian priests, and a complaint lodged by some 21 people, including three Belgian nationals, in connection with the actions of former President Hissène Habré of Chad.

In December a Brussels court ruled on a request by the Federal Prosecutor for proceedings against two Rwandan men residing in Belgium, and suspected of involvement in war crimes committed in the context of events which occurred in the Kibungo region of eastern Rwanda during the 1994 genocide, to continue before a court of assizes. The court referred the cases to the indictment chamber attached to Brussels Court of Assizes. The indictment chamber will examine the charges and decide whether the two men will stand trial before the assize court. If the men were to be sent for trial it would be the second such

trial to take place in Belgium. In June 2001, following Belgium's first trial based on universal jurisdiction (see AI Index: EUR 01/003/2001), Brussels Court of Assizes convicted four Rwandese nationals resident in Belgium of war crimes committed in the context of the 1994 genocide.

## BOSNIA-HERZEGOVINA

### *General and Political Developments*

The international community continued to exert significant influence over the political process in Bosnia-Herzegovina (BiH). The civilian implementation of the Dayton Peace Agreement continued to be led by a High Representative whose nomination is proposed by the Peace Implementation Council (PIC) and then endorsed by the UN Security Council. Approximately 12,000 peacekeeping troops of the NATO-led Stabilisation Force (SFOR) were still stationed in the territory of Bosnia-Herzegovina. In December it was anticipated that SFOR troops would be reduced to about 7,000 by mid-2004. The European Union Police Mission (EUPM) composed of approximately 500 police officers and a small number of civilian personnel, remained tasked with monitoring and supervising the activities of the local police.

In June 2003 members of the BiH presidency agreed unanimously that Bosnia-Herzegovina, together with the International Commission on Missing Persons (ICMP), would become a founding member of the Missing Persons Institute (MPI). The MPI is to create a mechanism at the state level to address the issue of the thousands of unresolved "disappearances". Ultimately it is envisaged that the MPI will replace the two entity commissions on missing persons in Republika Srpska (RS) and the Federation of Bosnia-Herzegovina (FBiH). The first working group meeting to draft the Protocol of the MPI was held in December and, at the end of the year, the precise modalities in which the work of the two entity commissions will be transferred

to the MPI had yet to be agreed. A draft law on missing persons is expected to be examined by the BiH parliament in 2004.

In September the High Representative established a Commission for Reforming the City of Mostar, which presented its recommendations in December on the structure and legal framework adequate to ensure the development of Mostar as a unified city.

### *Legal Reform*

The PIC had endorsed in June 2003 a proposal by the Office of the High Representative to abolish the Human Rights Chamber and transfer its caseload to the BiH Constitutional Court, which has a narrower mandate. The implementation of this proposal was completed at the end of 2003, despite concerns about the large outstanding caseload of the Chamber and the lack of an accessible and adequate legal mechanism to take over its work. It was envisaged that, between 1 January 2004 and 31 December 2004, a special Human Rights Commission within the Constitutional Court would deal with the backlog of cases registered with the Human Rights Chamber before its closure.

The PIC gave its endorsement also to a proposal of the High Representative to establish a special chamber for war crimes in the new State Court of Bosnia and Herzegovina. The War Crimes Chamber is expected to be operational from late 2004 and it is envisaged that it would include international judges and prosecutors for a period of three to five years, after which it would be entirely staffed by local officials. At a donors' conference in October the international community pledged 15.6 million Euros to finance the establishment of the special chamber. However, it is estimated that this sum will be sufficient to finance only the first two years of operation of the War Crimes Chamber. Limited resources heighten the risk that the War Crimes Chamber would only be able to prosecute a small number of the thousands of suspects, selected on the basis of vague and contradictory criteria, and so undermine the battle against impunity -



including efforts by the International Criminal Tribunal for the former Yugoslavia (Tribunal) itself - and adversely affect the process of reconciliation.

### **Impunity for war-time human rights violations**

#### *International prosecutions*

The Tribunal continued to try alleged perpetrators of serious violations of international humanitarian law.

In July Milomir Stakić was found guilty of violations of the laws and customs of war and of crimes against humanity committed against non-Serbs in the Prijedor municipality and was sentenced to life imprisonment. In October Blagoje Simić, Miroslav Tadić and Simo Zarić were sentenced to 17, eight and six years' imprisonment, respectively, for crimes against the non-Serbian population in the areas of Bosanski Šamac and Odžak.

In May, the trial commenced of four former commanders in the Bosnian Serb Army, for their criminal involvement in the executions of thousands of Bosniak men and children after the fall of Srebrenica in July 1995. This trial was one of six separate proceedings initiated so far, which focused solely on the massive violations which were committed in the former "protected area" of Srebrenica. Two of the defendants, Dragan Obrenović and Momir Nikolić, pleaded guilty to the count of persecutions, after which the remaining charges were withdrawn and proceedings against them were separated from that of the other defendants. In December Dragan Obrenović and Momir Nikolić were found guilty and sentenced to 27 and 17 years' imprisonment, respectively.

Cooperation between the RS authorities and the Tribunal remained inadequate. The RS police failed to arrest those indicted by the Tribunal. A total of 20 publicly indicted suspects remained at large at the end of the year, the majority of them Bosnian Serbs thought to be residing in the RS or in neighbouring Serbia and Montenegro.

#### *Domestic prosecutions*

Several trials for war crimes opened or continued before local courts, mainly in the FBiH. The Zenica Cantonal Court continued the trial of Bosnian Croat military commander Dominik Ilijašević for war crimes committed against Bosniak civilians in Stupni Do in central Bosnia, amid concerns that prosecution witnesses were not sufficiently protected from intimidating and offensive treatment by the accused and their families in court. Moreover, recent changes in the composition of the Zenica Cantonal Court are likely to cause delays in the proceedings, which were set to continue in 2004.

The retrial at the Mostar Cantonal Court of four Bosnian Croat former military police officers accused of war crimes against the Bosniak civilian population and prisoners of war remained pending, allegedly because of difficulties in summoning witnesses who had not been heard during the first trial. The FBiH Supreme Court had quashed the earlier acquittal of all defendants in mid-2002 and ordered a retrial before the same court, during which new witnesses were to be summoned. The defendants were *inter alia* suspected of being responsible for the detention and subsequent "disappearance" of 13 Army of Bosnia-Herzegovina (ABiH) soldiers.

In RS the Banja Luka District Court continued criminal proceedings for war crimes against 11 former police officers from Prijedor in connection with the 1995 abduction and murder of Father Tomislav Matanović and his parents. The trial opened on 22 September but reportedly was suspended the following day so that the judges could consider another motion filed by one of the defendants.

In August the FBiH police arrested two former soldiers of the ABiH, Mustafa Hota and Enes Šakrak, on suspicion that they took part in the massive violations committed in 1993 against the Bosnian Croat population of the Grabovica village. The Sarajevo Cantonal Court sentenced Enes Šakrak to 10 years' imprisonment in

November and Mustafa Hota to nine years' imprisonment in December for war crimes against the civilian population.

Time and again the domestic criminal justice system failed to take steps to actively prosecute alleged perpetrators. A major factor in fostering this continuing impunity was the lack of co-operation between FBiH and RS judiciary and police forces, in particular in enforcing arrest warrants.

### ***Unresolved "Disappearances"***

Thousands of "disappearances" remained unresolved amid continuing impunity for the perpetrators. In October forensic experts recovered the remains of 629 people near Zvornik, in Bosnia's largest known mass grave. The dead are believed to be Bosniak civilians.

In March, the Human Rights Chamber of Bosnia-Herzegovina had issued a decision in the case of 49 relatives of the "disappeared" from Srebrenica who had brought an application against the RS authorities. Subsequently the Chamber struck out over 1,800 further applications filed by other Srebrenica relatives, as it was decided that the March decision would apply to all victims collectively.

In early June, the RS submitted a brief report to the Chamber which failed to address adequately the various parts of the decision which the government was obliged to implement. In September the RS authorities sent a second much more detailed reply to the Chamber which envisaged, among other things, the establishment of an independent commission of inquiry into the events which took place in and around Srebrenica between 10 and 19 July 1995. The work of the commission will begin in January 2004 and is expected to be completed in six months.

In December the Human Rights Chamber issued a decision in a case arising from the "disappearance" in 1993 of 13 ABiH soldiers in Mostar, during the conflict between the

ABiH and the Croatian Defence Council (HVO). The Chamber, as in its previous cases, recognized that the failure of the FBiH authorities to disclose the fate of the "disappeared" to their relatives amounted to a violation of the relatives' right to be free from inhuman and degrading treatment. The Human Rights Chamber ordered the FBiH authorities to disclose all the information in their possession on the fate and whereabouts of the "disappeared" and to conduct a full investigation into the events that gave rise to the human rights violations. Moreover, the Chamber awarded collective compensation to the relatives of the "disappeared" and ordered the FBiH authorities to make a lump sum contribution of approximately 50,000 Euros to the MPI, to be used in particular to clarify the fate of the 13 "disappeared" soldiers.

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

According to the UN High Commissioner for Refugees (UNHCR) field mission in Bosnia-Herzegovina, some 25,000 people returned to their pre-war homes between July and December. This brought the total number of returnees to nearly a million. However, in 2003 the number of returns declined by approximately 50 per cent over the previous year.

Lack of access to employment was 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.

### ***'Anti-terrorism' measures***

In April the Chamber had ruled that the state and FBiH authorities had violated the fundamental rights of two Algerian nationals, Bensayah Belkacem and Mustafa Ait Idir, who had been unlawfully transferred to US custody in January 2001. In October 2002 the Chamber had made a

similar ruling in the case of four other Algerian nationals unlawfully transferred to US custody at the same time. The Chamber ordered the Bosnian authorities to use diplomatic means to protect the men from the death penalty and unfair trial while they remained in US custody, and to pay them compensation. At the end of 2003 the authorities had implemented the Chamber's decision only to the extent that the Bosnia-Herzegovina Council of Ministers decided, in December, to award compensation to the families of the detained men.

In July, Amgad Fath Allah Yusuf 'Amir, an Egyptian national whose BiH citizenship had been withdrawn in 2001, was taken into custody in the FBIH on the grounds that he was carrying forged documents. Following his arrest, the Egyptian authorities requested his extradition claiming that he was a member of an armed Islamist group. Pending a final decision on his citizenship - BiH law forbids the extradition of BiH citizens - he remained in detention at the end of the year.

### ***Human Trafficking***

In November the prosecutor at the newly established BiH State Court filed charges against a group of 18 people suspected of being involved in trafficking women and girls who had been forced to engage in prostitution in a chain of nightclubs in Prijedor. The trial is expected to begin in January 2004.

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## **BULGARIA**

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### ***Discrimination of people with mental disabilities***

In September Amnesty International received information about seclusion practices in a social care home in southern Bulgaria which amounted to cruel, inhuman and degrading treatment and were in violation of international law. This institution which cares for about 100 women with mental disabilities, was visited by a representative of the Bulgarian

Helsinki Committee (BHC) on 4 September. The main facility, with dormitories for the residents, was among the best of any similar institutions in the country. However, there was also a small building where the BHC representative was initially refused access. This building was used for long-term seclusion of residents who were considered by the staff as "dangerous". In the separate yard of this building there was a wire-fenced cage of about 125 m<sup>2</sup>, which was described by the staff as a "summer day room". In the building, which was in an appalling state of disrepair, 29 women were found in several rooms - all locked, without any electricity, and containing metal bars from floor to ceiling, located 20 cm in front of each window. One of the rooms contained four cages which were occupied at the time of the visit. Many of the women stated that they had been held in this building for several months, some for several years, which was confirmed by the staff. These findings illustrated the government's failure to take concerted, effective and appropriate measures to address the treatment of people with mental disabilities in social care homes. In particular the government had failed to take effective measures to prohibit restraint and seclusion practices which are in violation of international law and to put in place a mechanism for effective oversight and supervision of the institutions within the system.

On 5 September the BHC representative urged the municipal and regional authorities responsible for this social care home to release all the women from the seclusion building and dismantle the cages and iron bars. Two weeks later BHC representatives revisited the institution and found that the seclusion building had been redecorated and some of the cages had been dismantled. They spoke to some of the women who confirmed that they had been released from the seclusion building the day after the first BHC visit. However, all the metal bars in front of the windows were still in place as was the cage in the yard. The staff stated that they would continue to use the facility for seclusion as many women in their care were "dangerous".

In September Amnesty International wrote to the Bulgarian authorities expressing concern that two years after the organization had visited Sanadinovo Social Care Home and found six women held in a cage in a dilapidated outbuilding (see Concerns in Europe: July - December 2001, AI Index: EUR 01/002/2002), the Ministry of Labour and Social Policy had failed to effectively ensure that people in their care are treated with respect for their human dignity and not subjected to practices which are cruel, inhuman and degrading and in violation of international law. The Ministry had reportedly sent a letter on an unspecified date in September to all social care homes for people with mental disabilities, prohibiting the practice of seclusion. However, the organization was not able to obtain a copy of this letter by the end of the period under review.

#### ***The conclusions of the European Committee of Social Rights***

On 21 July the European Committee of Social Rights published its conclusions regarding the conformity of Bulgaria's law and practice with the Revised European Social Charter. With regard to Article 14 - the right to benefit from social welfare services - the Committee noted the existence of serious problems in social care homes for children and adults with mental disabilities. Pointing to the location of these institutions which were far away from settlements, the placement of people with intellectual disabilities together with people with mental health disorders, the inadequate facilities of these institutions, which are frequently dilapidated and inappropriate for people with mental disabilities, the Committee asked the Bulgarian government to indicate what measures were taken to remedy these problems. It also asked that the next report prepared by the Bulgarian government contain "information on the conditions in all the relevant types of residential institutions, including on how the right to integrity, privacy, secrecy of mail and telephone conversations, protection of property, etc. is guaranteed for the users of these institutions". The Committee also asked the government to provide information

regarding the activity of public boards which are established to supervise the provision of social services.

With regard to Article 17 - the right of children and young persons to social, legal and economic protection - the Committee noted that integrated education for children with disabilities and special needs should be the norm and that very few such children in Bulgaria, apparently only those with impaired hearing, had so far been integrated. Furthermore, the Committee was concerned that children with intellectual disabilities living in institutions under the responsibility of the Ministry of Labour and Social Policy received virtually no education or training. It noted that the situation was not in conformity with the Revised Charter, as children with disabilities were not guaranteed an effective right to education. It requested the next report to provide information on the measures taken to integrate children with disabilities into mainstream education, the number of children so integrated, the number of children attending special schools, the number completing primary and secondary education in special schools and the measures taken to address the educational needs of the children with intellectual disabilities living in institutions.

#### ***Police ill-treatment***

There were numerous reports of police ill-treatment. In Sofia, on 7 July, shortly after 12am, Dr Irina Dobrinova, who was driving a car to visit a patient in the village of German was stopped by a traffic police patrol. The three officers reportedly took her bag and searched it and called her a "prostitute who was on the way to see a client". Then one of the officers struck her with a truncheon hitting Dr Dobrilova on the arm. The following morning her injuries were examined by a forensic medical expert and Dr Dobrilova filed a complaint about the ill-treatment with the military prosecutor. The police spokesperson reported claimed that Dr Dobrilova had refused to undergo an alcohol test. However, the three officers involved

reportedly visited the doctor at her hospital to apologize for the ill-treatment.

At least one man died in custody, apparently as a result of lack of adequate medical treatment. On the morning of 18 October, 21-year-old Iliya Yordanov died in Plovdiv Investigation lock-up five days after he was arrested, reportedly for possession of one gram of heroin. The day before he died he was reportedly examined twice by doctors who established that he was suffering from diabetes but apparently did not consider that he should be hospitalized. An investigation was reportedly initiated by the military prosecutor but its results were not made public by the end of the period under review.

#### ***Alleged unlawful use of firearms by law enforcement officers***

There were reports that law enforcement officers used firearms in circumstances which are prohibited under UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Many people were injured in such incidents. On 19 July at around 1.30pm at a crossroad in Aitos, Chief-Sergeant T.R. shot in the leg 44-year-old Lazar Nedelchev, who is a Rom, after he was reportedly involved in a quarrel with the officers brother. Lazar Nedelchev was then taken to hospital. On 31 August in Varna, police officers shot in the leg 26-year-old Krassimir Dimitrov who had reportedly been running away in order to avoid being arrested. He had been observed leaving, through a window, a first-floor apartment on "Aleksandr Dyakovich" Street where he and another man had allegedly committed a theft.

At least one person died as a result of inappropriate use of firearms by law enforcement officers. On 7 August, at Predela near Kyustendil, P.N., a forest ranger, started shooting his gun, apparently without any motive. One of the bullets hit in the head and killed Stoyan Katsarov, a 25-year-old man who was sitting in a truck, which was parked near-by. An investigation into manslaughter was initiated against P.N. His superior reportedly stated that the ranger had successfully passed the test that

the Ministry of the Interior Psychology Institute conducts for those who are to be issued with an official firearm.

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## **CROATIA**

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### ***General and Political Developments***

Following the general election held in November, the HDZ (Croatian Democratic Union) became the strongest party in the Croatian Parliament. The HDZ was formerly led by Franjo Tuđman, the first president of independent Croatia. The leader of the HDZ, Ivo Sanader, took office as Prime Minister in December, forming a coalition with the DC (Democratic Centre) and the HSLP (Croatian Social Liberal Party).

An advisory opinion (*avis*) of the European Commission on Croatia's candidacy to join the European Union (EU) is expected in spring 2004. At the end of 2003 the Stabilization and Association Agreement between Croatia and the EU had not yet been ratified by three countries: Italy, the Netherlands and the United Kingdom. The latter two have suspended the ratification procedure due to the lack of full cooperation of the Croatian authorities with the International Criminal Tribunal for the Former Yugoslavia (Tribunal) and in particular the failure to arrest and transfer to the Tribunal retired Croatian army General Ante Gotovina.

A new law came into force in November on the application of the statute of the International Criminal Court (ICC) and the prosecution of war crimes and crimes against humanity. The law regulates certain aspects of domestic war crimes prosecutions. In particular, it provides that the Chief State Prosecutor can initiate proceedings for war crimes in local courts or in four specially designated county courts in Osijek, Rijeka, Split and Zagreb. The law also provides that evidence collected during proceedings at the Tribunal may be used in criminal proceedings in Croatia on condition that this evidence was established in

compliance with the Tribunal's Statute and Rules of Evidence and Procedure.

### **Impunity for war-time violations**

#### *International prosecutions*

The remaining two suspects of the so-called "Vukovar Three" had been transferred to the Tribunal's custody after remaining at large in Serbia for several years and were awaiting trial at the end of the year. They had been indicted for crimes against humanity and war crimes by the Tribunal in connection with the mass executions of some 200 mainly Croat people taken from Vukovar hospital in November 1991 after the town fell to the former Yugoslav People's Army (JNA) and Serb paramilitaries.

In November Milan Babić, former president of the Republic of Serbian Krajina, was indicted by the Tribunal for crimes against humanity and violations of the laws or customs of war, in connection with his alleged involvement in human rights violations against the non-Serb population in Croatia. Milan Babić voluntarily surrendered to the Tribunal at the end of November, and was being held in detention awaiting trial.

Croatian authorities were criticized for their failure to arrest and transfer Ante Gotovina, charged with command responsibility for crimes against humanity and war crimes against the Krajina Serb population in 1995. Prime Minister Ivo Sanader pledged to cooperate with the Tribunal, but suggested that his cabinet may legally challenge the indictment against Ante Gotovina.

#### *Domestic prosecutions*

Scores of trials for war crimes continued or started before local courts. According to the Organization for Security and Co-Operation in Europe (OSCE), 30 out of 38 arrests in the first 11 months of 2003 were of Serbs. In the same period, Croatian courts issued new indictments against 31 Serbs and four Croats. Some proceedings, particularly those against Serb suspects, which in

several cases were conducted *in absentia*, did not meet internationally recognized standards of fairness.

Proceedings were ongoing at the Osijek County Court against two former Croatian soldiers indicted for war crimes against Serb civilians in Paulin Dvor near Osijek in December 1991. The bodies of 18 victims, exhumed by Tribunal investigators in 2002, were reported to have been positively identified in June.

Victims and witnesses testifying in war crimes proceedings remained without adequate state protection from harassment, intimidation and threats in the absence of a comprehensive witness protection program, despite the enactment of a witness protection law in October.

### **'Disappearances'**

The Croatian Government Office for Missing and Detained Persons was, by the end of the year, still searching for over 1,200 missing people. Many of these individuals were victims of "disappearances", for which perpetrators continued to enjoy impunity. Cooperation continued between the Croatian government and neighbouring Serbia and Montenegro in exhuming bodies buried in Serbia and returning them to Croatia for identification and final burial.

### **Right to return**

According to the Croatian authorities, some 9,000 individuals, mostly Serbs, registered as returnees in the first 11 months of the year. However, many returns were not sustainable and returnees continued to face difficulties in repossessing private property because legislation disproportionately protected current occupants and was slowly and inconsistently enforced by the authorities. Tens of thousands of Serb refugees were unable to return. Most had lost pre-war tenancy rights in unfair legal proceedings in their absence. The new government pledged to solve the problem of the repossession of private property by mid-2004.

In November the Zagreb District Court acquitted Ivica Rožić of charges of planting explosive devices between 1996 and 1998 in Serbian houses, fields, and places of religious worship in the area of Gospić. The attacks had killed five people and injured several others. Reportedly, no other suspects were under investigation or had been indicted in connection with these attacks.

#### **Asylum procedures**

In June the Croatian Parliament adopted a new Asylum Law, to come into force in July 2004 after the construction of a reception centre for asylum-seekers. The previous system for determining refugee status did not constitute a full and fair asylum procedure and asylum-seekers and undocumented migrants were often arbitrarily detained without recourse to judicial redress.

There continued to be concerns about conditions of detention in the Ježevo Reception Centre for Aliens and about allegations of ill-treatment against the detainees, in particular following attempts to escape from the centre.

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## **CZECH REPUBLIC**

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#### **Failure to impartially and independently investigate police ill-treatment of Roma**

The investigation into the police ill-treatment of a Romani family in Popovice u Jičín, on 12 May 2003 was closed in December without any of the five police officers reportedly involved being charged with any criminal offence. According to the information received from the League for Human Rights, a Brno-based non-governmental organization, late in the evening of 12 May five police officers who were not on duty came to an apartment building in Popovice u Jičín looking for the Danišový family, who are Roma. They reportedly forced their way into the apartment of Mr.T. and threatened to beat

him if he did not show them the apartment where the Danišový family lived. Two officers then remained with Mr.T. apparently to prevent him from calling for help. Three officers broke into the Danišový apartment and assaulted Lubica Danišová, her pregnant daughter and her 17-year-old son, whom they accused of a theft from a pub belonging to one of the officers. Earlier that evening the officers had been in this same pub with around 30 colleagues.

The investigation of the victims' complaint was carried out by the Interior Ministry Inspectorate in Hradec Králové, under the supervision of the regional public prosecutor. The victims were asked to identify the officers, who assaulted them, in a line-up of all officers who were present in the pub on the evening of the assault. They were able to identify only one of the officers involved and subsequently two officers were charged with violating the right to privacy in one's home. This was a considerably lesser charge than the more appropriate, in these circumstances, charge of causing bodily harm. In December all charges were dropped. The Danišový family has filed an appeal.

#### **The Committee on the Elimination of Racial Discrimination**

In August the Committee on the Elimination of Racial Discrimination considered the Czech Republic's fifth periodic report regarding the implementation of the International Convention on the Elimination of All Forms of Racist Discrimination. The Committee welcomed the self-critical report submitted by the Czech Republic and pointed to some positive developments in the country, including the existence of a number of advisory bodies of the government dealing with human rights and specifically the rights of national minorities. The Committee encouraged the Czech Government to complete its efforts with regard to promptly adopting a comprehensive anti-discrimination law.

However, the Committee remained concerned "at the continuance of acts of racially motivated violence and incitement to hatred and the persistence of intolerance

and de facto discrimination, in particular with regard to the Roma minority". The Committee was also concerned about allegations of racially motivated ill-treatment, ineffective protection and discrimination against the Roma by the police; and that complaints about police abuse were not promptly and impartially investigated.

The Committee recommended that the government intensify its efforts to achieve more effective application of existing legislation. The Committee stressed "that prompt and impartial investigations are paramount in countering discriminatory attitudes and practices" and recommended that the government intensify its efforts to end such discriminatory practices. It further recommended that the investigations into police abuses be conducted and overseen by a body independent of the police and the Ministry of the Interior. The Committee requested the government to include in its next periodic report statistical information on the number and nature of complaints of racial discrimination received, prosecutions launched and penalties imposed.

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## FINLAND

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### ***Prisoners of conscience: imprisonment of conscientious objectors to military service***

In the period under review, AI adopted as prisoners of conscience two conscientious objectors to military service and called for their immediate and unconditional release. Charged with a civilian service offence, Toivo Johannes Lilja, a 20-year-old student from Kontiolahden, and Lasse Jansson, a 19-year-old student from Helsinki, were both sentenced to 197 days' imprisonment. They entered prison in July and August, respectively.

Legislation, in force since 1998, considerably reduced the length of military service. The length of alternative civilian service, however, remained more than double the length of military service

performed by the majority of army conscripts. Amnesty International considered such a length as punitive and discriminatory, and urged that a review of existing legislation, aimed at reducing the length of alternative civilian service, thereby bringing it into line with internationally-recognized standards and recommendations, be considered at the earliest opportunity. In her replies to the organization, Finland's Minister of Labour stated that there were considerable pressures for and against reducing the length of alternative civilian service but noted that she would do all she could within her power to have the length of civilian service shortened.

### ***Preliminary observations of the CPT***

The government authorized publication, in October, of the preliminary observations of a visit of inspection carried out by a delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) between 7 and 17 September. Two previous visits had been carried out in 1992 and 1998.

The CPT noted that it had not received any allegations of recent ill-treatment of persons detained by the police, nor had it received allegations of ill-treatment by prison staff in the three prisons visited, or by staff at the psychiatric establishment visited. However, it noted that there was an urgent need to draw up detailed instructions on the use of force and means of restraint authorized in the context of deportation of foreign nationals by plane or other means of transport. The CPT had obtained information about a case involving several members of the same family, including two minors, who had been forcibly injected with sedating and neuroleptic medication without proper examination by a doctor, a practice which, in the CPT's opinion, was totally unacceptable. It referred the Finnish authorities to the principles set out in the CPT's Thirteenth General Report (CPT/Inf (2003) 35), published in September, concerning the deportation of foreign nationals by air.



Paragraph 40 states: "...The CPT considers that the administration of medication to persons subject to a deportation order must always be carried out on the basis of a medical decision taken in respect of each particular case. Save for clearly and strictly defined exceptional circumstances, medication should only be administered with the informed consent of the person concerned." A detailed visit report, including further information on this case, would be submitted to the Finnish authorities in 2004.

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## FRANCE

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### ***Gendarme detained after shooting***

A judicial inquiry was opened in October into an incident at Moissac (Tarn-et-Garonne) when a patrol of gendarmes allegedly approached a badly parked vehicle at about 6am, carried out an identity check and an alcohol test, and asked the driver to park in a different position, on the right hand side of the road. According to a report of the incident, a row of parked cars rendered this difficult. The driver, Nacer Boutekrabt, therefore decided to park on the left hand side instead. It was at this point that one of the gendarmes fired up to five shots at the car. On hearing the shots, the driver accelerated away, then stopped, and the three occupants got out and tried to escape on foot. Nadjib Nacéri, who had been in the front passenger seat, was reportedly shot behind the ear and collapsed in the road. Ramzi Haggui, who was in the back, was injured in the left eye by broken glass. The injured men were taken to hospital by a passing nurse who stopped her car when she saw them in the road. Nadjib Nacéri was said to be in a coma.

The gendarme who fired the shots allegedly explained that he had done so because the car driver was trying to escape. He was arrested and placed under judicial investigation for using his weapon to carry out illegal acts of violence.

In February 2003 the Court of Cassation ruled that gendarmes should use their weapons only when "absolutely necessary". The Gendarmerie nationale has traditionally had exceptionally wide latitude with regard to the use of weapons (see AI Index: EUR 01/016/2003).

### ***New legislation extends garde à vue***

In November a controversial draft law on "organized crime and delinquency", commonly known as the "Perben 2" law, went through its second reading in the National Assembly.<sup>1</sup> The law, which strongly enhances the powers of both the prosecution and the police, doubles the length of time (from 48 hours to 96 hours) in which those suspected of "organized crime", including minors, may be held in police custody (*garde à vue*). During this time those held under the special custody regime would not be granted access to a lawyer. The law on "organized crime" follows upon the law on "internal security", definitively adopted in February (see AI Index: EUR 01/016/2003). The move to double the length of police custody for a wide variety of crimes appears to put into reverse provisions of the law on the "presumption of innocence", passed under a previous government, which allowed for access to a lawyer within the first hour of police custody (except for "terrorism"-related or drugs trafficking cases).

### ***Health concerns about long term prisoners***

In November the Regional Committee on Conditional Liberty at Douai (Nord) rejected a plea for release for Nathalie Ménigon, a member of the former armed group *Action Directe*. AI believes, and has constantly reiterated, that the reportedly serious medical condition of Nathalie Ménigon, and of other members of the group, such as Georges Cipriani, was related to long periods previously spent by the prisoners in rigorous isolation. Nathalie Ménigon,

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1 Projet de loi portant adaptation de la justice aux évolutions de la criminalité 23 February 2004, commonly known as 'Perben law')

sentenced to life imprisonment in 1988, is partially hemiplegic as a result of two cerebral vascular accidents while in prison. Nathalie Ménigon has made two applications for suspension of her prison term under the provisions of a law of March 2002 on the rights of ill people (widely known as the '*Loi Kouchner*'). This enables prisoners' sentences to be suspended if they are critically ill or suffering from a chronic condition incompatible with their detention; in September 2002 Maurice Papon, former high-ranking government official and Paris police chief, was released from prison – where he was serving a 10-year sentence – on grounds of advanced age and poor health (see AI Index: EUR 01/016/2003).

AI also remained concerned about the health of Alain Solé, who was arrested in 1999 in connection with alleged illegal activities by the Breton nationalist group, *Emgann*. Alain Solé was among 16 Basque and Breton nationalist suspects who were committed for trial, in October, before the Special Assize Court of Paris, charged with involvement in a theft of explosives at Plévin (Côtes-d'Armor) in September 1999.<sup>2</sup>

#### ***Inquiries into violence and rape of foreign women by police***

In November three police officers were placed under investigation on a number of charges, including illegal entry, acts of violence and theft, after breaking into the home of a Chinese woman whom they had accused of resisting authority and being without papers. The officers allegedly hit her and stole a number of objects from her home, after which they made false charges against her. The investigation was proceeding.

In December three police officers belonging to the seventh unit of the CRS or Republican Security Company (*Compagnie républicaine de sécurité*), of the Val d'Oise

<sup>2</sup> The charge in full is: "vol à main armée en bande organisée ou recel de ce crime, le tout en relation avec une entreprise terroriste". Five of the defendants are also allegedly involved in a number of attacks on targets in Brittany, including the attack on the McDonald's outlet in Quévert, in which a woman employee, Laurence Turbec, died.

were placed under investigation for a charge of collective rape by persons abusing their authority and were held in custody.<sup>3</sup> According to reports, in April 2003 two officers had stopped a sex worker of immigrant origin for an identity check and had told her to accompany them to the police station because her papers were not in order. However, they drove her instead to a parking area off a motorway near the Stade de France, where they forced her to have sex with them. Later that night the same officers, and a third officer, allegedly attempted to take advantage of their status by having sex with two other women, before the latter managed to escape. An internal inquiry was opened by the internal police inspection division, the *Inspection générale des services* (IGS), after complaints had been lodged on behalf of the sex workers by a human rights association. The IGS was reported as saying that the allegations referred to a pattern of abuse affecting a number of officers, and were not isolated incidents. Following the internal inquiry, a judicial investigation was opened and the three officers were suspended from duty.

#### ***CPT describes ill-treatment of foreign nationals at airport***

In December the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published its report on a visit to Roissy-Charles de Gaulle airport from 17 to 21 June 2002. The report concluded that there were "a certain number of allegations of ill-treatment of foreign nationals (slaps, kicks, baton blows, tight handcuffing, threats and insults) by police officers during passport controls, requests for asylum and attempts to force detainees to board aircraft". Several people told the delegation that their mouths had been taped during attempts to deport them. The medical service of Immigration Waiting Zone (ZAPI) No. 3, had compiled 23 reports of physical ill-treatment sustained at the airport during a period of a few weeks in the summer of 2002. The CPT report highlighted one case

<sup>3</sup> "viol en réunion commis par une personne abusant de l'autorité que lui confère sa fonction"

in which an officer had, during a strip search at a police post, taken a man's head between his hands and banged it twice against a wall. He then punched him on the left side of his head and in the stomach and kicked him. When the man fell the officer punched him in the lower jaw. A medical report had been compiled and the man had lodged a judicial complaint.

The delegation did not, on the other hand, hear "credible allegations ... of ill-treatment of detained persons by staff employed in Immigration Waiting Zones (ZAPI) Nos. 2 and 3." Holding conditions of ZAPI Nos. 2 and 3 showed a clear improvement. However, the report referred to a number of allegations of disrespectful behaviour in one waiting zone (ZAPI 3), where mocking messages had been relayed over loudspeakers, and foreign accents ridiculed.

The CPT recommended completion and updating of some aspects of the directives on the forcible removal of foreign nationals by air. It recalled that: "techniques which can directly or indirectly obstruct the airways, such as compression of the thorax or techniques involving restriction of limbs with adhesives" must be prohibited and those forms of restraint liable to provoke "postural asphyxia" should be listed with precision and avoided, except in exceptional cases.

AI is continuing to investigate the circumstances in which two foreign nationals, Ricardo Barrientos, and Mariame Geto Hagos, died during deportations in December 2002 and January 2003. In its letter to AI of June 2003 the Interior Minister assured AI that no techniques involving asphyxiation had been used in respect of the Argentinian national Ricardo Barrientos, who died during deportation by air in December 2002. However, the Minister did not specify exactly what techniques had been used by the members of the National Escort, Support and Intervention Unit (UNESI).<sup>4</sup> The inquiry into the death of Mariame Geto Hagos was continuing.

<sup>4</sup> L'Unité nationale d'escorte, de soutien et d'intervention de la police nationale

### **Tension in prisons**

Serious overcrowding, and a consequent deterioration in living conditions, was reported to be contributing to rising tension in many prisons and a rising rate of suicides, especially with regard to prisoners held in disciplinary areas. There were also reports of serious overcrowding in detention centres for foreign nationals awaiting expulsion (*centres de rétention*).

## **GEORGIA**

### **Resignation of the President**

Parliamentary elections took place on 2 November, amid widespread concern at procedural irregularities including allegations of inaccurate voter lists; instances of violence against election monitors; and falsification of election returns disadvantaging the opposition. The Organization for Security and Co-operation in Europe stated that the conduct of the elections "fell short of a number of international standards".

Public anger at the conduct of the elections triggered mass demonstrations led by opposition figures, in particular National Movement leader Mikhail Saakashvili, that culminated in a peaceful mass protest outside parliament on 22 November, known as the "Rose Revolution". Demands by the demonstrators included that President Eduard Shevardnadze step down. The President declared a state of emergency, but then resigned on 23 November "to avoid bloodshed". The same day Nino Burdzhaniadze, Speaker of the outgoing parliament and a key opposition figure, was declared interim President. Presidential elections were scheduled for January 2004, and a partial re-run of parliamentary elections for later that year.

### **Religious freedom curtailed**

Religious minorities continued to face harassment, intimidation and violent attacks by supporters of the Georgian

Orthodox Church. In many cases, the police failed to provide adequate protection for those targeted. The first prosecution of the perpetrators in a series of attacks over more than four years resulted in suspended prison sentences handed down on five men in November (see below). Hundreds of other attackers remained unpunished.

Amnesty International learnt of three attacks on Jehovah's Witnesses after the "Rose Revolution" in the town of Samtredia in the west of Georgia (see below).

#### *Attacks on religious minorities*

On 13 October some 40 men reportedly raided the home of a Jehovah's Witness family in the town of Senaki in the west of Georgia. One of the attackers was reportedly armed with a gun. The men were said to have physically assaulted Merab Kardava, his son-in-law Leri Otkhozoriya, and their neighbour Zoya Ashordiya and threatened further violence if they continued to hold religious gatherings in their home. The attackers reportedly took away religious literature and destroyed the gate of the house. As in hundreds of similar cases a complaint was filed with the authorities, but no criminal case had reportedly been opened by the end of the period under review.

On 26 October several young men blocked the entrance to the home of Pentacostal priest Nikolay Kalutsky, which houses the congregation's church in Gldani-Nadzaladevi district in Tbilisi, to prevent the congregation from holding a church service. When Vera Kalutskaya, the priest's wife, called the local police for help, a senior officer reportedly told her "to leave [him] alone" and that he was "fed up" with the congregation's complaints. The city procuracy also responded reluctantly and only following phone calls from local human rights activists did the police arrive at the scene. By that time, some 20 men had gathered who were verbally abusing the congregation and beating several of its members. For example, in the presence of the police 17-year-old Maksim Kalutsky, one of the priest's sons, was hit several times to prevent him from taking

photographs of the attack. Suzanna Gvenetadze, an elderly church member who was recovering from a heart attack, was hit in the chest. The attackers were said to have repeatedly consulted with at least one Georgian Orthodox priest by mobile phone. Reportedly, the police only intervened after Nikolay Kalutsky had repeatedly urged them to do so. The congregation has faced a series of attacks since July 2002 by a crowd of radical supporters of the Georgian Orthodox Church, reportedly incited by at least three Georgian Orthodox priests. For most of the time since, they have been unable to hold religious gatherings in the church. In many cases the police have failed to protect the congregation; several members sustained injuries and one had to be hospitalized following physical abuse. Violent supporters of the Georgian Orthodox Church physically and verbally assaulted members of the Jehovah's Witnesses in the town of Samtredia on 7, 23 and 28 December. Jehovah's Witness Paata Arabuli, for example, suffered a concussion as a result of the attack on 23 December. Complaints regarding the three attacks were filed with the Prosecutor General and the Ministry of the Interior. However, no criminal cases were reportedly opened by the end of the period under review.

#### *Suspended prison sentences handed down on five attackers of Jehovah's Witnesses*

On 4 November Rustavi City Court handed down suspended sentences of between two and four years' imprisonment on Paata Bluashvili, a supporter of the Georgian Orthodox church and member of the radical *Jvari* (Cross) group, and four supporters. The men were convicted of involvement in two attacks on Jehovah's Witnesses. Reports suggested they had been involved in a series of attacks on religious minorities.

#### *Special Rapporteur on freedom of religion or belief*

Abdelfattah Amor, the United Nations Special Rapporteur on freedom of religion or belief, visited Georgia from 31 August to 7 September to examine the situation of freedom of religion and belief in the country.

In his 16 December report he urged the authorities of Georgia, among other issues, "to take steps immediately to investigate all acts of violence or religious intolerance which have been committed in Georgia, to put those responsible on trial within a reasonable period and to take them into custody if the courts order a term of imprisonment or pre-trial detention"; and "to ensure the complete safety of the victims and applicants for civil indemnification so that they are free to attend the hearings and do not feel threatened". He also stressed that "freedom of speech does not authorize the press to broadcast messages which might constitute incitement to religious hatred" and urged the authorities to "take appropriate steps for the swift prosecution of anyone who commits a criminal offence of this kind". In addition, he called on the authorities to promptly remove any passages from schoolbooks that "run counter to religious tolerance or, if this is infeasible, to withdraw [such] books".

*Jehovah's Witness entity re-registered (update to information in AI Index: 01/003/2001)*

On 28 November the Jehovah's Witnesses were informed by the authorities that a branch of the Watch Tower Bible and Tract Society in Pennsylvania was registered with the Ministry of Justice in Georgia. The registration followed an application lodged by the Jehovah's Witnesses in September. On 22 February 2001 the Supreme Court of Georgia had upheld a lower court's decision to revoke the registration of two Jehovah's Witness entities - the Union of the Jehovah's Witnesses and a branch of the Watch Tower Bible and Tract Society in Pennsylvania - that had been registered in Georgia since 1998. Following the ruling the Jehovah's Witnesses had repeatedly unsuccessfully applied for re-registration of the two entities. The Union of the Jehovah's Witnesses remained unregistered by the end of the period under review.

### **Extraditions**

On 16 September the European Court of Human Rights declared admissible an application against the extradition to the Russian Federation of 13 Chechens who had been detained by border guards near the village of Girevi in the Akhmeta district in August 2002. The Court also announced that it would take evidence from the 13 applicants and from witnesses in Russia and Georgia. The application had been lodged with the Court on 4 and 9 October 2002. However, five of the 13 applicants had already been extradited to Russia on 4 October. The men were believed to be at risk of serious human rights violations including torture upon their return to Russia. On 19 September 2003 the trial of four of those extradited opened in Stavropol in Russia on charges including "terrorism" and "participation in an armed group". On 16 May 2003 the Supreme Court of Georgia refused to permit the extradition to Russia of three of the applicants: Huseyn Alkhanov, Ruslan Gelogayev and Rustam Elkhadzhiev.

### **International Criminal Court**

On 5 September Georgia became a party to the Rome Statute of the International Criminal Court (ICC). The Rome Statute provides for the establishment of a permanent ICC to bring to justice people accused of genocide, crimes against humanity and war crimes as the most serious crimes under international law. However, prior to this, on 7 May 2003 the Parliament of Georgia had become the second parliament in the world to ratify a bilateral impunity agreement with the United States of America (USA). By doing so it agreed not to surrender US nationals accused of genocide, crimes against humanity or war crimes to the ICC. Such agreements are in breach of states' obligations under international law.

### **Concerns in the autonomous republic of Ajaria**

AI learnt of several cases where activists critical of the authorities of the Autonomous Republic of Ajaria were harassed and

intimidated, in particular in connection with the November parliamentary elections. On 2 November 21-year-old Giorgi Mshvenieradze, who monitored the elections on behalf of the non-governmental Georgian Young Lawyers' Association, was reportedly beaten inside the polling station no. 23 in Kobuleti region after he had tried to prevent a man – who was said to have been a police officer in plainclothes – from bringing unmarked ballot papers into the polling station that were reportedly intended for ballot box stuffing. Giorgi Mshvenieradze was subsequently detained by police. On 5 December Kobuleti regional court sentenced him to three months' imprisonment on charges of "hooliganism" (Article 239 part 3 of the Criminal Code of Georgia), "infringing on the expression of the will of the electorate" (Article 162), and "committing a crime against a government official" (Article 353) and kept in prison no. 3 in Batumi. He was released early from preliminary detention on 7 December.

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## GERMANY

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### *Allegations of ill-treatment*

AI wrote to the Munich Public Prosecutor in July requesting to be informed of the findings of the investigation into the alleged ill-treatment of Abdurazak Mömün. Abdurazak Mömün, an asylum-seeker from the Xinjiang Uighur Autonomous Region of China, was allegedly ill-treated by police officers in Munich on the morning of 20 May. According to information provided to AI, three officers from Munich's Police Headquarters escorted Abdurazak Mömün from Stadelheim prison to the District Administration of Upper Bavaria in Munich, where Abdurazak Mömün had an appointment regarding his application for asylum in Germany. After the appointment at around 10.45am Abdurazak Mömün was again met by the three police officers assigned with the task of escorting him back to Stadelheim prison. Abdurazak Mömün alleged that, while still in the building, one of the police officers, to whom one of his hands was handcuffed, put him

in a so-called double-lock hold, whereby Abdurazak Mömün's arm was twisted and pushed up behind his back. He was allegedly dragged in this position to a police vehicle and verbally abused. In the car park the same police officer also allegedly on Abdurazak Mömün's twisted arm, causing him considerable pain, as a result of which he subsequently began to cry. The actions of the police officer also reportedly caused Abdurazak Mömün to fall over backwards, as a result of which he reportedly hit his head hard on the ground. The police officers escorted Abdurazak Mömün back to Stadelheim prison, where he was medically examined by a prison doctor. He reportedly suffered an injury to his right wrist and experienced pain in the front and back of his head.

In a letter dated 15 September, the Munich Public Prosecutor referred AI to Abdurazak Mömün's lawyer for information regarding the outcome of the investigation. According to information received from Abdurazak Mömün's lawyer, the Public Prosecutor had terminated the investigation against the officers on the basis that no criminal offence had been committed. Abdurazak Mömün was subsequently released from detention on 14 July.

A court in Hamburg convicted three police officers on 15 July of dangerous bodily harm for repeatedly hitting two undercover police officers with their batons during a protest against squat clearances in Hamburg on 16 November 2002. The two police officers sustained serious injuries as a result. The three officers from the state of Thuringia were given suspended sentences for seriously injuring the two undercover officers. The presiding judge was reported to have said that, had the victims been ordinary demonstrators and not police officers, they would never have been able to identify the officers who attacked them. Thuringia's police leadership was also heavily criticized during the trial for attempting to cover up the incident.

The Osnabrück Public Prosecutor's Office informed AI in August that he had terminated investigations into the alleged ill-treatment of Haki Ceku because the

source of his injuries could not be established. The organization had written to the Osnabrück Public Prosecutor in April noting his decision to discontinue the preliminary investigation against the accused prison official and requesting to be informed whether it had been determined how Haki Ceku sustained his injuries, particularly the significant bruising to his left eye. Haki Ceku was allegedly ill-treated by two prison officials in Lingen Prison shortly after 6pm on 28 July 2002. He had been given permission to telephone his relatives in the early evening of 28 July 2002 and during the telephone call Haki Ceku spoke to his children in Albanian because they were reportedly unable to speak and understand German. Two prison officials reportedly instructed Haki Ceku to speak German only, since prison rules forbid foreign prisoners from speaking their own languages while using the telephone. One of the two prison officials then allegedly assaulted Haki Ceku by punching him in the left side of his face. The prison officials were then reported to have carried the prisoner back to his room in the prison hospital, pushed him against a table and pressed his upper-body and head against it. He then reportedly fell to the floor, where the prison officials left him lying. According to information received by AI, the head doctor at the prison learned of the alleged incident early on 29 July 2002 and upon seeing the blackening to Haki Ceku's left eye and bruising to his arms, he arranged for Haki Ceku's injuries to be photographed. Haki Ceku's lawyer provided AI with a photograph of his client's black-eye.

In November a 46-year-old police officer was sentenced in Frankfurt am Main to two-and-a-half years' imprisonment for assaulting a homeless man in Bad Homburg in the state of Hesse on 26 November 2001. According to news reports, police had been called to the centre of Bad Homburg to deal with an intoxicated man who was causing a disturbance. However, attempts by four police officers to detain the man reportedly resulted in an altercation. A second police vehicle was said to have arrived as the four police officers pinned the man to the ground. The accused police officer got out of the vehicle and allegedly jumped up and

down on the homeless man and repeatedly kicked him in the region of the face. The man reportedly experienced convulsions and breathing difficulties as a result and would have died had one of the other police officers not administered emergency first aid. The man also sustained a broken nose and bruising to his head as a result of being

### **Refugees**

German courts continued to rule that refugees seeking asylum on the basis of fearing persecution by non-state actors were excluded from the protection of the 1951 Refugee Convention and the European Convention on Human Rights. Germany's definition of persecution in these cases was contrary to international law.

### **Update to cases previously documented (see AI Index: EUR 01/016/2003)**

#### *The death of Stephan Neisius*

Cologne District Court on 25 July convicted six police officers of bodily harm resulting in the death of Stephan Neisius, although none of the officers were sentenced to periods of imprisonment. The suspended sentences of between 12 and 16 months provoked accusations of leniency. All six officers have reportedly appealed against the suspended sentences.

#### *The alleged ill-treatment of Walter Herrmann*

The date for the trial of the three police officers alleged to have ill-treated Walter Herrmann was set for 19 and 22 January 2004. The 62-year-old community activist had allegedly been ill-treated in police custody at Cologne Police Headquarters on 18 September 2001, whereby Walter Herrmann sustained first degree concussion, bruising to the cranium, an open fracture of the bridge of the nose, bruising to the chest, and a non-displaced fracture to a rib.

*The alleged ill-treatment of Svetlana Lauer*

Svetlana Lauer's appeal for a judicial review was rejected as inadmissible by the Bamberg Higher Regional Court. However, the prosecutor instituted proceedings in September against Svetlana Lauer for resisting enforcement officials and slander as well as causing bodily harm to the officers.

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## GREECE

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**Border policing**

A number of individuals reported ill-treatment and unlawful shootings by police and border guards on the northwest border with Albania, crossed by many Albanian migrants.

Vullnet Bytyci, an Albanian aged 18, was shot dead in September while trying to cross the border into Greece with five other Albanians. One of three border guards fired at Vullnet Bytyci and at another of the group who tried to flee. Vullnet Bytyci was pronounced dead on admission to hospital in Kastoria. The border guard was arrested shortly afterwards but later released pending investigation for "reckless homicide".

Three other Albanian nationals, the brothers Gori and Mili Halili, aged 46 and 43 respectively, and Rahman Pashollari, aged 59, were allegedly detained, beaten, kicked and robbed by guards on the Albanian border near Krystalopigi in September. They were forcibly returned to Albania where medical examination at the hospital in the town of Elbasan found that Gori Halili had "bruising of the abdomen, rupture of the spleen and bleeding in the abdominal area", which required surgery to remove his spleen. Rahman Pashollari was found to have sustained a fractured rib.

Shpëtim Shabani, an Albanian aged 28, was drinking coffee in a bar in Agrinio in November, when allegedly three Greek police officers dressed in camouflage

uniforms, entered the bar, asked to see his papers and after seeing that they were in order asked him to follow them out. Once outside the bar, they reportedly assaulted him in full public view, beating him with their guns, kicking and punching him, and leaving him covered in bruises and with an injured shoulder. He was then reportedly detained at a police station for two days before being forcibly returned to Albania.

At least 13 more Albanian men reported ill-treatment by guards and police officers in the area around the northwestern border.

Concerns raised with the Greek authorities about these incidents met no response. The Ombudsman in Albania subsequently took up some of the cases with the UN Committee against Torture and the Human Rights Commissioner of the Council of Europe.

**Impunity and independence of the judiciary**

A high profile alleged rape case highlighted concerns about the impunity enjoyed by police officers and the independence of the judiciary in handling complaints against officers.

The judicial authorities failed to call as a prosecution witness a Ukrainian national, Olga B., who was reportedly raped by a police officer in Amaliada in February 1998. The trial of the police officer, the bar owner and three co-defendants took place before Patras Mixed Jury Criminal Court on 23 May. The bar owner was 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. In the absence of the victim at the trial, the court concluded that she had consented to sexual intercourse with the police officer and acquitted him of rape. He was sentenced to two years' imprisonment for breach of duty. All of the defendants' sentences were suspended.



The court bailiffs said that they delivered two summonses to Olga B. to appear in court to give evidence at the first trial. She said that she had never lived at the address where they were allegedly delivered, and the people who lived at the address testified on oath that they had never seen any bailiffs. Olga B.'s complaint that the two bailiffs had falsely claimed to serve her the summonses was filed in Patras on 11 September, but by October had not been forwarded by the Patras prosecutor to the competent Amaliada prosecutor. A witness who had testified for the prosecution at preliminary hearings was also not summoned to give evidence. Olga B. reportedly received threats not to testify but was not offered any state protection.

After protests at the failure to call Olga B. as a witness in the first trial, a retrial was held in October. However, the court reportedly again failed to call her to testify. A further trial was subsequently set for 2004.

#### ***Excessive force against protesters***

Police reportedly used excessive force during a demonstration about the EU summit on 21 June – beating protesters with batons, and kicking and verbally abusing them. Of 100 demonstrators arrested between 21 and 23 June, 29 were charged, including three children under the age of 18. Three Greek nationals and four nationals of Spain, Syria and the UK were charged with possession of weapons (hammers and explosives) and detained to await trial until 26 November. Four of the detainees were allegedly ill-treated at the time of their arrest and later in police custody. Fernando Pérez, 22, and Carlos Martín Martínez, 25, both Spanish nationals, alleged that during the first days of their detention after their arrest, they were denied access to medical care, and that when they asked to see a doctor the treatment they received was confined to anti-inflammatory medication which was inadequate for the injuries they had sustained. Amnesty International was further informed that Carlos Martín Martínez's parents were denied adequate

access to information about their son for the first three months of their son's detention. There were additional fears that at least one of them, UK national Simon Chapman, was charged on the basis of fabricated evidence. After international protests, the seven were released on bail.

#### ***Roma***

Local and European human rights organizations filed a series of complaints to the police, judicial authorities and the government, and to international human rights bodies, about human rights violations against Roma.

Human rights organizations accused the police of repeated violations against Roma in the last four years. The Greek Helsinki Monitor filed complaints against police officers in Argostoli in September on behalf of two young Roma men alleging ill-treatment. These were exemplary of many complaints received including of arbitrary and discriminatory arrests, ill-treatment in police custody, extraction of statements under duress, and falsification and corruption of evidence.

Other complaints were also made to the government in September, regarding its failure to provide adequate water and electricity supplies to a Roma settlement in Spata, where 22 families had been forcibly relocated three years earlier. The local authorities had also failed to implement an agreement to provide a bus to transport Roma children to school.

#### ***Refugees***

The treatment of migrants in detention centres continued to be of concern.

Overcrowding in reception facilities for asylum-seekers, which include former prison buildings, was reported in several instances. In May the UNHCR had expressed concern about the authorities' implementation of legislation on matters relating to asylum and immigration. In particular, it had noted difficulties in accessing the procedures for claiming

asylum and refugee status; inadequate facilities to accommodate asylum-seekers; the low number of claimants given refugee status; and the inability of the welfare system to satisfy the needs or assist the social integration of refugees.

These concerns were highlighted again in a report produced by the Greek section of Amnesty International covering issues related to "Greek Asylum Policy" between June 2002 and November 2003.

In July, 24 asylum-seekers, among them a seven-month-old girl, were detained for five days in a secure open-air area on the seafront at the port on the island of Mytilini. They were moved from a detention centre for migrants, converted from a former prison, following complaints by local inhabitants. For the first few days, the authorities failed to provide them with adequate supplies of water or medical treatment. Local human rights organizations were refused access to them.

#### **Conscientious objection**

In September charges of "disobedience", brought against Jehovah's Witness Alexandros Evtousenko for refusing to carry out military service, were withdrawn after a court in Thessaloniki ruled that he could not be tried twice for the same offence. In another case, Lazaros Petromelidis was convicted and sentenced to 20 months' imprisonment by an Athens court, also for "disobedience".

The alternative civilian service available to conscientious objectors in Greece is of a punitive nature. A planned law, that would make civilian service double the length of military service, therefore still of a punitive length, had not been drafted by the end of 2003.

## ITALY

### **Asylum and immigration**

AI continued to call for the introduction of a specific and comprehensive law on asylum, in order to guarantee the fundamental human right to asylum, recognized in principle in the Italian Constitution and through Italy's ratification of the UN Convention relating to the Status of Refugees. The organization was concerned that certain provisions of a law on immigration introduced in 2002, and partly implemented through enabling legislation in 2003 (Law 189/2002 - the so-called Bossi-Fini law), permitted asylum-seekers to be expelled during appeal procedures relating to rejected asylum applications and allowed many asylum-seekers to be detained or restricted in their liberty in circumstances over and above those allowed under international standards.

### **Temporary holding centres for aliens (Update to information given in AI Index: EUR 01/016/2003)**

AI was concerned at reports that inmates of temporary holding centres, commonly known as CPTs (*Centri di permanenza temporanea*), where unauthorized immigrants and rejected asylum-seekers could be detained for up to 60 days before their expulsion from the country or release, often experienced difficulties in gaining access to the legal advice necessary to challenge the legality of their detention and expulsion. There was increasing tension in the centres, accompanied by disturbing reports of frequent overcrowding, unhygienic living conditions, unsatisfactory diets and inadequate and inappropriate medical care. Information continued to emerge regarding alleged physical assaults on inmates by security and administrative personnel and several criminal investigations were under way into such allegations. AI was concerned that the centres lacked any permanent, independent monitoring and inspection system and, therefore, did not meet the requirements of the UN Body of Principles for the Protection

of All Persons under Any Form of Detention or Imprisonment. These principles, which call on states to take definite steps to implement and enforce their provisions, stress the importance of regular and independent supervision of detention conditions.

In October, Lecce public prosecutor's office concluded an investigation into a complaint lodged by 17 young North African men. The men had alleged that, after attempting to escape from Regina Pacis holding centre in Puglia province in November 2002, they and dozens of fellow inmates were subjected to verbal abuse, directed at their religious beliefs, and physically assaulted by a Roman Catholic priest acting as the centre's director, as well as by around six members of the administrative personnel and 11 *carabinieri* providing the centre's security service. It was also claimed that one inmate was stripped naked, and put, handcuffed, into a courtyard as 'an example' while others were denied medical treatment for their injuries. The prosecutor requested the relevant judge of preliminary investigation to commit all the accused for trial.

A criminal investigation continued into allegations that, following an escape attempt by two North African inmates of the via Mattei holding centre in Bologna, in March 2003, some 11 police officers, one *carabiniere* and a member of the Red Cross administration were involved in a physical assault on them and some 10 other inmates, including at least one woman. In November the judge of preliminary investigation endorsed the public prosecutor's request for proceedings to be dropped against four police officers because the alleged victims had failed to identify them with certainty as their aggressors. The investigation against the other accused was continuing at the end of December.

***Policing operation surrounding the July 2001 G8 summit and related demonstrations in Genoa (Update to information given in AI Index: EUR 01/016/2003)***

In September, Genoa public prosecutor's office concluded its investigations into the conduct of law enforcement officers during a raid on buildings legally occupied by the Genoa Social Forum (GSF), the main organizer of the demonstrations surrounding the G8 summit. The prosecutors presented their findings to 30 members of the state police, including high-ranking officers, allowing them the legal right to respond with evidence in their defence, before requesting their committal for trial. The accusations put forward by the prosecutors included abuse of authority, assault and battery, slander and falsifying evidence against the 93 people detained during the raid, apparently in order to justify the raid, the arrest of the 93 and the degree of force used by officers.

Individuals detained in and around the buildings occupied by the GSF, many of them asleep when the raid started, reported that law enforcement officers subjected them to deliberate and gratuitous beatings, resulting in numerous injuries, some of them requiring urgent hospitalization and in some cases surgical operations. Medical reports recorded injuries to 62 people detained during the raid: up to 20 people were reportedly carried out of the buildings on stretchers, two of them unconscious.

A criminal investigation into accusations that the 93 had violently resisted state officers, committed theft and carried offensive weapons had ended in May 2003 when a judge of preliminary investigation ruled, amongst other things, that there was no evidence of resistance. In December prosecutors concluded a separate criminal investigation into an accusation that the 93 belonged to a criminal association intent on looting and destroying property and requested the relevant judge of preliminary investigation to close the proceedings without any charges being brought against them.

In September also, the Genoa public prosecutor's office concluded investigations into events inside Bolzaneto temporary detention facility, through which over 200 detainees held during the G8 summit passed, including the vast majority of those detained in the raid on the GSF centre. This facility was intended to receive and hold temporarily those detained by law enforcement officers before transfer to prison proper or release. Detainees alleged they were systematically denied the rights to have their relatives informed of their whereabouts, and to prompt access to lawyers and, in the case of foreign nationals, to consular officials. Scores of detainees claimed that, among other things, they were slapped, kicked, punched, spat on, subjected to verbal abuse, sometimes of an obscene sexual nature, subjected to body searches carried out in a degrading manner, threatened, deprived of food, water and sleep for lengthy periods, made to line up with their legs apart and faces against the wall and forced to remain in this position for hours, and beaten, in particular on parts of their bodies already injured during arrest, if they failed to maintain this position or spoke.

The findings of the public prosecutor's office were presented to 47 individuals, including members of the state police, *carabinieri*, penitentiary and medical personnel. The accusations included abuse of authority, assault and battery, falsification of official records, and failure to certify injuries.

***Alleged torture and ill-treatment in San Sebastiano Prison, Sardinia (update to information given in AI Index: EUR 01/016/2003 and EUR 01/03/00)***

The public court hearing in the cases of nine prison officers who had chosen to be tried under the ordinary criminal process in connection with the ill-treatment, in some cases amounting to torture, of inmates of San Sebastiano Prison, Sassari, in April 2000 opened in September but was immediately postponed to 2004. At the same time an appeal court was considering the public prosecutor's appeal against the February 2003 decisions of the judge of

preliminary hearing in the cases of those defendants who had chosen to be tried via a fast-track trial procedure. The judge had concluded that prison inmates had been subjected to unpremeditated ill-treatment by prison personnel and imposed sentences ranging from fines to 18 months' imprisonment on nine prison officers, the former chief prison guard, a prison doctor, the former director of San Sebastiano prison and the former regional director of prisons. The judge concluded that there were no grounds to prosecute a further 20 prison officers and acquitted 48 others. The magistrate also ordered that 28 prisoners who had constituted themselves civil parties to the proceedings should be awarded substantial financial compensation for physical and moral damages. The outcome of the public prosecutor's appeal was still awaited at the end of December.

In December also, one prison officer was acquitted and two officers found guilty of ill-treating Ziad Abdel Aziz, a Moroccan national, in San Sebastiano Prison in November 1997, six years earlier. AI had first raised the case in a letter addressed to the Minister of Justice in May 2000. The letter which, amongst other things, raised the allegations then still emerging regarding the April 2000 incidents at the prison (see above), also sought confirmation that three San Sebastiano prison officers had been committed for trial in December 1999 on charges of bodily harm, abuse of authority and coercion with violence in connection with the treatment of Ziad Abdel Aziz. When he appeared in court in November 1997, at a hearing to endorse his recent detention in connection with alleged sexual offences against a minor, he displayed visible injuries, including a swollen face and bruising, and was subsequently found to have a perforated ear-drum. When questioned by the court as to the cause of his injuries he alleged that he had been beaten by prison guards while held in an isolation cell. One prison guard was sentenced to 18 months' imprisonment, the other to 15 months' imprisonment. Both sentences were suspended and accompanied by a requirement to pay damages.

## KAZAKSTAN

### ***The death penalty (update to AI Index: EUR 01/002/2003)***

On 18 December, a one-year reprieve on the death sentences of **Mikhail Vershinin, Evgeniy Turochkin and Sergey Kopay** expired, leading to concerns that they could be executed at any time. Four prisoners on death row with Mikhail Vershinin were reportedly secretly executed in October and November and Mikhail Vershinin believed that he was next. However, on the same day, it was announced that the President of Kazakhstan had signed a moratorium on executions the previous evening. The moratorium came into force on 19 December.

The three men had reportedly been tortured in order to force them to confess to a number of murders, and were sentenced to death by Almaty City Court in September 2001. The Supreme Court of Kazakhstan upheld their death sentences on 18 December 2002.

The President decreed that the moratorium on executions would be in place until legislation to enshrine full abolition of the death penalty was introduced in 2004. The General Procuracy was instructed to review all existing death sentences.

In his annual speech to the nation in April President Nazarbayev had urged the government to create the necessary conditions for introducing a moratorium on the death penalty. He acknowledged the importance of "continuing to make the criminal law more humane" and called for the introduction of life imprisonment. A draft law introducing life imprisonment as an alternative to the death penalty was approved by the Kazak Senate on 29 December and was to enter into legal force on 1 January 2004.

During the year the government cooperated with non-governmental organizations and the Organization for Security and Cooperation in Europe in launching a nation-wide awareness raising campaign on

the death penalty. It also provided the OSCE with death penalty statistics, except for details on executions, which remained classified as a state secret. According to information released by the Justice Ministry at the end of December 20 men were sentenced to death during 2003.

### ***Political prisoners (update to AI Index: EUR 01/002/2003)***

Supporters of the secular opposition and members of independent media continued to report harassment by the authorities. In July a court ordered the main opposition Democratic Choice for Kazakhstan movement (DVK) to suspend its activities for four months. In August another court banned all DVK activities outright and in October the DVK was informed that it could not register under a new name.

In October the Presidential clemency commission explained that it could not consider a petition for clemency submitted in August by **Galymzhan Zhakiyanov**, one of two imprisoned DVK leaders, since the National Security Committee (KNB) had brought new criminal charges against him. However, these new charges were reportedly only filed in September. Galymzhan Zhakiyanov had initially refused to submit a petition for clemency insisting that he was not guilty of the charges brought against him. However, concerns by family and supporters over his deteriorating health, including fears that he had contracted tuberculosis in prison, reportedly lead to him appealing for pardon on humanitarian grounds. He denied that he had agreed to abandon political opposition activities in exchange for his freedom. A videotape released to the media by the KNB reportedly showed Galymzhan Zhakiyanov agreeing to such a deal.

In April **Mukhtar Ablyazov** co-leader of the DVK, had appealed to President Nazarbayev for clemency. He was released under a presidential amnesty in May. He had allegedly been beaten and otherwise ill treated in detention in order to force him to abandon all opposition political activities in

exchange for his freedom. He resigned from the DVK upon his release from prison.

Mukhtar Ablyazov and Galymzhan Zhakiyanov, both former senior government officials, were sentenced to six and seven years' imprisonment in July and August 2002 respectively, on charges of "abuse of office" and financial crimes, including misappropriation of state funds in trials that failed to meet international fair trial standards. They were apparently targeted because of their peaceful opposition activities.

In October the Supreme Court turned down an appeal filed by **Sergey Duvanov's** legal team for a review of his case. However, on 29 December a court ordered his transfer to an open prison which would allow him, on condition of regular reporting to prison authorities, to return to his previous job at the non-governmental Kazak International Bureau on Human Rights (KIBHR) and to live at his home. For the remainder of his sentence Sergey Duvanov was not to take part in public life or leave his place of residence.

Sergey Duvanov, an independent journalist and editor of the KIBHR human rights bulletin, was sentenced in January 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. The representative on Freedom of the Media of the OSCE expressed concern that the trial may have been politically motivated. Despite international pressure the appeal court refused to admit two independent experts commissioned by the OSCE to attend the hearing and upheld the original verdict. In their review of the criminal case against Sergey Duvanov, the OSCE experts noted serious procedural errors in the trial and lack of sufficient evidence for a conviction.

From the day of his arrest in October 2002 Sergey Duvanov had always maintained his innocence and claimed that his conviction was an attempt to discredit him and to punish him for articles critical of the authorities, in particular those implicating

government officials and the president in financial irregularities and corruption in relation to the so-called "Kazakgate" affair. In March 2003 a US businessman and former advisor to President Nazarbayev was arrested in New York, USA, and charged with 'making unlawful payments to Kazak government officials' under the Foreign Corrupt Practices Act. The authorities in Kazakstan tried to curtail reporting of the so-called "Kazakgate" scandal in the country by allegedly harassing newspapers who published details of the scandal, threatening journalists investigating it and blocking access to websites.

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## KYRGYZSTAN

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### ***Excessive use of force by police (update to AI Index: EUR 01/002/20023)***

In May police in Bishkek broke up a peaceful demonstration by members of the recently formed Committee of Mothers and Wives of the Aksy Victims who were protesting the acquittal on appeal of three law enforcement officials sentenced in December 2002 to prison terms for their part in the fatal shooting of protestors in Aksy. The women, most of whom were elderly, were detained for 10 hours and reportedly threatened and humiliated by police officers. At least one woman was reportedly beaten. Following their release 18 of the women declared a hunger strike demanding to see President Akayev in order to appeal directly to him for justice. They agreed to end their hunger strike after they received assurances by the presidential chief of staff that he would submit their appeal to the president.

At least five demonstrators died in clashes between police and protesters [during anti-government protests in the Aksy district of Jalal-abad region on 17 and 18 March 2002. A State Commission later found that the use of force by law enforcement agencies was erroneous.

In October **Dilbar Momonkulova**, the head of Committee of Aksy Mothers, was denied

an exit visa to attend a conference on torture in Austria organized by the Organization for Cooperation and Security in Europe.

### **Freedom of the press**

Courts continued to award punitive criminal libel damages against independent newspapers publishing articles critical of the government or making allegations of corruption and abuse of office. The state-run printing press reportedly refused to print several independent newspapers because of their perceived opposition to the government. The first independent printing press in Kyrgyzstan and Central Asia set up by the US-based international human rights organization Freedom House opened in November. It offered an alternative outlet to independent newspapers critical of the government.

In June the independent newspaper Moya Stolitsa Novosti (My Capital News) was forced to close down after criminal libel damages awarded against the newspaper pushed it into bankruptcy. Over 30 libel lawsuits were filed against Moya Stolitsa as a result of articles critical of senior government officials or alleging corruption and fraud among state officials and in the private sector. In January Aleksandra Chernykh, the daughter of the political editor Rina Prizhivoit, and a journalist herself was assaulted and badly beaten by unknown assailants. In June the car of Aleksandr Kim, the paper's publisher and editor-in-chief was set on fire. Both attacks were seen as attempts to intimidate staff.

### **Death in mysterious circumstances**

On 15 September the body of **Ernis Nazalov**, a correspondent for the Kyrgyz Rukhu (Kyrgyz Spirit) newspaper, was reportedly found in a canal in the Kara-suu region. According to the Ministry of Internal Affairs (MVD) the original autopsy revealed no sign of a violent death and a verdict of accidental death by drowning was recorded. Ernis Nazalov's father, however, alleged that one of his son's hands was broken and bore knife wounds. According to colleagues Ernis Nazalov had been

investigating allegations of high-level corruption and was about to publish his findings. There was concern that his death could have been linked to his investigative work. The MVD confirmed that he had been attacked two weeks prior to his death by unknown assailants who had stolen some of his research materials.

### **Political prisoners (update to AI EUR 01/000/200? Tbc)**

In August the Supreme Court turned down an appeal by **Feliks Kulov**, leader of the opposition party *Ar-Namys (Dignity)* and a former senior government official, against a 10-year prison sentence handed down in May 2002 for abuse of office and embezzlement during his time as governor of Chui Province between 1993 and 1997. Supporters claimed that these charges were brought for political reasons.

In March **Tynchtyk Dulatov**, a member of the *Ar-Namys* party, was detained for questioning for two days by police in Bishkek after a young man filed a complaint for attempted kidnapping against him. The charge related to Tynchtyk Dulatov's participation in the election monitoring of the February constitutional referendum and specifically to his interview of Botir Chordoev who was part of a group who had reportedly carried out multiple voting at the behest of Bishkek city officials. During questioning by police, Botir Chordoev reportedly withdrew allegations that he had been kidnapped and forced to make false allegations of multiple voting by Tynchtyk Dulatov. However, following two weeks of being forcibly confined in a psychiatric hospital, he reportedly repeated his original claims against Tynchtyk Dulatov.

In January the President had replaced the Council for Constitutional Reforms with a group of experts to expedite the drafting of amendments to the constitution. A national referendum to vote on these amendments took place just two weeks later in early February amid claims of serious voting irregularities, including intimidation of election observers

## MACEDONIA

### **Background**

In July parliament passed an amnesty law for those who since 1992 had avoided compulsory military service. This affected 12,369 people of whom 3,260 were ethnic Macedonians, 7,730 ethnic Albanians and the rest from Macedonia's other ethnic groups.

On 10 September parliament passed a new law on the competencies of the Ombudsperson's office which significantly extended its powers vis-à-vis state authorities, and proposed setting up six decentralized units throughout the country.

In December EUFOR - a European Union (EU) armed force of 400 soldiers from 26 different countries charged with providing stability for the implementation of the Ohrid Framework Agreement was replaced by Proxima, a EU police force of 200 members to reform the Ministry of the Interior, including the police..

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

There were continuing allegations of police torture and ill-treatment. Three ethnic Albanian men, Xhezair Shabani, from the Malino village, and his two sons, Resmi Shabani, aged 27, and Shefket Shabani, aged 23, were allegedly brutally beaten by members of a special police unit from 5pm Tuesday 26 August until 3am Thursday 28 August. They were stopped while returning from a timber-gathering expedition in Ramno by a large number of masked special police members apparently seeking the ethnic Albanian fugitive, Avdyl Jakupi (also known as Commander Chakalla). Allegedly, some 20 of the masked policemen started beating them and insulting them with racial slurs, while other policemen watched. One of the masked policemen allegedly carved the letter 'M' (for Macedonia) with a knife on one of the victims. The three men were then driven to the Mirkovci police station with the police allegedly holding Resmi Shabani in front of

the vehicle as a human shield, and forcing him to shout that he was an Albanian in order to deter any possible attack from armed Albanian insurgents operating in the area. The ill-treatment allegedly continued in Mirkovci police station until they were finally released at 3am on Thursday 28 August. On 5 September it was reported that Interior Minister Hari Kostov had confirmed that the three men had been maltreated for 30 hours by the Macedonian special police forces and that measures would be undertaken against those responsible for exceeding their authority.

The Macedonian Helsinki Committee (MHC) reported the case of Petre Nikoloski, a former member of the "Lions" - a paramilitary police force set up by the Interior Ministry following the insurgency in 2001, which was disbanded in January. He alleged that at 2am on 6 November he was forcibly arrested and taken to the Prilep police station where he was beaten with rubber bats, baseball bats and police flashlights while he was handcuffed, in order to extort a confession from him. The MHC reported that there was medical documentation and photographic evidence corroborating the allegations.

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

Women and girls continued to be trafficked in and through Macedonia for the purposes of forced prostitution. A purported main trafficker, Dilaver Bojku-Leku who had been sentenced in March to the minimum sentence of six months' imprisonment for involvement in prostitution and who had escaped from custody in June, was re-arrested on 2 July in Montenegro and transferred back to Macedonia. A new trial against him and others accused of trafficking and forced prostitution began in October with the court hearing protected witnesses from Moldova and Romania, and in December he was sentenced to three years and eight months' imprisonment. Suspicions of past official complicity appeared to be confirmed in November when charges were brought against the former assistant police chief of Struga for releasing him from custody in 2001



immediately after he had been arrested on a court order.

In October five people were sentenced in Skopje to between five and eight years' imprisonment for trafficking women and girls from Moldova for forced prostitution, while in Gostivar six people including two Albanian citizens and a Bulgarian woman received sentences of between seven and 12 years for trafficking and other crimes in connection with an armed incident between rival traffickers in January which saw three trafficked women – two from Bulgaria and one from Moldova – shot dead.

#### **Journalists punished for criminal libel**

In November verdicts were delivered in three cases of criminal slander or insult of leading officials in 2001 by journalists. Sonja Kramarska of the daily *Utrinski Vestnik* was fined 20,000 denars (\$420) or 20 days' imprisonment for slandering former Parliament Speaker Stojan Andov. Dragan Antonovski, formerly of A1 TV, was fined 100,000 denars (\$2,100) for insulting former Chief of General Staff Jovan Andrevski, while Zoran Markozanov of the weekly *Zum*, received a conditional three-month prison sentence for libelling Stojan Andov. In September the trial began of Marjan Gjurovski, of the weekly *Start*, on slander charges, filed in 2002 by former Minister of the Interior Ljube Boshkovski over a story about the government's role in the 2001 crisis. It was not completed by the end of the year. The Association of Print Media protested that such criminal proceedings were an attempt to intimidate and control the media.

#### **Refugees and IDPs**

There remained over 2,500 registered internally displaced persons (IDPs) after the 2001 fighting in Macedonia. In addition there were an estimated 1,500 refugees from Kosovo. In August over 600 Roma from Kosovo, including women and children, who had camped on the border, were persuaded to leave the border area and were all offered asylum status under the terms of the new asylum law which was

passed by the Assembly on 16 July. They had fled to Macedonia fearing attacks on them by Kosovo Albanians after the 1999 NATO operation over Kosovo, and were attempting to leave Macedonia - where they had been granted temporary asylum - and gain entry to Greece (and the EU) to seek asylum there. Most refused asylum status hoping instead to gain entry to the EU, and thus faced the threat of forcible deportation back to Kosovo.

On 15 September the authorities forcibly expelled two members of the Kosovo Egyptian minority, Dzavit Berisha and his wife Bojljije, back to Kosovo after the courts failed to recognize them as refugees, despite the United Nations High Commission for Refugees' (UNHCR) position that Roma, Ashkaelia and Egyptians in Kosovo faced severe discrimination including physical attacks. The UNHCR urged that such groups should not be subject to *refoulement*.

On 27 November the European Roma Rights Center (ERRC) filed a pre-application letter with the European Court of Human Rights against the Macedonian authorities to prevent the forced expulsion of Kosovo Romani, Ashkaeli and Egyptian refugees to Kosovo or to Serbia and Montenegro.

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## **MALTA**

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#### **Asylum and immigration**

*Refoulement of Eritreans (Update to AI Index: EUR 01/002/2003)*

In October AI wrote to the Minister for Justice and Home Affairs concerning new information received by the organization about the fate of a group of some 220 Eritreans deported to Eritrea over September and October 2002. In correspondence exchanged with the Minister in 2002, AI had expressed grave concern about their deportation and treatment following return.

In its October letter AI reiterated that, according to its information, the deportees were detained on arrival at the airport in Asmara, Eritrea, and that foreign embassies and journalists had not access to them since. AI explained, however, that several Eritreans who had recently arrived in Sudan and made contact with AI and representatives of the UN High Commissioner for Refugees (UNHCR) said that they had been amongst the deportees and had only recently escaped from detention in Eritrea. They stated that all those deported from Malta had been detained on arrival at the airport, apparently away from the view of the Air Malta pilots who had flown them back to Eritrea and the Maltese police officers who had escorted them on board the planes. According to the escapees, the deportees were not greeted by any relatives on arrival and none of those remaining in detention had been allowed any contact with their families since their return. After the Air Malta flights left on their homeward journeys, all the deportees were taken to Adi Abeto military detention centre, near Asmara. After some days the women, children and persons over 40 (and thus over military conscription age), were taken away. In its letter, AI pointed out that it was possible that they had been released but that it had received no confirmation of this. The escapees said that the remaining detainees, some 180 people, were kept in detention and tortured over a period of some two and a half months. Some tried to escape but were recaptured: three were shot, one man dying from his wounds. In December 2002 all remaining detainees were transferred to a secret detention centre on the main Dahlak Island in the Red Sea, where they performed forced labour. Some were moved to secret mainland prisons in July 2003, from which several later escaped across the Sudan border.

At the end of December 2003, all others deported from Malta in 2002 reportedly continued to be held in indefinite, incommunicado detention, without charge or trial or any opportunity for legal redress, in harsh conditions and at risk of torture.

In its letter, noting that scores of Eritreans were then being held in Maltese detention centres for asylum-seekers and migrants, many of them apparently at risk of deportation, AI stated that, in its view, if they were to be returned to Eritrea, their treatment would be similar to that experienced by those deported in 2002.

AI urged the government to ensure, as a matter of highest importance, that no asylum-seeker be forcibly returned to a country of origin, directly or indirectly, where they would be at risk of serious human rights abuses. The organization called on the Maltese Government to look more closely at the human rights situation in Eritrea and not to deport Eritrean asylum-seekers to Eritrea while there were well-grounded fears that they could be detained or tortured. The organization also suggested that the government support international efforts to secure better protection for human rights in Eritrea. No response had been received by the end of December, nor were any reports received of Eritreans being deported from Malta.

***Detention of asylum-seekers and unsatisfactory asylum proceedings (Update to AI Index: EUR 01/016/2003)***

Hundreds of asylum-seekers and unauthorized migrants, including pregnant women, nursing mothers and children, were held in detention centres for aliens on grounds beyond those allowed by international standards, often for periods ranging between one and two years. Asylum-seekers and migrants arriving irregularly are automatically detained until the conclusion of refugee determination procedures and/or return to the country of origin. AI noted that in June UNHCR had stated that, in order to comply fully with international standards, Malta's asylum legislation needed improvements in several areas and strongly recommended that the automatic detention of asylum-seekers, "in particular women and children asylum-seekers as well as other vulnerable cases", be discontinued. AI has called on Malta to ensure that, in line with relevant

international standards, asylum-seekers are 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.

Over 500 people were detained in the centres during the period under review and there was concern that some did not have access to a fair and satisfactory asylum determination procedure. Severe delays in the processing of asylum applications continued and appeared in large part due to acute understaffing in the Refugee Commissioner's office, the first instance decision-making body. There were also claims that detainees in the detention centres were frequently unable to exercise their rights as they were not fully and regularly informed of asylum determination proceedings, and the progress of such proceedings, or lacked access to timely legal advice. The Refugee Appeals Board systematically confirmed first instance decisions rejecting asylum applications, without re-interviewing the asylum-seekers about the merits of their claims and usually without motivating their decisions. This resulted in continuing calls for greater transparency and diligence in the appeals process.

***Detention conditions (Update to AI Index: EUR 01/016/2003)***

Living conditions in the detention centres continued to fall short of relevant international standards, giving rise to ongoing tensions and protests within the centres, including frequent hunger-strikes. Many people were held in facilities not originally designed as detention centres, with reports of people in some centres suffering severe overcrowding and highly inadequate sanitary arrangements. Some inmates, including children, had little or no regular access to exercise in the open air, spending most of the day inside the detention centre, with no recreational facilities. School-age children detained with their relatives faced lengthy delays in gaining permission to leave the detention centres during the day to attend local schools, with the result that a number of

children were deprived of education for six months or more. The overall treatment of detained children appeared to fall short of the requirements of the UN Convention on the Rights of the Child.

Local non-governmental organizations providing basic social and medical services, often on a voluntary basis, continued to report deterioration in the mental health of some of the inmates as the time they had spent detained in poor conditions lengthened, without any apparent indication of progress in the processing of their asylum claims or a time limit on their detention. It was reported that the police and military personnel running the centres often made considerable efforts to cope with the problems arising but were not provided with appropriate training.

There was still a lack of appropriate housing available in the community for recognized refugees once released and there were reports of unsatisfactory living conditions in Hal Far open centre to which some detainees were transferred after gaining refugee status or temporary humanitarian protection, or as an exceptional measure. At the end of the year the centre was said to be overcrowded, with inadequate lighting, heating and bedding, and inappropriate food provided for the babies and young children amongst the residents.

***Visit by the Council of Europe's Commissioner for Human Rights***

In October, in public statements made at the close of a visit to Malta, including visits to some detention centres for aliens, the Council of Europe's Commissioner for Human Rights said that living conditions in the centres were particularly "shocking" when compared to those in the local prison, that asylum-seekers were detained for unacceptable periods of time, and that the office of the Commissioner for Refugees was seriously understaffed. He underlined that urgent action was needed to address the situation. The Commissioner's official report on his visit was due to be published in early 2004.

### **Government reaction to concerns**

In November the Minister for Justice and Home Affairs stated publicly that the detention of asylum-seekers and migrants "should not exceed a reasonable period" and that the government planned to guarantee this via several reforms. He indicated that "these included accelerating the procedures for processing asylum applications, increasing relevant human resources and drafting an internal policy of not detaining irregular immigrants beyond a reasonable period of time". He said that a reduction in the number of detainees would lead to improved conditions in the detention centres.

Over 500 people were held in the detention centres during the period under review but the number had been substantially reduced by the end of the year. In December, over 65 Eritrean and Ethiopian asylum-seekers were transferred to Hal Far open centre, apparently as a humanitarian gesture. They constituted the majority of detained Eritrean and Ethiopian nationals and had been held for periods ranging between some 17 and 22 months. None of them had been granted refugee status or, apparently, temporary humanitarian protection. Many of those remaining in detention had been held for over a year.

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## **MOLDOVA**

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### **Police ill-treatment**

In the period under review there were numerous reports of torture and ill-treatment in police custody. In most cases detainees were refused access to a lawyer and to an independent medical examination. Children under 18 were questioned without the presence of a parent, lawyer or responsible adult. Most of the victims were criminal suspects. However, in some cases people were apprehended by police without any apparent motive before being beaten and then charged with assaulting a police officer, to pre-empt investigation of allegations of torture. The authorities were

often unwilling to conduct prompt and impartial investigations into allegations of ill-treatment.

### **Ill-treatment of a minor**

On 16 July police officer P. and another man reportedly came to the house of V.S. in Cojuşna. She was absent at the time, and they called her 14-year-old son R. to come to the gate to answer some questions. The two men reportedly grabbed R.S. by his arms, lifted him over the fence, and took him in a car to the Cojuşna Police Station. Neither R.'s 17-year-old brother K.S., who was at home at the time, nor any of the neighbours were informed that the boy had been taken to the village police station for questioning. Officer P. and two other police officers then reportedly accused R.S. of committing a theft from a house in the village and pressured him to sign a statement confessing to this offence. The boy explained that on the date of the theft he had been working together with his older brother on a building site and refused to sign any papers without his mother or a lawyer being present. Officer P. then reportedly took the boy to a room with no windows and beat him with a rubber stick on his head and body, making R. S. wet himself from pain and fear. The beating was allegedly intermittently repeated and the officer threatened the boy by saying that he would be placed in the pre-trial lock-up (*izolator*) of the Străşeni Police Station, where the adult criminal suspects would teach him not to disobey police orders.

At 6pm R.S. was released from the police station and he returned home. He told his mother what had happened at the station and because he was feeling poorly as a result of the beatings he was taken to the "Ignatenco" Children Hospital in Chisinau. He was hospitalized for several days. It has also been reported that R.S. had been harassed by officers P. and T. on several occasions in the past, beginning with November 2000; and that his mother, V.S. had filed complaints about this to the local public prosecutor without any apparent results. In November the Străşeni Prosecutors Office decided not to initiate a

criminal investigation into the alleged ill-treatment of R.S. because "he is a thief".

***Use of assault charges to pre-empt independent investigation into ill-treatment***

On 28 July in Leova D.V. and L.A. were reportedly beaten by police officers on the street, as well as in the city police station. They had been detained whilst walking home after attending a party, and had refused to get into a car containing two police officers, who reportedly shouted that they should not walk drunk in street and look like homosexuals. The officers then allegedly beat them with a baseball bat and a gun, and forced them into their car, not identifying themselves or giving a reason for their detention. D.V. and L.A. were taken to the police station where the alleged beatings continued for several hours. D.V. who is a law student insisted on their rights and stated they would complain about the ill-treatment. D.V. and L.A. were taken to a hospital only to check their alcohol level, and were returned to police custody, reportedly without receiving medical treatment. After a visit by the local prosecutor, who took an official statement, they were released. The same day a criminal investigation was opened against D.V. and L.A. for an assault on police officers' lives, for which they were charged as suspects on 22 September. After D.V. and L.A. lodged a complaint a criminal investigation was initiated against the two police officers abuse of police powers. An independent medical forensic examination confirmed that the injuries D.V. and L.A. sustained could have been caused with a hard object of limited surface probably at the time and in the way as alleged by D.V. Both investigations were continuing at the end of the year.

***Self-proclaimed Dnestr Moldavian Republic (DMR)***

A Russian proposal for resolution of the status of the breakaway region was rejected in November by President Voronin. Initially he had hailed the plan as a "realistic compromise", but subsequently withdrew his support. The Organization for

Security and Co-operation in Europe had expressed its concern about the lack of clarity in the proposed agreement, particularly concerning the division of powers between the central and regional authorities.

It was reported that in November the administration of the city Bender decided to discontinue the agreement allowing the Moldovan police to act in Bender. The Moldovan police in Bender are serving in accordance with a Moldovan-Russian agreement dating back to 21 July 1992, the end of the military conflict in the DMR.

***Death Penalty***

Amnesty International expressed concern to the Minister of Justice of the DMR in August about reports that a decision by the Supreme Court on 25 June confirmed the death sentence of F.I. Negrya. In September the Ministry of Justice confirmed that F.I. Negrya was sentenced to death, but assured Amnesty International that the moratorium on the execution of the death penalty in the Dnestr Moldavian Republic, as established on 6 July 1999, remains enforced.

***Prison conditions***

In November a delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) examined the situation at prison colony No.29/8 in Bender, which functions as a medical institution specifically equipped for detainees with tuberculosis. According to the CPT the prison was cut off from running water and electricity supplies in July by a decision of the Bender municipal authorities. The institution forms part of the prison system of the Republic of Moldova, but is located in an area under the control of the DMR. Having visited the prison colony in February and July the Moldovan Helsinki Committee reported that the conditions of detention for the over 650 detainees amounted to cruel, inhuman and degrading treatment, in particular it noted the lack of sanitation, inadequate food provision and harsh living

conditions, which could be considered "a sentence to a slow death".

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## PORTUGAL

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The United Nations Human Rights Committee (HRC) published its Concluding Observations in August, following its consideration of Portugal's third periodic report under the International Covenant on Civil and Political Rights (ICCPR). In December the Commissioner for Human Rights of the Council of Europe published the report of his visit to Portugal in May 2003.

The findings of both international monitoring bodies corroborated AI's long-standing concerns about human rights violations in the country, including fatal police shootings, reportedly as a result of unlawful use of force; failure to protect the right to life of people in police and prison custody; ill-treatment, excessive use of force, and racial abuse by police and prison officers; conditions amounting to cruel, inhuman and degrading treatment in numerous prisons; and persistent discrimination and racism against Roma and other ethnic minority communities (see *Portugal before the Human Rights Committee: a summary of Amnesty International's concerns*, AI Index: EUR 38/001/2003).

The HRC and the Commissioner for Human Rights also expressed concern about the slow functioning of the justice system, and the excessive use and length of pre-trial detention. The HRC recommended legislative amendments to require that anyone held in pre-trial detention be charged and tried within a reasonable time, and that magistrates authorize pre-trial detention only as a last resort.

### **Policing**

AI continued to be concerned that in recent years police may have used firearms, including rubber bullets, in breach of international standards and national laws and regulations on occasions in which their

use was disproportionate to the threat posed, if any, to the police officers involved. Some people may have been unlawfully killed as a result. AI's concern that these incidents may be symptomatic of inadequate training, both as to the situations in which firearms can lawfully be used and as to the technical aspects of their use, was reflected in the HRC's Concluding Observations.

The HRC, noting that several people had been shot dead by police over recent years, called for the UN Principles on the Use of Force and Firearms by Law Enforcement Officials to be fully integrated into Portuguese law and implemented in practice, and for adequate training to be effectively conducted.

Some of AI's concerns appeared to be shared also by the General Inspectorate of the Internal Administration (GIIA), the police oversight agency under the Ministry of the Interior, which has responsibility to initiate investigations into allegations of police misconduct and make recommendations for disciplinary actions. In November, at a seminar on police use of firearms, the head of the GIIA reportedly stated that police officers often operate without adequate protection, or technical and tactical support by their superiors, and expressed concern that police authorities were failing to ensure that firearms were used only in exceptional circumstances.

In a paper published for the above-mentioned seminar, the GIIA stated that between the beginning of 2000 and the end of 2002 they had investigated eight fatal police shootings and 19 police shootings resulting in injuries, and drew attention to the fact that since the beginning of 2003, six fatal police shootings had occurred, three of which the GIIA had found to have been lawful.

In its paper -- which examined various issues regarding the interpretation of *Decreto Lei* n. 457/99 regulating police use of firearms -- the GIIA identified a number of situations in which police use of firearms raised concern and was deemed unlawful:

-- shooting in circumstances unduly regarded as justifying self-defence, due to a wrong interpretation of what constitutes an 'imminent aggression'. The GIIA illustrated this kind of situation by an example that, in AI's opinion, bears strong similarities to the case of António Pereira, fatally shot by police in June 2002 in the town of Setúbal, near Lisbon (see AI Index: EUR 38/001/2003). In addition, with regard to the use of so-called 'less-than-lethal' weapons, including rubber bullets, in such situations the GIIA argued that their level of dangerousness depends on the way in which they are used, particularly the distance from which they were discharged, and which part of the body they were aimed at; and that it would be extremely difficult to claim not to have been aware of the lethal nature of a shotgun firing rubber bullets if used at close range and aiming at vital parts of the body.

Self-defence was also called upon to justify fatal shootings in cases where firearms were discharged at a vehicle allegedly attempting to run over police officers, killing either the driver or a passenger. In the GIIA's opinion, in these cases it was not possible to deem that an aggression was occurring at the time of the shooting, as firearms were discharged at a fleeing vehicle, whose driver had disobeyed an order to stop after having driven past the police officers.

-- shootings at the tyres of a fleeing vehicle whose driver had not stopped as requested, either in the course of traffic control operations, where the use of firearms is unlawful, or to stop the car of suspected offenders. Due to the high risks involved, the GIIA concluded that discharging firearms at a fleeing vehicle should only be allowed in highly exceptional situations, when the life or physical integrity of a person is at risk;

-- accidental/involuntary shootings occurring in connection with the pursuit on foot of suspected offenders, for example, in cases where the terrain was uneven and the police officer lost his/her balance at the moment of apprehending the suspect, falling against the suspect and involuntarily

pulling the trigger, wounding the suspect in the back; and where, due to the suspect's resistance at the moment of apprehension, the firearm, upholstered and ready to be discharged, was used to hit the nape of the suspect's neck, causing the weapon to fire. According to the GIIA, this course of action, which occurred on various occasions, was in breach of national laws and regulations; and

-- shootings to stop suspects fleeing on foot, and resulting in injuries or death. The GIIA clarified that shooting at a person, even if aiming at non vital parts of the body, should only be allowed in situations pertaining to the protection of human life. The distinction between shooting to immobilize a person and intentional fatal shooting was relevant only with regard to the police officer's obligation to minimize injuries and damages and to preserve human life.

After listing a number of scenarios of possible unlawful killing, the GIIA recommended that there should be a review of some aspects of the implementation of the law.

**Update to the case of António Pereira (AI Index: EUR 38/001/2003)**

The criminal trial of the police officer charged with the aggravated homicide of António Pereira started in November. According to reports, the accused argued that he had acted in self-defence and that at the time he had not been aware of the potentially lethal nature of the weapon in his possession, a so-called "shot-gun" firing rubber bullets. The trial was ongoing at the end of the year. Following disciplinary proceedings, the police officer was also suspended from duty for 225 days.

**Update to the cases of Ângelo Semedo and Nuno Lucas (AI Index: EUR 38/001/2003)**

In July the authorities informed the HRC that the GIIA had proposed a 75-day suspension for the police officer involved in the killing of Ângelo Semedo in December 2001, but that the measure had been

suspended for one year, because elements diminishing and limiting the responsibility of the police officer had emerged. The GIIA had also proposed to the Minister of the Interior the dismissal of the police officer involved in the killing of Nuno Lucas in August 2002 in Oporto. A decision was pending at the end of the year.

**Update to cases of police ill-treatment and excessive use of force (AI Index: EUR 38/001/2003)**

In October the Ministry of the Interior informed AI that a criminal investigation was ongoing into the alleged unlawful detention and verbal abuse of Carlos Moreira by police officers. A disciplinary investigation by a police deontology and disciplinary unit, under the supervision of the GIIA, of one officer in connection with the same incident was also ongoing. Carlos Moreira, 15, was reportedly ill-treated and racially abused by police while in custody in connection with a disturbance outside his school in October 2002. His mother, Augusta Monteiro, was also reportedly racially abused and threatened with a firearm when she went to inquire about her son at the police station.

A GIIA disciplinary investigation into the alleged ill-treatment of Lin Aizhong and Qiaolian Zhon in August 2002 concluded that the police had not used disproportionate force.

Disciplinary investigations by the relevant police deontology and disciplinary units were also ongoing in the cases of alleged ill-treatment of Cláudia Domingues and Mónica Godinho in August 2002 and of Nathalie and Didier Eric Julien in November 2001. A criminal investigation into the latter incident had concluded that there was insufficient evidence of criminal conduct by police.

**Mechanisms of investigation of grave police misconduct**

The HRC was concerned about reported failures of the judicial and disciplinary systems to deal promptly and effectively with allegations of grave police misconduct.

It suggested the establishment of "a police oversight service, independent from the Ministry of the Interior". The Commissioner for Human Rights regretted the practice of suspending disciplinary proceedings pending a criminal investigation into allegations of grave police misconduct, and of discontinuing them if no criminal charges were brought.

**Prisons**

The safety of detainees in some prisons remained under threat, including from self-harm and inter-prisoner violence. Safeguards to prevent self-harm and inter-prisoner violence, and to identify vulnerable detainees, were inadequate, causing concern that the authorities were failing to protect the right to life of people in prison. The authorities failed to ensure that convicted prisoners were held separately from detainees in pre-trial detention and that prisoners received adequate medical care. Reports persisted of widespread infectious diseases and drug trafficking and use inside prisons. Conditions and sanitary facilities in some prisons remained below international standards: the latest available figures showed that 17 per cent of detainees were still using buckets as toilets in February 2002. Overcrowding aggravated all other problems in the prison system.

There were some new reports of ill-treatment and harassment of detainees by prison officers. The HRC expressed concern about reports of ill-treatment and abuse of authority by prison staff and of violence, in some cases lethal, among prisoners. It recommended increased efforts to eliminate violence in prisons; ensure the separation of convicted prisoners and pre-trial detainees; make appropriate and timely medical care available to all detainees; and reduce overcrowding.

In November the Ombudsperson published his first report on prisons since 1998. It drew attention to inadequate medical care and factors threatening the safety of detainees and prison staff. These included malfunctioning cell doors and inadequate systems to enable prisoners in solitary



confinement to call for help, coupled, in some cases, with only sporadic checks by prison staff. He also stressed the potential for abuse in the lack of clear separation between disciplinary measures, security measures, and measures pertaining to the regime of detainees regarded as dangerous. The Ombudsperson recommended that detainees must have legal assistance of their choice in proceedings for the application of security and disciplinary measures. Full reasons should be given for any decision to subject a detainee to a security or disciplinary measure, and all prisons should implement the requirement that the governor or a deputy must always hear a detainee before imposing the measure.

Concern regarding the situation in prisons was also voiced by the Human Rights Commission of the national Bar Association (*Ordem dos Advogados*).

The criminal investigation into the killings of two prisoners at the Vale de Judeus prison in October 2001 was in the final stage. However, no charges had been brought by the end of the year. Some reports had implicated custodial staff in the killings. In 2003 three self-inflicted deaths and one killing, allegedly as a result of violence between prisoners, were reported at the same prison.

AI received reports that at the end of November a detainee was beaten by several prison guards in Lisbon prison. An internal prison service investigation and a criminal inquiry were opened.

#### **Racism and discrimination**

Despite measures to integrate people of Roma origin, discrimination continued, particularly in education, housing and access to employment and social services. Reportedly, some local police authorities harassed and discriminated against Roma people. Occasional attempts by some local councils to harass Roma groups and induce them to leave the area were also reported.

The HRC expressed concern about prejudice against Roma people. The authorities failed

to provide the HRC with information, including statistical data, on the situation of the Roma, on the work of institutions responsible for their advancement and welfare, or on complaints – and their outcomes – filed by members of ethnic minorities, including Roma, with those institutions.

#### **Asylum-seekers and refugees**

The Commissioner for Human Rights expressed concern about the requirement that asylum applications must be lodged within eight days of entry into the country, and that procedures allowed for removals while decisions on appeals against initial rejections of asylum claims were pending. The National Commissioner for Refugees was reportedly reluctant to hear applicants before ruling on their appeals against rejection of their asylum claims, raising concern about the independence of this institution from the immigration service.

The HRC expressed concern that domestic law did not provide effective remedies against forcible return, in violation of the state's international human rights obligations not to return people to countries where they would be at risk of grave human rights abuses.

#### **Violence against women**

According to data of the national Commission for Equality and the Rights of Women, on average five women per month die in Portugal as a result of domestic violence. The Portuguese Association for the Support of the Victim (APAV), a charity which victims of crimes can contact to seek psychological support and legal advice, recorded a 17 per cent increase in 2003 in reports of domestic violence cases, with over 90 per cent of the victims being women. In about one case out of five violence had been ongoing for five years prior to the incident that was eventually reported. APAV noted, however, that, due to the high number of unreported cases of domestic violence, it was impossible to say whether this reflected an increased willingness of the victims to report their situation or an actual increase in cases.

Legislation passed in 1999 in connection with the First National Plan against Domestic Violence (*I Plano Nacional Contra a Violência Doméstica*), which provided for the creation of reception and assistance centres in all districts for women affected by domestic violence, had not been fully implemented. The Second National Plan against Domestic Violence (*II Plano Nacional Contra a Violência Doméstica*), for the period 2003-2006, was adopted in June. It provided for, among other things, the training of judges and a revision of procedures to obtain compensation for people affected by domestic violence.

Despite praising national legislation on domestic violence, the Commissioner for Human Rights expressed concern about failures to make use of available protection measures, for example, to prevent perpetrators from having access to the home of their victims. Despite 1991 legislation providing for specialized police units to tackle domestic violence, they had not been established by the end of 2003. However, according to the Commissioner for Human Rights, a number of programs to develop police responsiveness to domestic violence, including training programs, were improving officers' capacity to address domestic violence.

#### **Universal jurisdiction**

AI submitted its recommendations for the implementation of the Rome Statute of the International Criminal Court to the parliamentary Commission on Constitutional Affairs, Rights, Freedoms and Guarantees, which, at the end of 2003, was drafting relevant legislation.

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## **ROMANIA**

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#### ***Death in custody in suspicious circumstances***

On 1 October in Bucharest 20-year-old Marian Predică, who was held in pre-trial detention in Rahova prison, was taken unconscious to a hospital where he died five

days later of brain haemorrhage. The report of the post-mortem examination stated that Marian Predică's death was caused by violence. It described numerous injuries to the face and body and noted that the injuries could have been caused by a blow in the face with a heavy object several days before he was admitted to the hospital. The report concluded that there was a direct link between the head injuries and the death and that these injuries required prompt specialist treatment which Marian Predică had not received.

Shortly before he died, Marian Predică, who had been held for three and a half years for allegedly stealing from cars, appeared in court. Afterwards, Marian Predică reportedly expressed pleasure that he would soon be released which apparently provoked officers of the prison intervention unit to beat him and shave off his hair. One of Marian Predică's co-defendants, held in another section of the prison, was reportedly similarly ill-treated at the time. The prison authorities denied that its staff had ill-treated Marian Predică or that the detainees had their heads forcibly shaved as a disciplinary punishment. An investigation initiated by the Military Prosecutor, who is responsible for abuses committed by prison staff, was closed on 26 January 2004 without anyone being charged and the case was referred to the Bucharest public prosecutor.

In the period under review there had been other reports of ill-treatment by officers of the special intervention unit of the Rahova prison. On 25 September Dan Bejinaru, together with another detainee, was taken to court for a hearing. After he was brought back to the prison Dan Bejinaru refused to return the clothes which he wore for the hearing. Two officers wearing masks then reportedly punched and kicked him and undressed him by force. Afterwards, when he refused to write a statement that he had not obeyed an order issued by a staff member, Dan Bejinaru was reportedly beaten again. On the same day he was visited by his mother who reported her son's ill-treatment to APADOR-CH (the Romanian Helsinki Committee), a non-

governmental organization. The director of the prison reportedly initiated an investigation into Dan Bejinaru's complaint and established that he had a tendency to "auto-aggression" and that the officers who intervened 'to immobilize him' did not resort to excessive force.

#### **Reports of ill-treatment by law enforcement officers**

Numerous new reports of police ill-treatment were received in the period under review. On 20 August in Buziaş, Nicolae Cohaul was taken by gendarmes from a local bar to the station. All along the way and in the station he was reportedly beaten with truncheons. Following his release Nicolae Cohaul was examined at the Timisoara County Hospital for multiple lesions on the back and was treated in hospital for several days. These injuries were consistent with the allegations of ill-treatment. A representative of the Timisoara Gendarmerie reportedly stated that Nicolae Cohaul suffered the injuries as a result of an epileptic fit.

A number of women were reportedly raped or otherwise sexually abused by police officers. On 24 July in Arpasu de Jos, in the municipality of Laslea, a 45-year-old woman was reportedly raped by the chief of the local police station after he had come to her house to investigate a neighbour's complaint. Although she obtained a forensic medical certificate on the same day she was unable to file her complaint with the County Police Inspectorate until four days later. A police commission established to investigate the case reportedly questioned the victim in the presence of the suspected perpetrator and 'persuaded' the victim to withdraw her complaint in consideration for the officer's family. On 18 August she filed a complaint for the investigation to be reopened with the Sibiu Prosecutor.

Two officers of Section 4 in Iaşi were reportedly under investigation for the rape of 17-year-old N.N. late in the evening of 15 December in a field in the Cîrc neighbourhood. The minor who reportedly may be disabled, had left home and had

approached the two officers asking for help in finding a place to stay. She was then taken to a field and reportedly forced to engage in sex with both men. The officers reportedly claimed that they did not carry out their intention to engage in consensual sex with the minor. An investigation was initiated by the Iaşi County Police Inspectorate.

Some of the victims of police ill-treatment were minors. On 29 November in Bacău, 16-year-old Iulian Vasile Grecu was taken from the market to the police station by a guard who accused the boy of stealing a packet of sweets. Initially the boy did not give his real identity, being afraid of his parents reaction. After officer S. took Iulian Vasile Grecu in a police van to check the address he had been given, the boy acknowledged that he had not told the truth. The officer then reportedly beat Iulian Vasile Grecu and took him back to the station. Iulian Vasile Grecu was reportedly handcuffed and repeatedly hit on the head and the back and lashed with a rope. Iulian Vasile Grecu was released at about 8pm after his father came to the police station. His injuries, suffered as a result of the beating, were described in a medical certificate issued by the Bacău Forensic Medical Unit and a criminal complaint was filed with the Bacău public prosecutor.

#### **The Roma**

Some of the victims of police ill-treatment were Roma. The Roma were also subjected to racist violence or beatings by private security guards who work under licence issued by the local police authorities. On 3 November, at around 5pm, in Petroşani, security guards of a coalmine found Olga David, a 42-year-old Romani woman, and her 12-year-old niece, collecting coal in the mine yard. A guard reportedly slapped the girl on the face, who then ran away, and repeatedly hit Olga David with a truncheon. When Olga David's husband later arrived in the yard he found her lying on the ground unconscious, with injuries to her head and back. Olga David was then taken to the Petroşani Emergency Hospital where she died on 14 November from injuries suffered as a result of the beating. She had been

collecting coal to heat her home, a single room without electricity or running water.

Unlawful use of firearms by law enforcement officers

There were numerous reports of law enforcement officers resorting to firearms in circumstances which are in breach of international standards. In October Amnesty International published a report Romania: Further reports of unlawful use of firearms by law enforcement officials (AI Index: EUR 39/006/2003) describing five incidents, involving three men who died as a result of the shooting and three who were seriously injured. None of the investigations into these incidents appeared to have been conducted promptly, independently, thoroughly and impartially as required by international law.

#### **Assaults on journalists**

In the period under review Amnesty International received reports of a number of assaults on journalists, who were involved in investigating politically sensitive issues. Although these incidents were promptly reported to the local police authorities, none appeared to have been promptly and impartially investigated. The perception that perpetrators of such assaults enjoyed impunity undermined the journalists' ability to freely report on issues of public interest thus restricting their right to freedom of expression. One such incident occurred on the evening of 3 December in Timișoara. Ino Ardelean, a journalist for the daily *Evenimentul Zilei* (Events of the Day), was assaulted and beaten until he lost consciousness. Ardelean was the author of several articles which were critical of the local officials of the ruling Social Democratic Party (PSD). Ino Ardelean suffered a broken jaw and other head injuries as a result of the assault. It was alleged that the police did not take effective measures to investigate his complaint, identify and bring to justice the perpetrators of the assault.

## **SERBIA AND MONTENEGRO**

### **Background**

In September, the seven-year prison sentence imposed in January against Radomir Marković, former head of Serbian state security, for involvement in an attempt in 1999 to kill leading opposition politician Vuk Drašković in which four people died, was set aside by the Serbian Supreme Court after new evidence emerged implicating additional people of involvement in the crime. A new trial was scheduled against Marković and others, including former President Slobodan Milošević, former army chief Nebojša Pavković, and Milorad "Legija" Ulemek-Luković, a prime suspect for the assassination in March of Prime Minister Zoran Đinđić, who remained at large. On 22 December the trial of those accused of involvement in the Đinđić assassination began.

On 6 October SCG signed an agreement and protocol with Bosnia-Herzegovina on refugee returns.

In November Serbian Presidential elections failed for the third time due to a turnout below the statutory minimum, and the interim presidency of assembly speaker Nataša Mičić continued. On 13 November the Serbian parliament was dissolved and new elections held on 28 December in which the Serbian Radical Party, led by Vojislav Šešelj gained the most votes. Vojislav Šešelj remained in the Hague indicted for crimes against humanity by the International Criminal Court for the former Yugoslavia (Tribunal). No new government had been formed by the end of the year.

The UN Mission in Kosovo (UNMIK) continued to administer Kosovo, with the Special Representative of the UN Secretary-General (SRSG) holding executive powers. At the end of June SRSG Michael Steiner left office and was replaced by Harri Holkeri in August. In October the first talks between the Serbian government and

Kosovo Albanian leaders on the future of Kosovo took place in Vienna.

### **Legal developments**

On 1 July the Serbian Assembly repealed amendments to the Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime which were in clear breach of international standards. The amendments had been ruled unconstitutional and been suspended by the Serbian Supreme Court in June.

On 8 July Montenegro adopted a law creating an Ombudsperson's Office and in October Šefko Crnovršanin was appointed to the post. An Ombudsperson, Petar Teofilović, was appointed specifically for the Vojvodina Province in Serbia in September 2003 but was not yet operational by the end of the year due to lack of office space.

In December the Montenegro Assembly passed a new criminal code which retained libel and slander as criminal offences but removed the possibility of custodial sentences for them.

### **War crimes**

The trial of Slobodan Milošević, accused of responsibility for war crimes committed in Croatia, Bosnia-Herzegovina and Kosovo, continued before the Tribunal. Some 16 people indicted by the Tribunal and believed to be in SCG remained at large in July. The Serbian authorities refused to transfer four persons indicted by the Tribunal on 2 October for crimes against humanity and violating the laws or customs of law in Kosovo in 1999. The indictees were Serbian Assistant Interior Minister and former Kosovo police chief Sreten Lukić, former Yugoslav army chief Nebojša Pavković, and two other generals, former commander of Priština Corps Vladimir Lazarević and former Assistant Minister of the Interior and former Chief of Public Security Department Vlastimir Đorđević. Serbian Interior Minister Dušan Mihailović publicly defended his assistant Sreten Lukić who remained in office.

In June Serbia signed an agreement with Croatia on war crimes that each would try its own nationals. In July legislation was approved which established a special war crimes prosecutor and a special war crimes court for Serbia. In October the special war crimes court opened in Belgrade although no war crimes cases had been heard by the new court by the end of the year.

On 29 September Dragutin Dragičević (a Bosnian Serb) and Đorđe Sević were sentenced in Belgrade to 20 years' and 15 years' imprisonment respectively while Bosnian Serbs Milan Lukić and Oliver Krsmanović received 20-year-sentences in absentia for the abduction and murder in October 1992 of 16 Muslims who were taken from a bus at Mioče near Sjeverin in Bosnia-Herzegovina.

On 20 October the Supreme Military Court sentenced Major Dragiša Petrović to nine years' and reservist Nenad Stamenković to seven years' imprisonment for killing an elderly Albanian couple in Kosovo in 1999.

On 4 December Serbia's special war crimes prosecutor indicted eight people in connection with the Ovčara massacre near Vukovar in Croatia in 1991. The suspects were all reportedly detained.

### **Exhumations**

In July 2003 some 40 bodies previously found in a mass grave in Serbia were returned to Kosovo making a total of 110 repatriations out of the 820 or so ethnic Albanians from Kosovo exhumed from the mass graves in Serbia. In December a further 44 bodies of Albanians from Kosovo, exhumed from the Batajnica Interior Ministry training camp where over 700 murdered Albanian civilians had been buried in secret graves, were returned to Kosovo.

On 25 October, the Special Prosecutor for War Crimes Vladimir Vukčević reportedly stated that the Batajnica case had been processed, that unnamed persons were under investigation, and that indictments

would be filed on completion of the investigation.

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

There were allegations of police torture and ill-treatment from both Serbia and Montenegro. The Humanitarian Law Centre (HLC – a Belgrade-based non-governmental human rights organization) reported the case of Saša Dinić and his father Zvonimir who were allegedly severely beaten by five named and one unnamed police officers in Batočina police station in Serbia on 23 August. Both men were allegedly repeatedly punched and kicked in the head and body, and Saša Dinić suffered a broken arm attempting to protect his head from kicks while he lay on the floor and briefly lost consciousness. Both men were taken for medical treatment, initially at Batočina ambulanta and then at Kragujevac hospital.

The HLC also reported the case of Nikola Popović, from Podgorica in Montenegro, who was allegedly ill-treated by a police officer on 21 August. Nikola Popović, who has had two operations for a throat tumour and in the past had suffered from a stroke, had gone to the police station in the Podgorica district of Zabjelo after being informed that his son had been detained there by a named police inspector. Nikola Popović alleged that, without any provocation, the named police inspector punched him and knocked him semi-conscious whereupon he was carried out of the station by two uniformed police officers and pushed backwards over a low metal fence. The two uniformed officers then pinned his shoulders to the ground with their feet while the same inspector allegedly kicked him repeatedly in the mouth and nose and threatened to beat him with his truncheon if they met again. Nikola Popović was then handcuffed and taken to the Security Centre in Podgorica and held for three hours before being taken for medical treatment, initially to an ambulanta and then to an Emergency Treatment Centre. After being treated for his injuries he was returned to the Security Centre and detained for three days. Amnesty International was informed that, fearing

further physical ill-treatment, he had signed a number of incriminating statements presented to him by the police.

**Conscientious objection to military service**  
A regulation on Civilian Service by the Committee of Ministers of Serbia and Montenegro was passed on 27 August and came into force on 15 October. This offers for the first time a genuine alternative to military service (of 13 months instead of the normal nine-month service), recognizing service in civilian institutions of a humanitarian nature. There were some initial problems in implementing the new regulation due to apparent ignorance of the legislation by lower levels of the military, and an initial absence of availability of a genuine alternative service. However, the system was operational in December with some 400 conscientious objectors due to start their service in 2004 in the 575 approved civilian institutions, such as hospitals. However, the new legislation was defective in a number of ways: it restricted when a person could apply for conscientious objector status; it forbade certain categories of people from applying; and did not allow for permanent members of the armed forces to apply.

#### **Roma**

Discriminatory practices against Roma remained widespread. The HLC reported that a Romani woman, Radmila Selimović, was discharged with no follow-up provision from hospital with a broken pelvis that left her unable to walk after being severely injured in a 16 July hit-and-run accident.

In October the HLC, the European Roma Rights Center (ERRC), and the Center for Minority Rights (CMP) filed a criminal complaint against unidentified private security guards at the Acapulco Club in Belgrade for denying Petar and Ljutvija Antić and Zorica Stojković admission to the premises because of their Romani ethnicity. The organizations also instituted a civil action against the owner, seeking compensation for the violation of the Roma's rights, an apology and an end to the practice of discrimination at this boat

restaurant. Also in October, the same three NGOs jointly filed a criminal complaint against three people for incitement to ethnic, racial and religious hatred and intolerance in connection with an incident on 25 September, when a Romani man, Nebojša Radosavljević, and his mother, Danica Radosavljević, visited a plot of land in the Sremčica suburb of Belgrade on which they had paid a deposit and on which they intended to build a house. The three accused lived in the adjacent property and allegedly racially insulted them and threatened them with violence if they moved in. Because of the threats, the Roma decided not to buy the lot and forfeited their deposit.

On 5 November the Geneva-based NGO, Centre on Housing Right and Evictions (COHRE), reported that some 1,500 Roma in SCG were without homes in 2002 and 2003, and that they faced "dehumanising discrimination". The NGO awarded SCG the joint prize (along with Indonesia and Guatemala) for Housing Rights Violator 2003.

A Poverty Reduction Strategy Paper from the Serbian Ministry of Social Affairs was adopted in November, with financial assistance from the World Bank. This aims at legalizing 'illegal' settlements, including Romani ones, and giving the inhabitants access to adequate housing.

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

Women and girls continued to be trafficked in and through SCG for the purposes of forced prostitution. Under new anti-trafficking legislation (passed in Serbia in April) 75 criminal charges were filed but no trials completed. There was concern that victims of forced trafficking in Montenegro were being failed by the judicial system. In September the OSCE submitted a report which was highly critical of the authorities' conduct in a high profile trial which had collapsed in May against the Montenegrin deputy state prosecutor and three other men indicted for involvement in sex-slavery.

In September an anti-trafficking action, "Operation Mirage", was initiated in Serbia which by late December had rescued some 192 foreign victims but only one domestic victim.

#### ***KOSOVO***

On 13 August, the day the new Special Representative of the Secretary General, Harri Holkeri, arrived in Kosovo, a gun attack on a swimming party in the Serb enclave of Goraždevac/Gorazhdvec near Peć/Pejë killed two Serb youths and wounded several others. There were several incidents of physical attacks on ethnic Albanians by Serbs in retaliation. Other incidents of inter-ethnic violence included grenade attacks on houses, including one such incident on 31 August in Cernica/Cënicë which killed one Serb man and wounded four others, and the widespread stoning of vehicles perceived as belonging to minorities.

In July in Priština/Prishtinë ex-Kosovo Liberation Army (KLA) commander Rrustem Mustafa and three others were found guilty by an international court of war crimes connected with the illegal confinement, torture and murder of suspected ethnic Albanian 'collaborators'. They received sentences of up to 17 years' imprisonment.

This and other arrests, transferrals and trials provoked mass protests by tens of thousands of Kosovo Albanians, who saw the detainees as 'freedom fighters', as well as attacks on UNMIK vehicles and property.

On 4 September five prison inmates died in a fire following a riot in Dubrava prison. On 16 September a judicial investigation was opened into the incident and submitted its findings on 7 November. These identified the lack of educational and recreational activities as a prime cause of the riot, as well as: poor staff training; inadequate hygienic conditions; procedural flaws in response to the fire; and structural deficiencies in the prison building.

On 7 October Martin Almer was sentenced in absentia to three years' imprisonment,

while two former KPS officers, Feriz Thaqi and Isa Olluri, were sentenced to six months for ill-treatment of an ethnic Albanian detainee in February 2002 and obtaining a false confession by force. Martin Almer had at the time of the incident been a member of Austrian CIVPOL – the international civilian police force in Kosovo. His immunity from prosecution – enjoyed by all UNMIK personnel – was waived by the UN Secretary General and he was arrested and subsequently placed in investigative detention. However, he was reportedly subsequently driven by Austrian officers across the border into Macedonia, from where he was flown to Austria. The Austrian government, despite an international arrest warrant, continued to refuse to extradite the officer to face the charges or bring him to justice.

In September UNMIK reported that some 1,000 Serbs (of the estimated 180,000 who had fled since the 1999 war) had returned since January.

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

The trafficking into, within and from Kosovo of women and girls for forced prostitution remained a serious concern. In October UNMIK announced that since the formation in October 2000 of the Police Trafficking and Prostitution Unit within CIVPOL, the unit had raided over 2,000 places, rescued 300 trafficked victims and brought 140 charges. However, despite such measures, trafficking for forced prostitution remains widespread and allegations of official complicity, including the involvement of international military and civilian personnel, continued.

The process of constructing a National Plan of Action on Trafficking, as required by the Stability Pact for South Eastern Europe Task Force on Trafficking of which Kosovo is a member, was started at a conference held in Priština/Priştinë on 20-22 October.

## SLOVAKIA

***Failing to ensure an impartial and thorough investigation into allegations of illegal sterilization of Romani women***

In July Amnesty International, the Center for Reproductive Rights, the European Roma Rights Center, Human Rights Watch, the International Helsinki Federation for Human Rights, Konzorcium Urobme to (Consortium Let's Do It), Ludia proti rasizmu (People Against Racism), Poradňa pre občianske a ľudské práva (Center for Civil and Human Rights) and Slovenský helsinský výbor (Slovak Helsinki Committee) urged the Slovak government to address serious problems regarding the investigation into allegations of forcible sterilization of Romani women and recommended the formation of an independent commission of inquiry into allegations of illegal sterilization.

In September Amnesty International expressed concern about new reports that victims and witnesses had been intimidated and harassed in the course of the investigation (see Slovakia: Failing to ensure an impartial and thorough investigation into allegations of illegal sterilization of Romani women, AI Index: EUR 72/002/2003). On 13 and 14 August, in the course of interrogations held at the police stations in Spišské Vlachy and Krompachy, investigators reportedly threatened at least 11 Romani women that they would be prosecuted for submitting a false complaint if the investigation failed to prove their allegations of forced sterilization. Furthermore, women, who had been pregnant before they were 15 years old, were told that their husbands or partners would be prosecuted for statutory rape. Some of them were subsequently questioned by the relevant investigators. On 13 August, Romani women in Bystrany were interrogated in Spišské Vlachy without having received prior written notice or summons. Police officers simply came to the settlement and required them to immediately come to the police station for questioning.



In October the official investigation was concluded, finding that no criminal offence had been committed. This was in stark contrast to the report also published in October by the Council of Europe Commissioner for Human Rights, which concluded that it was unlikely that the investigation "will shed full light on the sterilizations practices" and that "it can reasonably be assumed that sterilizations have taken place, particularly in eastern Slovakia, without informed consent".

In November Amnesty International reiterated its concern that this investigation failed to meet international standards and called for its reopening (see Slovakia: Failed investigation into allegations of illegal sterilization of Romani women, AI Index: EUR 72/005/2003). Furthermore, the organization was concerned about the Slovak government's refusal to accept responsibility for failing to ensure that no sterilizations could be performed without free and informed consent. At the same time, Amnesty International welcomed the government's plans to revise the legislation and regulations in force regarding sterilization procedures.

#### **Human Rights Committee**

In August the UN Human Rights Committee reviewed the Slovak Republic's compliance with the International Covenant on Civil and Political Rights. The Committee expressed concern, among others, about the persistent allegations of ill-treatment during police investigations, particularly of the Roma minority.

With regard to reports of forcible sterilization of Romani women the Committee was concerned "that in its written answers submitted after the oral consideration of the report, the State party does not clearly deny or admit breaches of the principle of full and informed consent" and noted that a "reference made to "the fact that not all administrative acts were fulfilled in every case" appeared to "amount to an implicit admission of breaches of the requirement of informed consent". The Committee recommended that the authorities "adopt all necessary measures

to investigate all alleged cases of coerced or forced sterilization, publicize the findings, provide effective remedies to victims and prevent any instances of sterilization without full and informed consent".

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## **SLOVENIA**

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#### **Police Accountability**

In its briefing to the UN Committee against Torture in May 2003 Amnesty International had reported on the failure to investigate promptly and impartially all allegations of ill-treatment as required under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and domestic law. In virtually every case known to Amnesty International, a thorough investigation was not conducted despite formal complaints lodged with the relevant police station or local public prosecutor.

A new regulation on complaints against the police was in preparation and is expected to enter into force in February 2004. However, the regulation was not adequate to ensure that complaints against the police would be thoroughly and effectively investigated in a manner which would be truly independent and seen to be independent. The new regulation still allowed for the police to continue to play a major role in investigating complaints of police misconduct amounting to human rights violations, as it authorized the Ministry of the Interior to appoint a police officer to investigate complaints against the police. Moreover, it did not define a mechanism ensuring that an authority independent from the police would be empowered to issue recommendations on disciplinary sanctions against police personnel or on compensation to victims of police misconduct. Finally, the new regulation did not state at which stage of the complaints procedure the competent prosecutor should be informed of complaints which alleged criminal behaviour of members of the police and did not explicitly require that the committee forward the findings of the

investigation on possible criminal conduct of members of the police to the prosecution authorities.

### **Citizenship and Residency Rights**

The status of thousands of former Yugoslav citizens who were removed from the Slovenian population registry in 1992 (otherwise known as the "erased") remained unclarified. Most of the individuals removed from the population registry were citizens of other former Yugoslav republics who had been living in Slovenia and had not filed an application for Slovenian citizenship, after Slovenia became independent. The Slovenian Constitutional Court had recognized that this measure constituted a violation of the principle of equality and, in those cases where the individuals concerned had to leave the territory of Slovenia, it gave rise to a violation of their rights to a family life and to freedom of movement. Moreover, Amnesty International was concerned that the removal from population registers gave rise to violations of the social and economic rights; in some cases the individuals concerned lost their employment and pension rights.

The Slovenian Constitutional Court had established in April 2003 that previous provisions to solve this issue were inadequate to restore the rights of former Yugoslav citizens who were unlawfully removed from Slovenian population registers. A "technicalities bill", the first of two acts aimed at reinstating the status of individuals removed from the population registry, was adopted by the parliament in October. However, debates on a second bill continued, prompting opposition parties to call for a referendum, which is scheduled to take place in February 2004, to address the "technicalities bill".

## **SPAIN**

### ***ECRI report on "persisting racism"***

In July the European Commission against Racism and Intolerance (ECRI) published its second report on Spain, which concluded that problems of racism and xenophobia persisted there, particularly in relation to Roma and non-EU citizens. Although Spain had taken a number of steps towards combating racism and intolerance, including adoption of criminal law provisions and educational initiatives, the problem of persisting racism "appears to be partly linked to an inadequate implementation of the existing legislation to fight against these phenomena but also to the widespread use in public debate of arguments and imagery that create a negative climate around immigration and immigrants". ECRI stated that there was a need, inter alia, to:

Improve the implementation of the existing criminal, civil and administrative legal provisions against racism and racial discrimination;

Improve the situation of Spain's Roma communities through a strategy elaborated and implemented in close cooperation with the communities concerned;

Ensure that human rights, including the principle of non-discrimination, were thoroughly respected while implementing immigration policy and legislation.

### ***Deportations and ill-treatment of migrant children***

In October there were reports that the number of unaccompanied immigrant children entering Spain had tripled in the last four years and that social assistance systems in some of the autonomous communities affected were unable to cope with such an increase in numbers. The same month the Attorney General issued guidelines to prosecutors which established criteria on the procedure to follow where minors of 16 or over entered the country

illegally, and encouraged their forcible deportation to their country of origin (predominantly Morocco). The guidelines aimed to prevent prosecutors from granting minors of 16 or over legal status as "defenceless" minors, unless exceptional circumstances applied. (Such status allows for minors to remain in Spain under the care and protection of the relevant government authority). In November the Minister of the Interior welcomed the initiative and stated that the Government would establish a procedure for the return of children in accordance with the new guidelines.

These met with wide criticism from immigrant associations and NGOs, including AI. In a letter to the Attorney General AI reiterated the concerns which had been expressed by the organization in previous documents and public statements and reminded the Spanish government of its responsibilities under the International Convention on the Rights of the Child.<sup>5</sup> AI argued that under the provisions of the Convention the authorities had a legal obligation to protect all children within their jurisdiction, without discrimination of age.

There were reports of ill-treatment, overcrowding, abusive distribution of sedatives, lack of supervision and racist attitudes in the secure reception centre for children in Gáldar, Gran Canaria. In July four prosecutors attached to the juvenile section of the High Court of Canarias claimed that the 42 children held there were receiving "humiliating" treatment. In one case an African child was allegedly beaten and held naked and in chains for a whole night by one of the centre's teachers.

### **Immigrant drownings**

In the largest single incident so far of its kind, over 35, and possibly as many as 50 migrants, mainly Moroccans, drowned when their boat capsized in rough seas in the Bay of Cádiz, near the US-Spanish naval base at Rota in October. The Defensor del Pueblo (national ombudsman's office) opened an

<sup>5</sup> See, for example, AI Index: EUR 41/003/2001 and AI Index: EUR 41/001/2002

inquiry into the drowning. There were allegations that the authorities had shown negligence by taking an unreasonably long time – up to an hour – to launch a rescue bid. The Ministry of Public Works reportedly admitted that there had been a delay in sending help, but emphasised the lack of material and human resources available for the rescue.

According to statistics reported in January 2004, the number of immigrants reaching, or attempting to reach, Spanish shores in small fishing boats grew by 14 per cent in 2003 and involved up to 19,000 people. Lack of material resources to receive the numbers arriving, continued to cause concern, as did conditions both in and around reception centres for immigrants. In September an encampment which had been struck by an NGO to provide shelter for homeless migrants, close to one of these centres, the Centro Nacional de Estancia Temporal de Inmigrantes (CETI) of Ceuta, was demolished. 6 Homeless migrants continued to sleep in the open air. In October the Defensor del Pueblo reportedly expressed concern to the Ministry of Social Affairs about the situation of those migrants who did not manage to obtain lodging in the already overcrowded CETI.

### **Reckless police shootings**

In December, following the fatal shooting of a Moroccan by a Civil Guard on the border between Spain and Morocco, AI wrote to the Interior Minister to express its concern about the apparently high number of shootings which appeared to take place 'accidentally' and the questions this raised with regard to the level of training received by officers when firing warnings or when stopping and searching suspects.

On 3 October Mustafa Labrach – one of a group of between 30-40 Moroccans attempting to enter the autonomous Spanish city of Ceuta by the double fence which forms the frontier boundary with Morocco – was shot dead by a Civil Guard officer. The latter was one of a patrol of two

<sup>6</sup>The NGO was Doctors without Borders (*Médicos sin Fronteras*)

Guards reported to have come under a hail of stones thrown by the Moroccans, suspected of trying to smuggle goods. The Civil Guards reportedly responded first by letting off smoke canisters and firing rubber bullets. As they retreated one officer allegedly drew out his service weapon and fired a warning shot into the air, but slipped, and accidentally fired another shot, which hit the Moroccan in the mouth and killed him. An internal inquiry was opened into the killing.

AI stated that it was aware that about 24 Civil Guards had reported receiving injuries as a result of over 200 stoning incidents on the border between Spain and Morocco, and that the work carried out there may be difficult and stressful. It was, however, concerned about the number of border shootings which had been reported in the months prior to writing, as well as about other cases of fatal or serious shootings in apparently accidental situations in other parts of Spain. AI noted that it still appeared to be a relatively common and acceptable practice for Spanish law enforcement officers to fire warning shots in the air, although some police forces in the EU state that warning shots are a dangerous option, precisely because they may lead to "collateral damage" or lead a subject or other officers to believe they were under fire. The organization asked for information about a number of specific cases which had come to its attention.

**Definition of torture in reform of Penal Code**  
AI welcomed the approval by the Spanish Parliament in November of a reform of the Penal Code, which widened the definition of torture to include, among the motives of torture, "discrimination of any kind". In its report on race-related torture and ill-treatment in Spain, published in 2002, and in its briefing to the Committee against Torture on Spain's fourth periodic report, also published in 2002, AI had made the recommendation that Article 174 of the Spanish Penal Code be revised in order to include the motive of "discrimination of any kind", in line with the definition of torture set out by the Convention against Torture. In its Recommendations to the Spanish government, published in November 2002,

the Committee urged the authorities to improve the definition of torture in the Penal Code to help avoid racist or xenophobic incidents.

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## SWITZERLAND

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**Police ill-treatment and use of excessive force**

There were further allegations that police officers ill-treated and used excessive force against detainees, frequently non-Caucasian Swiss and foreign nationals. A number of investigations were under way into such allegations.

In July there were reports of police subjecting detainees to cruel, degrading and dangerous treatment during raids carried out on two transit centres for asylum-seekers in Glarus Canton, in connection with drugs-related offences. Police officers forced their way into the centres and into the rooms of the sleeping asylum-seekers in the early hours of the morning of 3 July. They bound them hand and foot, to prevent them moving, covered their heads (but not their noses), to prevent them seeing and then photographed them while some were almost or completely naked. They then held them in the centres' common rooms for around five hours before release. One man was gagged with adhesive tape. Neither search apparently resulted in any criminal proceedings against those detained. AI called on the Glarus cantonal authorities to ensure that a thorough and impartial investigation was immediately opened into the treatment of the foreign nationals during the police raids and that the findings were made public at the earliest opportunity. (For further information – see *Switzerland – Alleged cruel, inhuman and degrading treatment of asylum-seekers in the Canton of Glarus*, AI Index: EUR 43/005/2003).

In November, an examining magistrate, specially contracted in from another canton by the Glarus judicial authorities in August, in order to carry out an investigation into police conduct during the raids, issued his

findings. He concluded that some of the measures used by the police after the initial phase of the raid went beyond "acceptable and proportionate bounds", that the gagging was dangerous, and the manner in which the asylum-seekers were photographed was "degrading". He pointed out that gagging could sometimes have serious health consequences and in some circumstances could lead to death: the gagging measure was not only disproportionate in itself but the manner in which it had been carried out was also unacceptable. He stated that there was an obvious and substantial need for relevant police training in order, amongst other things, to create awareness of the danger of such measures and sensitivity in the implementation of coercive measures. However, he said he could not discern deliberate intent by the police to abuse their authority or wrongfully detain the asylum-seekers. He ordered the destruction of the photographs. He also ordered the state and the commanding officer to share the costs of the proceedings, and the officer also to compensate four asylum-seekers who had lodged a criminal complaint.

Subsequently, the Glarus authorities indicated that they had already started implementing recommendations made by the magistrate with regard to rules of engagement and police training.

In July, Zurich City Council's Audit Commission issued a report following its examination of 10 controversial incidents relating to possible human rights violations by Zurich municipal police, mostly occurring in the first half of 2002. It found no evidence of systematic abuse by the police but the majority of the Commission concluded that infringements of rights and misconduct had occurred in around half the specific incidents examined, including the ill-treatment which Eldar S, a Bosnian (see below), alleged he had suffered on a Zurich street: the Commission found the allegations that he had suffered ill-treatment following transfer to a police station to be implausible. It made a series of recommendations to the police and relevant city authorities, aimed at improving the general conduct and

functioning of the police, most of which the City Council said were already implemented or in the process of being implemented. The City Council considered that no infringements of rights had occurred in the Eldar S case and that the Commission's majority assessment of the case was subjective.

In September a magistrate attached to Zurich District Court ruled on an appeal lodged by Eldar S in March against the decision of a Zurich district public prosecutor to discontinue criminal proceedings relating to his alleged ill-treatment by Zurich Municipal Police officers in April 2002 (see AI Index: EUR 01/016/2003). The magistrate judged the appeal well-founded and ordered that the case be returned to the prosecutor for further investigation. Following his detention in April 2002, apparently on suspicion, later found to be groundless, of drug-dealing, Eldar S had lodged a criminal complaint accusing four Municipal Police officers of causing him bodily harm. He claimed that physical injuries he incurred during his arrest on the street and detention in a police station, which necessitated his transfer from police custody to hospital for emergency treatment within hours of his arrest, as well as severe psychological trauma requiring subsequent hospital treatment, were the result of an unprovoked police assault on the street and in police headquarters. The police rejected the accusations and lodged a complaint against Eldar S for violent and threatening behaviour against police officers, while resisting arrest.

In October the Council of Europe's Committee for the Prevention of Torture (CPT) visited Zurich-Kloten international airport, principally in order to assess the implementation of measures adopted by the Swiss authorities after the CPT's 2001 visit (see AI Index: EUR: 01/007/2002), in particular as regards procedures and means of restraint applied in the context of forcible removals by air. In 2001 the CPT had found that the manner of forcible deportation operations under police escort presented "a manifest risk of inhuman and degrading treatment". The delegation also reviewed

the treatment of foreigners refused entry into the country and held in the transit zone at Zurich airport and of foreigners detained at Kloten airport prison no 2, pending their removal from the country. During its 2001 visit the CPT had gathered allegations of racist abuse, threats and ill-treatment involving police at the airport, usually aimed at persuading foreign nationals to accept voluntary repatriation or not to lodge an asylum application.

***Policing of demonstrations (Update to AI Index: EUR 01/016/2003)***

Several investigations, some still ongoing at the end of the year, were conducted by an independent commission of inquiry into the behaviour of the Geneva cantonal police who had initially denied responsibility for injuring Denise Chervet at Geneva's central railway station in March where, following a demonstration, violent confrontations had developed between some demonstrators and the police. After her son was involved in an altercation with a police officer and hit on the head with a police truncheon, Denise Chervet threw a bottle of beer at the police. A projectile then hit her body and another her forehead, in which doctors subsequently found small pieces of plastic, and metallic fragments. An operation to remove them carried the risk of paralysis and they remained embedded. Within days it emerged that a weapon (the FN 303 "less lethal" launcher) firing plastic capsules, containing paint and covered with bismuth, had recently been tested within the Geneva police and that an officer had used the weapon against Denise Chervet. The weapon's manufacturers indicate that the projectile is intended to bring a targeted person to a halt, while the paint marks them for arrest, but warn that police officers should never aim towards the face, throat or neck. The Geneva authorities subsequently withdrew the weapon.

In December, an investigation opened into a criminal complaint lodged by Denise Chervet concluded that the officer who fired the weapon had acted according to his instructions: no charges were brought against him. The police captain who had

authorized the use of the weapon during the demonstration was charged with causing bodily harm through negligence. In November the Geneva government had indicated that the independent commission of inquiry had not established any actions by the two officers warranting disciplinary proceedings against them but that the government was awaiting the outcome of the criminal investigation before taking a definitive position.

At the end of December the extra parliamentary commission of inquiry, established by the Geneva Cantonal Parliament in June, was continuing its investigations into, amongst other things, the conduct of the Geneva authorities, including the police during events surrounding the 2003 G8 Summit. A number of criminal proceedings were also under way in connection with individual incidents. In the aftermath of the G8 summit in neighbouring France in June, there had been extensive violent confrontations between anti-G8 protestors and police, as well as peaceful demonstrations and protest actions in and around Geneva. Allegations emerged of police officers making indiscriminate and abusive use of batons, stun grenades and rubber bullets.

***Violence against women in the home (update to AI Index: EUR 01/016/2003)***

A nation-wide campaign against domestic violence, launched in April by the Swiss Crime Prevention Centre, was continuing. In September parliament gave its definitive approval to a bill classing domestic violence as a specific and statutory crime which would allow the authorities to prosecute offenders without needing an official complaint from the victim. This paved the way for changes to the Swiss Penal Code. In November a consultation process was launched on proposals to amend the Swiss Civil Code, which would allow a judge, amongst other things, immediately to order offenders to leave any place of residence shared with the victim and to ban them from re-entering for a specific period.

**Universal jurisdiction over war crimes**

In December the federal parliament gave its definitive approval to a law restricting the scope of the Military Penal Code with regard to proceedings against war criminals. Under its provisions, Swiss military courts will be able to open proceedings against suspected war criminals found on Swiss territory only if the accused has a "close link" to Switzerland, such as close relatives or a residence there, thus increasing the possibility of impunity for the perpetrators of such crimes

**TAJIKISTAN****Death penalty**

In July the Tajik parliament approved a draft law, proposed by President Imomali Rakhmonov, amending the criminal code. Among the amendments were the abolition of the death penalty for all women and men aged under 18, and a reduction in the number of articles in the criminal code carrying a possible death sentence from 15 to five. It is believed that the president used his right of legislative initiative under Article 58 of the Tajik Constitution to reduce the scope of the death penalty following wide ranging and sustained international pressure. The death penalty was retained for murder with aggravating circumstances, rape with aggravating circumstances, terrorism, "biocide" and genocide. The amendments entered into legal force in August once they had been signed by the president. Unofficial sources reported that the president also instructed the Clemency Commission to recommend more prisoners on death row for pardon.

At least two death sentences were overturned on appeal. In June, in one of the cases, the Supreme Court overturned the decision of the court of appeal and commuted the death sentence of **Rakhim Kalandarov** to 25 years' imprisonment. There had been allegations that Rakhim Kalandarov was tortured in order to force him to confess during the investigation and

the Organization for Security and Cooperation in Europe (OSCE) had raised concerns about violations of international fair trial standards in his case in a letter to the Head of the Presidential Commission on Fulfilling International Obligations in the Field of Human Rights.

The Tajik authorities released no official statistics on the implementation of the death penalty during the year and continued to treat information on death sentences and executions as a secret. Consequently it was difficult to obtain precise figures. At least 34 men were believed to have been sentenced to death. AI did not learn of any executions during the year. In October amendments to the law on official secrets were submitted to parliament by the president. However, regrettably, none of the amendments proposed removing the veil of secrecy surrounding the death penalty.

In November the UN Human Rights Committee published its View on the case of death row prisoner **Abduali Kurbanov** in which it found the Tajik state to have violated his rights under six articles of the International Covenant on Civil and Political Rights (ICCPR), including the right to a fair trial and the right not to be subjected to torture. The committee called for Abduali Kurbanov to be given the right to a new open and fair trial or to be released if such conditions could not be met. It reminded the Tajik authorities that under the Optional Protocol to the ICCPR they were obliged to provide an effective and enforceable remedy.

Abduali Kurbanov was sentenced to death for aggravated murder in March 2002 without effective right of appeal. He was detained a year earlier in May 2001 on allegations of fraud, convicted and sentenced to prison. While he was in prison he was reportedly forced under torture to confess to three murders.

Since the beginning of 2001 the UN Human Rights Committee has requested that the Tajik authorities suspend the executions of 12 prisoners. By the end of 2002, five of the 12 had been executed.

## TURKEY

### *Continuing legal reforms*

Important legal reforms (known as the "harmonization laws") relating to human rights protection and aimed at meeting the criteria for accession to the European Union continued to be introduced by the Justice and Development Party (AKP) government. The sixth and seventh harmonization reform packages were passed by parliament on 15 and 30 July.

Among the notable elements of the sixth harmonization package (Law 4928) were the abolition of Article 8 of the Anti-Terror Law (the crime of spreading separatist propaganda) and the annulment of investigations, on-going prosecutions as well as sentences passed under this article. The end of incommunicado detention and the right to immediate legal counsel for State Security Court detainees was also introduced.

The seventh harmonization law package (Law 4963) included the provision that the National Security Council would become an advisory body only, would meet once every two months instead of monthly, and would be headed by a civilian secretary general appointed by the Prime Minister, with the approval of the president.

In the seventh package, formal restrictions on non-Turkish language broadcasting on private television and radio stations were lifted, though in practice there continued to be obstacles to such broadcasts.

A further change to article 159 of the Penal Code ("insulting or deriding Turkishness, the Republic, the Grand National Assembly or the moral personage of the government or state's armed forces or security forces or the moral personage of the judiciary") was made which removed penalties for statements and expressions made solely as criticism and not intended to "insult or deride". The lower limit for penalties was reduced from one year to six months. Amnesty International regarded this as an

inadequate change and was of the view that libel should not be part of criminal law, noted that people were still being prosecuted and sentenced on the basis of this article for non-violent expressions of dissent and called for the repeal of article 159. Prosecutions and sentencing on the basis of this article continued (see section below: "Restrictions on freedom of expression").

Article 169 ("aiding and abetting an illegal organization") – an article frequently used to criminalize non-violent statements – was slightly tightened to remove the phrase, "facilitation of their [armed groups] activities by any means whatever" which was vague and indefinable and had provided a means of prosecuting very widely on this basis.

Article 7/2 of the Anti-Terror Law was amended to incorporate the provision that propaganda in favour of illegal organizations must be deemed to "incite" acts of "terrorism" to merit prosecution.

The impact of these changes to the Penal Code and Anti-Terror Law will be gauged in the light of how public prosecutors apply them in the coming period when there emerges a pattern of application, but the amendments to date do not prevent some of the articles being used to prosecute a variety of non-violent activities. Amnesty International also remained concerned that the lack of a holistic approach to law reforms meant that similar articles to those altered or repealed were retained in other laws. It was feared that these could still be used by prosecutors in place of altered articles.

A further amendment to article 158 ("estranging the public from military service") was amended so that civilians could no longer be prosecuted under this article. The jurisdiction of military courts in peacetime over civilians was also narrowed.

A supplementary article 7 of the Criminal Procedure Code provided for trials for torture and ill-treatment to be considered as matters of priority and held at a



maximum of 30-day intervals and also during the judicial recess.

A change to the Law on Associations meant that those with past convictions for political crimes would be allowed to found or be a member of an association after two years rather than the previous five. Board members of associations that had been closed down would now be able to open a new association after one year.

With respect to the Laws on Associations and Foundations, as has been the case in previous harmonization reform packages, the reforms consisted of amendments to articles of these laws rather than the fundamental redrafting of the laws that human rights lawyers and defenders had called for. In general amended laws have been implemented by means of circulars, regulations and directives distributed to relevant local authorities, judiciary and law enforcement officials by the relevant ministries and official bodies (the Ministry of the Interior, the Ministry of Justice, the High Council on Radio and Television, etc). Human rights lawyers have pointed out that these regulations should be compatible with the law they are intended to implement and should not be used as a means of restricting the impact and reach of that law in practice.

On 23 September Turkey ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

On 25 September Turkey signed the Ottawa Convention (Law on Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and their Destruction). Amnesty International considered this an important step. Every year there are reports of deaths and severe injuries as a result of land mines in the southeast and eastern provinces of the country. Many of the victims have been children.

#### **Abuses by paramilitary groups**

On 15 November the Neve Şalom and Beth İsrail synagogues in Istanbul were bombed,

allegedly by militant Islamists, killing 26 people and injuring hundreds. On 20 November the British Consulate and the HSBC bank headquarters in Istanbul were bombed, killing 31 people and again injuring hundreds.

There continued to be doubts about the exact identity of the group or groups responsible for the bombings and of the nature of their international links with the Al Qaeda organization. Twenty-one Turkish nationals out of 22 extradited from Syria to Turkey in connection with the bombings were subsequently released. At the year end 33 people had been charged in relation to the bombings.

Torture, ill-treatment and impunity  
Torture and ill-treatment in police detention remained a grave concern. Although there were far fewer reports of the use of torture methods such as electric shocks, falaka (beatings on the soles of the feet) and suspension by the arms, there were regular reports of detainees being beaten, stripped naked, sexually harassed and denied adequate sleep, food, drink and use of the toilet.

One reason for the persistence of torture and ill-treatment in detention was the failure of law enforcement officials to follow prescribed procedures, including the duty to inform detainees of their rights and to allow access to legal counsel. Lawyers said that in some cases they were told by police officers that a detainee did not wish to see them, but failed to provide any evidence of this. Other contributing factors included inadequate documenting of torture and ill-treatment in medical reports, and the acceptance as evidence by courts of statements extracted under torture, inadequate investigation of allegations and failure to prosecute or discipline.

Disproportionate use of force by police during demonstrations was widespread. Television news programs regularly broadcast scenes of demonstrators being beaten, kicked and ill-treated by law enforcement officials. Groups particularly targeted during demonstrations included supporters of the political party DEHAP

(Democratic People's Party), leftist parties, trade unionists, students and anti-war activists. A disturbing recent trend reported to Amnesty International was the regular use of pepper gas, including on at least one occasion against demonstrators who had reportedly been detained and put in a police van and then subjected to being sprayed with pepper gas. Law enforcement officers were very rarely investigated for ill-treatment of demonstrators.

Of particular concern were the many allegations of people being abducted by plainclothes police and then subjected to threats and ill-treatment, sometimes amounting to torture. Some of those abducted reported being asked for information about people known or unknown to them or offered the possibility of becoming police informants. These incidents of unrecorded detention were almost impossible to investigate and the perpetrators continued to enjoy impunity.

Sixteen-year-old S.T. reported that on 26 November in the town of Siirt, southeast Turkey, he was abducted in the street by plainclothes police, had a sack put over his head and was pushed into a car. He said that his hands and feet were bound and he was beaten over the head and knocked unconscious. He stated that he was beaten severely and threatened with a gun held to his head for information about the whereabouts of his brother. He was later left in a cemetery outside the town.

Afife Mintaş reported that at approximately 6pm on 9 December in Diyarbakır city she was abducted, driven around in a car, threatened, tortured by having a gun put into her mouth and subjected to sexual harassment by four unknown persons. Active in the women's section of the political party DEHAP, Afife Mintaş reported that the assailants tried to make her become an informant.

The ratio of complaints of torture and ill-treatment filed by members of the public to the number of prosecutions of members of the security forces remained extremely low. Trials against alleged perpetrators remained excessively drawn out, a striking example

being the two separate trials against 10 police officers accused of the killing of Birtan Altunbaş, a student taken into custody in the Ankara Police Headquarters in 1991. Sometimes the accused failed to appear at trial hearings; on other occasions delays in supplying evidence delayed the trial. The trial of the police officers charged with torturing two women -- Fatma Deniz Polattaş and 16-year-old N.C.S. -- in İskenderun police headquarters in March 1999 was repeatedly delayed because of the Forensic Institute's two-year failure to supply medical reports detailing their torture.

On 3 July the parliamentarian Sema Pişkinsut, former Head of the Parliamentary Human Rights Commission, was acquitted of "professional misconduct" (article 230/1 of the Penal Code). She had been prosecuted on the basis of refusing to reveal names of torture victims interviewed by the Commission in the major and ground-breaking report on torture she had undertaken in 1998-2000.

#### **Harassment of human rights defenders**

A range of laws and regulations was used to restrict freedom of expression and obstruct the activities of human rights defenders. While prosecutions were sometimes initiated on the basis of articles of the Penal Code, such as Articles 159 and 169 (see above) or "inciting the people to enmity" (Article 312/2), Law No. 2911 on Meetings and Demonstrations, the Law on Associations, press laws and public order legislation were also frequently used. In some cases human rights defenders were imprisoned. However, most of the investigations and trials resulting from such prosecutions ended in acquittals or with sentences being suspended or commuted to fines, highlighting what AI regarded as a pattern of judicial harassment of human rights activists.

On 12 November, a delegate from Amnesty International observed the first hearing of a trial against TİHV which took place in Ankara. Seeking the suspension of nine executive board members of the foundation, the prosecutor alleged that in 2001 TİHV

had violated the Law on Foundations by "cooperating" with international organizations without securing the permission of the Council of Ministers, and by raising funds via the Internet. The alleged "cooperation" took the form of translating reports and distributing them to the UN Special Rapporteur for Extrajudicial, Summary and Arbitrary Executions, the European Parliament Rapporteur for Turkey, and the Council of Europe Commissioner for Human Rights.

Özkan Hoşanlı began serving a 15-month prison sentence on 28 October. He had attempted to observe demonstrations in April and May 1999 in his capacity as the then Chair of the human rights group Mazlum Der (Organization of Human Rights and Solidarity for Oppressed People) in Malatya, and was sentenced to prison and fined in May 2003 under Law No. 2911 for "participating in an illegal demonstration and not dispersing after orders and warnings, and having to be dispersed by government forces with force". He was a prisoner of conscience.

Two posters published and distributed nationally to its branches by the Human Rights Association (İHD) to commemorate Human Rights Day on 10 December were confiscated on the order of the public prosecutor in Van and also in other provinces in the southeast and east of the country. The posters carried the statements "Peace will win" and "Everyone is equal, everyone is different" in Turkish and Kurdish. Only those in Kurdish were confiscated. The Van public prosecutor had asked for the confiscation on the basis that: "Some of the posters contained Kurdish, that their being displayed would damage the indivisible integrity of the state and its country and were in character damaging to the basis qualities of the Republic as laid down in the constitution and that the aforementioned association [the Van branch of the Human Rights Association] was in this way trying to create minorities in the Turkish Republic on the basis of race, religion, sect or regional difference." Following this, posters were also confiscated in towns including Gaziantep, Siirt, Hakkari, Adıyaman and Mardin, and

on 15 December in Çanakkale in the west of the country. Bureaucratic regulations in place of ideological objections were invoked in some of these cases: the fact of a poster being hung in the wrong place or without permission. Legal proceedings were initiated against Vetha Aydın, chair of the Siirt branch of the Human Rights Associations, for hanging posters on billboards belonging to the municipality without permission of the governor, and the prosecutor has demanded a two-year sentence should she be convicted.

Subsequently, on 22 December the ban on the posters in Van was quashed by the Supreme Court following an intervention by the Ministry of Justice, but since the week of events around Human Rights Day had come and gone, the local judicial authorities can be deemed to have been successful in their efforts to restrict the Human Rights Association's legitimate efforts to mark the day by publishing posters that aimed to promote human rights for all in Turkey.

#### ***Restrictions on freedom of speech***

First trial hearings of prosecutions of non-violent statements on the basis of article 159 of the Penal Code ("insulting or deriding" the state, state institutions, etc) proceeded despite the slight amendment to the article in the seventh harmonization package which formally entered into law in August (see above).

On 10 September the Ankara Court of First Instance began to hear the case against the writer Fikret Başkaya and publishers of Maki publishing house for non-violent opinions expressed in Fikret Başkaya's book, *Articles against the Flow*.

A recent prosecution under Article 159 demonstrated that the article continued to be used to violate the right to freedom of expression, as guaranteed in Article 19 of the ICCPR. Sabri Ejder Öziç, the former head of Radyo Dünya, a local radio station in Adana, was sentenced on 30 December for expressing views, on 23 February 2003, against the deployment of foreign troops on Turkish soil and for claiming that were the

Turkish parliament to authorize deployment, it would be committing an act of terrorism. For this non-violent expression of opinion, Sabri Ejder Öziç was convicted and sentenced to a one-year term in prison. At the end of the year he was at liberty and planning to appeal against the verdict.

Other prosecutions for non-violent statements proceeded on the basis of articles 312/2 ("incitement to enmity based on class, race, religion, sect or regional difference") and Article 169 ("aiding and abetting an illegal organization") of the Turkish Penal Code,

#### **"Wernicke Korsakoff" syndrome and the Forensic Institute**

After prolonged hunger strikes, which mainly took place from 2001 to 2002 in protest against the F-type prison system of single and small-group cells (see 'Turkey: "F-Type" Prisons: Isolation and Allegations of Torture and Ill-treatment'; AI Index EUR44/025/2001), a number of prisoners deemed to be too unwell to remain in prison were released under article 399 of the Criminal Procedure Code. The majority of these were suffering from "Wernicke Korsakoff" syndrome, a condition in which as a result of prolonged hunger strike the patient suffers severe memory loss and both physical and mental deterioration. According to the view of the Turkish Medical Chambers and also international medical opinion, the condition does not permit recovery.

In the spring of 2003 it was reported that the former hunger strikers on release from prison on health grounds were under police surveillance and there were suspicions that the former prisoners were in good health (see Zaman newspaper, 28 April 2003). The Forensic Institute, attached to the Ministry of Justice, is the single official body responsible for providing forensic reports which are accepted as evidence in court, and in this capacity had been the organ responsible for issuing reports which confirmed that hunger strikers were suffering from "Wernicke Korsakoff" syndrome. In response to the suggestions

that police surveillance revealed that former prisoners were in good health, the Forensic Institute immediately issued a statement to the effect that the institute "stood by" its reports and that it was "not possible for these patients to recover" from "Wernicke Korsakoff" syndrome.

Lawyers and human rights defenders in Turkey reported to Amnesty International that a few months later, in the autumn, the situation had altered and the Forensic Institute had begun to issue health reports on those suffering from "Wernicke Korsakoff" syndrome stating that they had recovered. On the basis of these reports, some prosecutors issued arrest warrants for a number of former prisoners suffering from the syndrome and some of these were re-imprisoned and serving their sentences despite their incurable medical condition.

Amnesty International was concerned that the Forensic Institute, a body devoted to diagnosing medical conditions and presenting medical and forensic evidence in an impartial manner in strict conformity with medical and scientific ethics, should be writing reports that raised questions about its independence and impartiality. These latest reports led to the suggestion by human rights defenders in Turkey that the institute was being subjected to political pressure, its present institutional arrangement – bound to the Ministry of Justice – preventing it from maintaining an independent position.

#### **Retrial of "Zana et al."**

As a result of the new law on retrial implemented in February 2003, four former Democracy Party (DEP) deputies – Leyla Zana, Hatip Dicle, Orhan Doğan and Selim Sadak – continued to be retried in monthly trial hearings (the first of which had been on 28 March). Amnesty International believed that the four prisoners of conscience, imprisoned since 1994, were punitively punished for their non-violent political activities relating to the Kurdish question and should be released without delay. Amnesty International and other international observers (notably the

International Commission of Jurists) voiced further serious concerns about the fairness of the trial procedures in the retrial and the continued imprisonment of the four former deputies.

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## TURKMENISTAN

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

On 23 October the European Parliament issued a resolution deploring that the "already appalling human rights situation in Turkmenistan has deteriorated dramatically recently, and [that] there is evidence that this Central Asian state has acquired one of the worst totalitarian systems in the world". Among other issues, the Parliament called on the authorities of Turkmenistan to "stop the attacks on, and torture and ill-treatment of, political opponents"; to "conduct impartial and thorough investigations into all [...] reports of [...] deaths in custody" and of "torture and ill-treatment of persons held in custody". It also urged the authorities to promptly and unconditionally "release all prisoners of conscience, including Nikolay Shelekhov and Kurban Zakirov and the political prisoner Mukhametkuli Aymuradov"; to ensure a fair retrial of all those "convicted in connection with the events of 25 November 2002 [and] all other political prisoners"; and to guarantee civil and political rights, in particular the freedoms of expression, association, religion and movement.

On 22 December, at its 58th Session, the United Nations (UN) General Assembly adopted a resolution by a large majority expressing "grave concern" about the country's human rights record. Among other issues, the General Assembly called on the authorities of Turkmenistan to "implement fully" the measures set out in the April 2003 resolution of the UN Commission on Human Rights<sup>7</sup> and the

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<sup>7</sup> See the entry on Turkmenistan in AI's Concerns in Europe and Central Asia bulletin covering January to June 2003 (AI Index: EUR 01/016/2003).

recommendations made in the March 2003 report by the Special Rapporteur on Turkmenistan who had been appointed by the Organization on Security and Co-operation in Europe in January 2003<sup>8</sup>; and to "grant immediate access [to detainees] by independent bodies, including the International Committee of the Red Cross, as well as lawyers and relatives of detained persons".

### ***Further restrictions on non-governmental and religious groups***

On 10 November the authorities published several legal texts and amendments to Turkmenistan's Criminal, Civil and Administrative Codes further punishing the legitimate exercise of internationally guaranteed rights to freedom of religion, expression and association. The laws entitled "On Public Associations" and "On Religious Freedom and Religious Organizations in Turkmenistan" had been signed by the President on 21 October. The new legislation criminalized the activities of any unregistered non-governmental and religious groups, and violations of the laws were made punishable by "corrective labour" of up to two years or prison terms of up to one year and other serious penalties.

Following the adoption of the laws, pressure on civil society groups increased significantly. For example, officials of the Ministry of Justice visited civil society activists at home urging them to stop their activities and forcing them to sign a document stating that they were members of an unregistered organization and were aware that activities in such an organization were regarded as criminal offences under the new law on public organizations. Only 14 days after the publication of the legislation, the non-governmental Dashoguz Ecological Club was closed in a court ruling by Dashoguz city court.

According to Baptist sources, police raided a service in the town of Balkanabad (formerly Nebitdag) on 30 November and took all participants to the local police

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<sup>8</sup> See footnote 1.

station. They were accused of having violated the new law on religion and fined 10 times the minimum wage. They were warned that criminal charges would be brought against them if they continued to conduct "illegal" services.

#### **Clampdown on dissent continued**

Anyone perceived to be critical of the regime remained at risk of persecution. The relatives of exiled dissidents continued to be targeted in an attempt to stop those in exile from criticizing government policies and speaking out about human rights violations in Turkmenistan.

#### **Forced resettlement of Sazak Begmedov**

On 31 August Sazak Begmedov, a 77-year-old former prosecutor, was reportedly detained by four police officers in Ashgabat and forcibly resettled to the northern town of Dashoguz. AI believes that Sazak Begmedov was targeted for political reasons. Shortly before the forced resettlement, his daughter Tadzhi gul Begmedova had announced the formation of the Turkmenistan Helsinki Committee, a human rights group in exile in Bulgaria and had publicly alleged that two political prisoners had died in prison as a result of torture. The officers reportedly beat and kicked Sazak Begmedov on their way to the airport, where they forced him on a plane to Dashoguz. Police accompanied him on the flight and confiscated his passport. He was instructed to regularly report to the police in Dashoguz. The head of the local police department reportedly refused to give an explanation as to why he was resettled. The police refused to register his complaint about the beatings although Sazak Begmedov showed a medical certificate documenting injuries to his body, concussion and injuries to the kidneys. Shortly afterwards, in the night of 3 to 4 September, Sazak Begmedov had a heart attack and had to be hospitalized for more than two weeks. Reportedly, he has been unable to receive his pension payments as he was told that the money could not be distributed other than at his permanent place of residence in Ashgabat.

#### **Radio Liberty correspondent abducted**

On 11 September Saparmurad Ovezberdiyev, a 63-year-old correspondent for the US Radio Liberty based in Ashgabat, was reportedly detained by secret service officers and held incommunicado for two days. He was said to have been forced to sign an agreement to collaborate with the secret service and threatened with long-term imprisonment unless he gave up his work as a journalist. In November he was reportedly abducted, beaten and abandoned at a cemetery in Ashgabat by two unidentified assailants. Saparmurad Ovezberdiyev had worked with Radio Liberty for more than 10 years and had refrained from openly criticizing the regime. However, he had been under close surveillance for several years.

#### **Continued imprisonment of conscientious objectors**

AI learnt that at least five men were imprisoned during 2003 for their conscientious objection to compulsory military service. The Jehovah's Witnesses Rinat Babadzhanov, Shokhrat Mitogorov, Ruslan Nasyrov and Rozymamed Satlykov were sentenced to 18 months' imprisonment in May and Aleksandr Matveyev was handed down a two-year prison sentence in December. All were serving their terms in Seydi prison colony in eastern Turkmenistan. Their relatives were reportedly refused permission to visit them.

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## UKRAINE

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

On 29 September the Parliamentary Assembly of the Council of Europe (PACE) adopted a resolution on "Honouring of obligations and commitments by Ukraine" (see below), in which with regards to conditions in detention, it indicated, that it shared the concerns of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the National Human Rights Ombudsperson. The resolution

"deplores the lack of progress in numerous areas, especially concerning the ill-treatment of persons deprived of their liberty by law-enforcement agencies; overcrowding both in militia and penitentiary establishments, police malpractice against all prisoners, poor health care and insufficient financing". In April similar concerns had been expressed in the annual report by the National Human Rights Ombudsperson, Nina Karpacheva (See AI Index: EUR 01/016/2003). In July she reportedly stated that her office had conducted a survey among middle-ranking police officers and only three per cent of those questioned indicated that they did not torture their suspects. She reportedly expressed her concern about legal provisions, which allow for a suspect to be held in custody for 72 hours without being charged, and mentioned that "when a person ends up in a police station, he or she, in many cases has no rights".

In September the UN Human Rights Committee ruled that former death-row prisoner Azer Garyverdy ogly Aliev had not received a fair trial. He had been denied access to a lawyer for the first five months of his detention. He had been arrested in Makeevka on suspicion of murder in August 1996 and sentenced to death in April 1997. Azer Garyverdy ogly Aliev had alleged that he and his pregnant wife were ill-treated and tortured by police officers during four days of interrogation shortly after their arrest.

In mid-October, public prosecutors in the region of Donetsk reportedly launched an investigation into an incident of alleged torture at correctional facility No. 120. Prison officers allegedly tortured Oleksandr Lobanov, a 25-year-old prisoner, as a result of which both his feet had to be amputated in April. It was alleged that the incident took place after the prisoner refused to follow the orders of prison officials. The prison officials reportedly forced Oleksandr Lobanov to sign a statement indicating he had injured his feet whilst exercising in the prison yard.

On 1 November 20-year-old Sergei Berdyugin died in pre-trial detention in

Odessa in suspicious circumstances. It was reported that the medical certificate issued after his death concluded that Sergei Berdygin had internal abdominal injuries including a ruptured liver, and a haematoma behind the intestinal membrane, injuries allegedly sustained in police custody. He had been arrested in December 2002 on suspicion of taking part in a terrorist group, as part of a group of 11 people. The group also included a 17-year-old girl, who reportedly whilst in detention was beaten and threatened with rape.

### **Freedom of expression**

On 15 July the Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, Freimut Duve, criticized an amendment to the media law, which provides for the Ukrainian secret service to arrest journalists who have been investigating issues related to state secrets and who intend to publish this information. He stated in a letter to the authorities that: "It is ominous that your country, where the media situation has been steadily deteriorating for the past five years, should decide at this point to approve a highly restrictive law that would have a chilling effect on the work of journalists, especially those investigating corruption."

During the period under review at least two journalists died in suspicious circumstances. On 14 July newspaper and TV journalist Volodymir Efremov died in a car accident. The journalist was a vocal critic of President Kuchma and had been correspondent for the press freedom group, Institute for Mass Information, in the region of Dnipropetrovsk for a number of years. He had reportedly feared an attack on his life because of his links to former Prime Minister Lazarenko, at whose trial he had agreed to testify, and his reporting on issues related to press freedom.

On 14 December journalist Volodymir Karachevtsev, chairman of the Independent Regional Union of Journalists, acting editor-in-chief of the newspaper *Kuryer* and journalist for the Internet publication *www.vlasti.net*, was found dead in Melitopol

(Zaparozhe region). He was reportedly discovered hanging by his clothing from the metal door handle of his refrigerator. The journalist had reportedly received death threats because of his publications on local corruption scandals involving government officials. In a joint statement the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe (CoE) expressed their concern about his death, stating that media organizations estimated that 18 journalists have died in Ukraine since 1991 because of their work and many of these cases remained unsolved. The Secretary General of the CoE, Walter Schwimmer stated: "We urge the Ukrainian authorities to conduct a thorough and swift investigation into the death of Volodymyr Karachevtsev and to make the findings public."

#### **"Disappearance" of Georgiy Gongadze**

No progress was made in determining those responsible for the "disappearance" of Georgiy Gongadze (update to AI Index: EUR 01/016/2003). On 16 September, the third anniversary of his "disappearance" the European Union issued a statement deploring the "lack of progress" into the circumstances of his death. Although several present and former officials of the Ministry of the Interior were reportedly arrested in connection with the "disappearance" of the independent journalist, in September 2000, the investigation appeared to come to a standstill in late October when Prosecutor General Svyatoslav Piskun, who was heading the investigation, was dismissed from his post by President Kuchma. It was suggested in certain quarters that his dismissal may have been connected to the arrests.

In August a former police officer, Igor Goncharov, who had been detained on suspicion of being the leader of the criminal group suspected of being responsible for Gongadze's "disappearance", died in suspicious circumstances in police custody. It was reported that he had allegedly been tortured in police custody after his arrest in May 2002, and that his death was a result

of the alleged torture and subsequent lack of access to medical attention.

#### **Violence against Women**

On 26 September Ukraine ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The ratification of the Optional Protocol provides an opportunity for redress for violations of women's human rights or failures to protect women against discrimination in Ukraine and provides international recourse to women who have been denied access to justice at the national level (see also *Claiming women's rights: the Optional Protocol to the UN Women's Convention*, AI Index: IOR 51/001/2001).

#### **PACE pursues monitoring procedure**

On 29 September the Parliamentary Assembly of the Council of Europe (PACE) adopted a resolution on "Honouring of obligations and commitments by Ukraine", deciding to pursue the monitoring procedure in respect of Ukraine. The resolution stated that "The Assembly recognizes legal reforms have advanced in many areas, but is preoccupied by the lack of enforcement and recalls the need for a proper implementation of existing legislation". Amongst others the Parliamentary Assembly expressed its deep concern about the lack of results in bringing to justice those responsible for the murder of the journalist, Georgiy Gongadze (see above); the practice of the highest executive giving systematic instructions to the general prosecutor's office with regard to special cases of criminal prosecution and, particularly, those relating to journalists; the lack of access of opposition political forces, represented in Parliament, to electronic media; especially state-controlled electronic media; and the continuing practice of imposing on journalists officially approved guidelines (*temnyki*) for covering events, which the PACE considered as a newly-created type of implicit censorship.



## UNITED KINGDOM

### *The UK's response to 11 September 2001 (Update to AI Index: EUR 01/016/2003)*

By the end of the year, 14 foreign nationals who could not be deported continued to be interned under the Anti-terrorism, Crime and Security Act 2001 (ATCSA). They were held in high-security facilities under severely restricted regimes.

In August the UN Committee on the Elimination of Racial Discrimination expressed concern about increasing racial prejudice against ethnic minorities, asylum-seekers and immigrants; reported cases of "Islamophobia" following the 11 September attacks; discrimination faced by Roma and Travellers; and reports of attacks on asylum-seekers. The Committee also expressed deep concern about provisions of the ATCSA targeting exclusively foreign nationals.

In October the appeals brought in May, June and July by 10 individuals against their certification as "suspected international terrorists" under the ATCSA were all dismissed. The Special Immigration Appeals Commission (SIAC) -- the tribunal empowered under the ATCSA to grant bail, hear appeal against, and periodically review, certification by the Secretary of State of foreign nationals as "suspected international terrorists" -- had heard appeals in both open and closed sessions. Judgments on the 10 appeals were handed down in a public session on 29 October 2003. Each judgment confirmed the certification of the individual concerned as a "suspected international terrorist" and dismissed his appeal. One generic public judgment, handed down by the SIAC on 29 October, and concerning all 10 appellants, indicated that the generic evidence of general relevance to all and the evidence relating to each of the individuals which had been considered in the closed sessions had been dealt with in a separate judgment which had not been made public or disclosed to the appellants or the lawyers of their choice. In the course of the SIAC appeals the individuals concerned did not

benefit from the presumption of innocence, given that the SIAC, disconcertingly, ruled that under the ATCSA the burden of proof that the Home Secretary had to meet to justify internment is not the criminal standard of "beyond reasonable doubt" but, instead, was even lower than that in a civil case. This meant that anyone involved in a civil claim to recover damages (for example as a result of a car accident) must prove their case to a standard higher than that required of the Home Secretary under the ATCSA in order to have his decision to intern people -- potentially indefinitely -- confirmed by the SIAC.

Among the appeals against internment under the ATCSA dismissed by the SIAC in October was Mahmoud Abu Rideh's. Mahmoud Abu Rideh is a Palestinian refugee and torture victim, who has been detained under the ATCSA since December 2001. At the end of the year he continued to be held at a high security psychiatric hospital.

In December AI published a report entitled "United Kingdom - Justice perverted under the Anti-terrorism, Crime and Security Act 2001" (AI Index: EUR 45/029/2003) detailing its concern that proceedings under the ATCSA fell far short of international fair trial standards, including the right to the presumption of innocence, the right to a defence and the right to counsel. AI also expressed grave concern at the reliance on secret evidence and at the executive's and judiciary's willingness to rely on evidence extracted under torture. Since only non-UK nationals could be interned, AI also considered the ATCSA discriminatory.

In December, the Committee of Privy Counsellors, who had been charged with reviewing the ATCSA, recommended the urgent repeal of ATCSA powers allowing non-UK nationals to be detained potentially indefinitely.

### ***UK nationals and residents held in US custody at Guantánamo Bay***

AI continued to be concerned about a variety of aspects of the detention of people, including UK nationals and residents, held

in US custody, in Camp Delta, at a US naval base in Guantánamo Bay, Cuba.

By the end of the year, nine UK nationals, including Asif Iqbal, Shafiq Rasul, Moazzam Begg and Feroz Abbasi, continued to be held indefinitely -- without charge or trial or access to courts, lawyers or relatives -- at Guantánamo Bay.

With respect to the role played by the UK authorities, AI considered that they had failed to make adequate representation to the US authorities to ensure that the human rights of UK nationals detained at Guantánamo be upheld. AI was particularly concerned that the UK detainees had been denied access to legal counsel during questioning by US and UK intelligence officers, and that such questioning had taken place despite the limbo of the detainees' legal status and the fact that the grounds for their interrogation had remained unclear. In this connection, AI emphasized that anyone arrested in the UK and questioned in connection with *al-Qa'ida* activities would have the right to legal assistance, including having a lawyer present during questioning.

In September the UK nationals held in US custody at Guantánamo were "visited" by UK officials. AI was concerned that as in previous occasions they would have been interviewed by UK officials, including members of the security services. AI continued to express concern that UK authorities were taking advantage of the legal limbo and the coercive detention conditions in which their nationals were held at Guantánamo Bay in US custody to interrogate them and extract information to use in proceedings under the ATCSA.

By the end of the year, Bisher al-Rawi, an Iraqi national legally resident in the UK, and Jamil Al-Banna, a Jordanian national with refugee status in the UK, remained in US custody at Guantánamo Bay. AI remained concerned about the role that the UK government may have played in their unlawful rendering to US custody, and about its refusal to make representations on their behalf to the US authorities.

### **Northern Ireland (Update to AI Index: EUR 01/016/2003)**

At the end of the year, the Northern Ireland Assembly remained suspended and direct rule continued.

#### *Collusion and political killings*

Following the April delivery by Sir John Stevens, the Metropolitan Police Commissioner, of his long-awaited report into matters of collusion in Northern Ireland, known as the "Stevens 3" investigation, to the Chief Constable of the Police Service of Northern Ireland (PSNI), decisions were awaited at the end of the year on whether to instigate criminal proceedings arising from more than 50 individual files prepared by the Stevens team relating to serving and retired army personnel and police officers.

In July the European Court of Human Rights found that the UK authorities had violated the right to life of human rights lawyer Patrick Finucane, including by failing to provide a prompt and effective investigation into the allegations of security personnel collusion in his murder in 1989. AI and other non-governmental organizations (NGOs) welcomed the ruling of the European Court of Human Rights in the case. The Court found that the Royal Ulster Constabulary (RUC), who were suspected of issuing threats against Patrick Finucane, were not sufficiently independent to conduct an effective investigation into the murder. It concluded that there were "serious doubts as to the thoroughness or effectiveness with which the possibility of collusion was pursued". It observed that, "as later events were to show however, there were indications that informers working for Special Branch [of the RUC] or the security forces knew about, or assisted in, the attack on Patrick Finucane". The inquest, which had refused to accept evidence of threats made against Patrick Finucane, "failed to address serious and legitimate concerns of the family and the public and cannot be regarded as providing an effective investigation into the incident or a means of identifying or leading to the prosecution of those responsible". The Court also criticised the Director of Public

Prosecutions for failing to give reasons for the many decisions taken in relation to cases touching on the murder. The Court noted that where the police investigation is itself open to doubts about its independence, "it is of increased importance that the officer who decides whether or not to prosecute also gives an appearance of independence in his decision-making". It found that, "notwithstanding the suspicions of collusion however, no reasons were forthcoming at the time for the various decisions not to prosecute and no information was made available either to the applicant or the public which might provide re-assurance that the rule of law had been respected ...". The Stevens 3 investigation, coming some ten years after the murder, "cannot comply with the requirement that effective investigations be commenced promptly and conducted with due expedition. It is also not apparent to what extent, if any, the final report will be made public, though a summary overview has recently been published."

The Court found that "the proceedings for investigating the death of Patrick Finucane failed to provide a prompt and effective investigation into the allegations of collusion by security personnel. There has consequently been a failure to comply with the procedural obligation imposed by Article 2 of the Convention and there has been, in this respect, a violation of that provision."

AI and other NGOs renewed their call on the UK authorities to establish forthwith a full, public, international, independent and impartial judicial inquiry into all the circumstances surrounding the killing of Patrick Finucane (see, "UK: Human rights groups welcome European ruling on Finucane case", AI Index: EUR 45/016/2003).

In October Justice Peter Cory, a retired Canadian Supreme Court judge, appointed jointly by the UK and Irish Governments to investigate a number of killings involving alleged collusion by security forces in Northern Ireland and in the Republic of Ireland, handed over his reports to the two governments. On the eve of the delivery of his reports to the governments AI and other

domestic and international NGOs urged the UK and Irish governments to commit themselves to publishing the reports promptly (see, "United Kingdom: Human Rights Groups call for prompt publication of Cory collusion reports", AI Index: EUR 45/024/2003). While in December the Irish government published the two reports that Justice Cory had submitted to it, and announced as recommended by Justice Cory the establishment of a public inquiry into the killing of RUC officers Harry Breen and Bob Buchanan, by the end of the year, the UK authorities had failed to publish the reports submitted to them in October. In December, AI and other domestic and international NGOs called upon the UK government once again to publish without delay the Cory reports into the killings of human rights lawyers Patrick Finucane and Rosemary Nelson, and of Robert Hamill and Billy Wright (see, "United Kingdom: Publish Cory reports now, human rights groups urge government", AI Index: EUR 45/031/2003).

In October, at an inquest into a number of cases, including that of Roseanne Mallon, in which there were serious allegations of collusion between state forces and Loyalists in killings, the PSNI and the Ministry of Defence refused to comply with a document disclosure order issued by the Coroner.

In October the Police Ombudsman for Northern Ireland launched an investigation into allegations that police officers had asked officials of the Forensic Science Agency to cover up mistakes made during police investigations.

In December Peter McBride's family was granted leave for a full judicial review of the Ministry of Defence's decision allowing the two Scots Guards, convicted of his murder in 1992, to continue to serve in the army.

The Tribunal of Inquiry's hearings into the 1972 killing of 13 unarmed people by soldiers on "Bloody Sunday" were ongoing at the end of the year.

*Abuses by non-state actors*

Yearly official statistics showed that there had been at least 10 killings by members of armed groups during 2003, of which eight were attributed to Loyalists and two to Republican dissidents. The majority of the killings were reportedly carried out as a result of feuds among and within Loyalist paramilitary organizations.

According to annual police figures made available to AI, there were 203 shootings and assaults by Loyalist paramilitaries and 101 shootings and assaults by Republican paramilitaries throughout the year. Many of the victims were children; some reports indicated that attacks on children had increased almost fivefold since the Good Friday Agreement was signed in 1998.

**Deaths in custody**

In October an inquest jury returned a unanimous verdict of unlawful killing at the inquest into the death of Roger Sylvester in January 1999 after he was restrained by police officers. At the end of the year, a decision by the Crown Prosecution Service on whether to prosecute the officers involved was pending.

*Prisons*

In October, in a landmark judgment, the House of Lords ruled that a public inquiry must be held into the circumstances of the death of Zahid Mubarek. He was killed by his cellmate in Feltham Young Offenders Institution in March 2000. Despite prior knowledge of the latter's violent behaviour and strong racial prejudices, the prison authorities had placed the two men in the same cell.

Suicides in prisons were on the rise, totalling 94 by the end of the year. The Chief Inspector of Prisons for England and Wales issued damning reports following her visits to a number of institutions, raising concern about abuses against inmates, serious risk to their safety, and inhuman and degrading detention conditions.

The Chief Inspector of Prisons for Scotland continued to highlight inhuman and

degrading detention conditions in some facilities, made worse by overcrowding.

In December settlements for compensation were reached in cases brought by victims who alleged that they had been subjected to ill-treatment, including torture such as rape, mock executions and brutal beatings while incarcerated at Wormwood Scrubs Prison in London in the mid to late 1990s.

**Army deaths in disputed circumstances (Update to AI Index: EUR 01/016/2003)**

In September Surrey police issued a statement about the findings of their re-investigation of the deaths of Privates James Collinson, Geoff Gray, Cheryl James, and Sean Benton -- who died in separate incidents at the Princess Royal Barracks, Deepcut, Surrey, between 1995 and 2002. In their statement Surrey Police referred to a number of "police lessons" that were identified in the course of the investigation, and which "are now being taken forward through the Association of Chief Police Officers (ACPO) with a view to establishing national best practice for the investigation of deaths at military establishments."

Among the "police lessons" identified were: "the need for all Police Forces in England and Wales to recognise their primacy in the investigation of unexplained deaths on Army establishments and a full investigation that considers potential homicide must be undertaken unless and until clear evidence of another explanation is available [sic]"; and, most importantly, "the use of military personnel in undertaking civilian police investigations should be restricted to the areas of facilitation not the investigation itself".

In light of the findings of the Surrey police re-investigation, AI renewed its call for a wide-ranging public inquiry into all non-combat deaths of UK Army personnel in and around Army barracks in the UK since 1990. The organization also called on the UK authorities to undertake prompt, thorough, independent and impartial investigations into all deaths in disputed circumstances of UK Armed Forces personnel.

**Violence against women**

According to government statistics, two women each week on average were killed by a partner or former partner. By the end of the year draft legislation introduced to tackle this most hidden, yet pervasive of human rights abuses, was pending before the UK Parliament. AI urged that this legislation on domestic violence be supplemented by a broad, comprehensive and fully resourced national strategy to eliminate all forms of violence against women.

*Allegations of rapes of Kenyan women by UK soldiers (Update to AI Index: EUR 01/016/2003)*

In September the UK Ministry of Defence (MoD) sent a response to AI stating that the allegations of rape were taken "extremely seriously" and that the MoD was "anxious to do all it can to discover the truth behind them". It added that the Royal Military Police Special Investigation Branch (RMP SIB) was engaged in a "major criminal investigation" with the assistance of the Kenyan authorities. The MoD stated that such investigation was complex and would take some time to be concluded. The MoD added that until the conclusion of the ongoing investigation "it would be premature to consider the need for a public enquiry or to discuss the possibility of criminal prosecutions". AI acknowledged the RMP SIB efforts to investigate the rape allegations with a view to bringing criminal charges. However, the organization remained concerned that the RMP SIB investigation -- whereby military police investigated allegations of grave misconduct by military personnel -- did not meet international human rights law and standards with regard to independence and impartiality, and could not be seen to be independent and impartial. Consequently, AI continued to urge the UK government to take measures to address such concerns. Moreover, AI considered that -- in addition to possible criminal responsibilities -- the systemic failures to investigate the allegations of rape when they were made and to prevent further attacks should be addressed and continued to call for the

establishment of an independent and impartial commission of inquiry into any such failures.

In October 2003, following press reports regarding alleged developments in the RMP SIB investigation, AI wrote to the Defence Secretary and asked clarifications regarding statements attributed to a spokesperson of the British High Commission in Nairobi. On 26 September 2003 the spokesman had been quoted as alleging that forensic tests carried out on Kenyan police records regarding the allegations of rape had shown that the records had been forged. AI asked whether the spokesperson had been briefed by the MoD before making the reported statements and whether the MoD could confirm the statements. On 9 October the MoD replied that "The provenance of these stories is unclear. Both the High Commission Press Office and the Defence Press Office in London handled a number of enquiries on and around the weekend of 27-28 September. In all cases the communication was reactive. The [RMP] SIB is engaged in a major criminal investigation into these [rape] allegations. This investigation remains at a relatively early stage."

**Freedom of expression**

At the end of the year, criminal proceedings were pending against Katharine Gun, a former government employee. She was being prosecuted under the Official Secrets Act 1989 for leaking an e-mail which reportedly exposed the US plan to eavesdrop on members of the UN Security Council during intensive negotiations in the run up to the war on Iraq. She argued that her actions were necessary to prevent what she believed to be an unlawful war and to save the lives of UK servicemen and women and Iraqi civilians. AI reiterated its concern that the Act does not allow for a "public interest" defence.

## UZBEKISTAN

### **Human rights defenders**

Despite further releases of imprisoned members of the unregistered Human Rights Society of Uzbekistan (OPCHU), human rights defenders continued to face harassment, intimidation, ill-treatment, detention and imprisonment.

### **Women human rights defenders (update to AI Index: EUR 01/016/2003)**

In August plainclothes officers from the National Security Service (SNB) stopped the car of human rights defender Elena Urlaeva and reportedly forcefully dragged her from it, kicking her. She was on her way to attend a demonstration in support of convicted human rights activist Ruslan Sharipov (see below). She was detained for several hours. In April Elena Urlaeva had reportedly been threatened by police officers with renewed forcible confinement in a psychiatric hospital if she did not desist from organizing and participating in public protests. She had most recently been forcibly confined in a psychiatric hospital from August to December 2002, reportedly to stop her human rights activities. A court case to declare Elena Urlaeva "legally incompetent" was pending at the end of the year. Despite an independent psychiatric assessment in March which declared her mentally responsible for her actions, the Uzbek authorities reportedly persisted in presenting medical evidence in court which claimed that she was mentally unfit.

In November Elena Urlaeva was hit by an officer of the Tashkent City Department of Internal Affairs (GUVD) when she took part in a small peaceful protest by human rights activists calling for the resignation of President Karimov outside the offices of Uzbek State Television. The officer also tore up the poster she was holding and ripped her coat.

### **Conviction of Ruslan Shapirov (update to AI Index: EUR 01/016/2003)**

In August Ruslan Sharipov, a 25-year-old correspondent with the Russian news agency PRIMA and chairman of the unregistered human rights organization Grahdanskoe sodeystvye (Civic Assistance) was found guilty of all the charges against him and sentenced to five-and-a-half years in prison following an unfair trial at Mirzo Ulugbek district court in Tashkent. He had been detained by police in May in Tashkent and charged with homosexuality under Article 120 of the Uzbek Criminal Code. He was later also charged under Article 127 (encouraging minors to commit antisocial behaviour) and Article 128 (having sexual relations with minors). Police interrogating him reportedly confronted him about several articles he had written on the subject of human rights violations in Uzbekistan, shouting at him and threatening him with rape and suffocation. In September Tashkent City Court dropped the charge under Article 127 and reduced his sentence on appeal to four years. In October Ruslan Sharipov was reportedly secretly transferred from Tashkent prison to Tavaksay penal colony outside the capital. In letters from prison he insisted that the case had been fabricated in order to punish him for his critical reporting and his human rights activities. He alleged that the prosecution had chosen to ignore the findings of forensic medical tests conducted after his arrest, which exonerated him and the alleged victims. He also alleged that he was tortured into changing his plea to guilty during a three-day recess of his trial in August, and to renouncing all his critical articles and dismissing his lawyer and his legal representative. He was reportedly also forced to ask for his mother not to be given further access to the trial, closed to the public "because of the sexual nature of the case". He claimed that police officers placed a gas mask over his head and turned off the air supply, that they sprayed an unknown substance into his throat and injected him with a similarly unknown substance. He further alleged that he was coerced into writing a suicide note and threatened with repercussions against his defense team and his family.

At the end of August Ruslan Sharipov's legal representative Surat Ikramov, the chairman of the unregistered Initiative Group of Independent Human Rights Defenders, was dragged from his car by masked men in broad daylight in Tashkent, driven to the outskirts of the capital and dumped near the river Chirchik. He had his arms and legs tied and he was beaten severely during the car journey. His abductors reportedly also placed a plastic bag over his head and restricted his air supply by tightening a belt around his neck. He was helping to organize a peaceful public protest in support of Ruslan Sharipov the day before he was attacked.

**Update on imprisoned OPCHU members (update to AI Index: EUR/01/016/2003)**

The four remaining OPCHU activists who continued to serve their prison sentences after the release in January of Yuldash Rasulov were set free in the second half of 2003. **Dzhura Muradov**, chairman of Nishansky district branch of OPCHU in Kashkadarya region in southern Uzbekistan, was released in August. Two other members of the branch, **Musulmonkul Khamraev** and **Norpulat Radzhapov**, were released in July. All three had been sentenced to prison terms ranging from five to six years' in September 2002 on criminal charges, including "hooliganism" and "robbery". In January the Karakalpakstan Supreme Court reduced **Tursinbay Utamuratov's** sentence on appeal to four years. Tursinbay Utamuratov, the chairman of OPCHU's branch in Karakalpakstan Autonomous Republic, was sentenced to nine years' imprisonment in November 2002. He was released in October. According to OPCHU, the four men were punished for their human rights activities and their public criticism of local officials.

**Political prisoners**

Trials of political prisoners continued and supporters and alleged supporters of the banned Islamic party Hizb-ut-Tahrir and members of independent Islamic congregations and their families, including

women, continued to face imprisonment, detention, ill-treatment and intimidation.

**Arrest of Fatima Mukadirova**

In August on the anniversary of her son's death 62-year-old Fatima Mukadirova renewed her campaign for justice by appealing publicly to the international community for help in disclosing the circumstances surrounding his death in Jaslyk prison camp.

Two months later in October she was detained and charged with membership of Hizb-ut-Tahrir and with possessing and distributing leaflets of this organization after officers of the Tashkent GUVVD anti-terror unit raided her home – allegedly without a search warrant – and claimed to have found hundreds of leaflets and books and manuscripts belonging to Hizb-ut-Tahrir. According to information released by the Uzbek authorities this search, which they claimed had been officially sanctioned, was the second such action undertaken by the authorities in six weeks. In September officers from the GUVVD anti-terror unit had conducted a search of Fatima Mukadirova's home and had seized a number of reportedly subversive publications. As a result a criminal case was opened against her on charges of attempting to undermine the constitutional order under Article 159 of the criminal code. She was allowed to remain at liberty on condition of "refraining from further disseminating information detrimental to the state". Fatima Mukadirova was remanded in custody in October because, according to the Uzbek authorities, she failed to comply with the conditions of her bail. Sources close to Fatima Mukadirova believed that the raids on her home and her subsequent detention on criminal charges were intended to intimidate her and to stop her from further publicizing the circumstances surrounding the death of her son.

In August 2002 the bodies of her son, Muzafar Avazov, a father of four, and of Khusniddin Alimov were brought from Jaslyk prison in the Northern Karakalpakstan region to their families in Tashkent. Eyewitnesses interviewed by the

international non-governmental organization Human Rights Watch said that Muzafar Avazov's corpse showed signs of burns on the legs, buttocks, lower back and arms. Reportedly, there was a large wound on the back of the head, bruises on the forehead, and the hands had no fingernails. Prison officials claimed that the two men had been scalded when fellow prisoners threw burning tea at them during a fight. Fatima Mukadirova distributed photographs of her son's body to international organizations and foreign diplomats appealing for help in investigating the cause of her son's death. Findings by an independent forensic expert in the UK based on these photographs cast doubt on the official version of events and concluded that "the pattern of scalding [...] could well indicate the forceful application of hot water whilst the person is within some kind of bath or similar vessel". Muzafar Avazov was serving a 20-year prison sentence on anti-state charges, including membership of Hizb-ut-Tahrir.

**Conditions of detention for Muslim prisoners charged with anti-state offences**

The United Nations (UN) Special Rapporteur on Torture's February report on Uzbekistan included the recommendation to "...give urgent consideration to closing Jaslyk colony, which by its very location creates conditions of detention amounting to cruel, inhuman and degrading treatment or punishment for both its inmates and their relatives..." In October the authorities reportedly violently suppressed a hunger strike in protest at their conditions of detention and the persecution of their relatives by prisoners at Jaslyk convicted for their affiliation or suspected affiliation with independent Islamic congregations or Hizb-ut-Tahrir. According to unofficial reports the deputy Minister of Internal Affairs, who was in Jaslyk on the day the prisoners declared their hunger strike, ordered special Internal Affairs troops into the prison who beat the hunger strikers. Dozens of prisoners were subsequently moved to different penal institutions throughout the country and an undisclosed

number were reportedly transferred to Tashkent Prison.

At the end of October a hunger strike by 250 prisoners charged with membership of Hizb-ut-Tahrir in a prison colony in Karshi was also allegedly violently suppressed. Special Internal Affairs troops called in by the prison director reportedly beat the hunger strikers with truncheons. At least 40 of the hunger strikers were locked in punishment cells, the rest were made to sit on their knees and anyone who moved was beaten with truncheons.

**Deaths in custody (update to AI Index: EUR 01/0016/2003)**

In an official response to AI the Uzbek authorities denied claims that Orif Ershanov (surname given as Eshonov by the authorities) and Otamaza Gafurov died in custody as a result of torture.

**Orif Ershanov's** body was returned to his family in May in Karshi where he had reportedly been detained earlier by SNB officers on suspicion of being a member of Hizb-ut-Tahrir. Eyewitnesses reported that his corpse showed signs of heavy bruising to the arms, shoulders, upper chest, legs and soles of the feet. There were reportedly also open wounds to one arm and his back, and several ribs were broken. The authorities reportedly told the family that he became ill while in custody at the Karshi GUVB and that he died of natural causes in the local hospital. However, they did not give the family a death certificate. SNB officers were reportedly present at Orif Ershanov's funeral.

According to the Uzbek authorities an investigation into the circumstances of his death established that Orif Ershanov was transferred to hospital because of a sudden rise in his blood pressure levels. At the hospital he was diagnosed as suffering from severe hypertension as well as asthma, chronic bronchitis, pneumonia and severe anaemia. The post-mortem ordered by the Karshi City procuracy stated that he died from a brain haemorrhage caused by hypertension. In June the Kashkadarya Regional procuracy overturned the decision



by Karshi City procuracy not to open criminal proceedings and ordered a new investigation into the circumstances of his death. The investigation was completed at the end of September and the regional procuracy decided that there was no evidence to suggest that Orif Ershanov had died as a result of torture. The General Procuracy upheld the findings of the investigation.

Otamaza Gafarov died in May at Chirchik prison camp where he had been serving a seven-year sentence, due to end in September, on allegedly fabricated charges of stealing state property. The authorities told his family that he had died of a sudden heart attack at the beginning of May, and maintained in their response to AI that the post-mortem supported this conclusion. However, family members who prepared Otamaza Gafarov's body for burial reported that it showed signs of torture, including a large wound to the head and bruising on the back of the head. To AI's knowledge no investigation into the family's claims was conducted by the authorities.

### **The death penalty**

The AI report '*Justice only in heaven*' – the death penalty in Uzbekistan (AI Index: EUR 62/011/2003) published in November documented how scores of people are executed every year in Uzbekistan after unfair trials amidst serious flaws in the criminal justice system opening the door for judicial error. Many detainees facing capital charges are tortured; 'confessions' extracted under torture are routinely used as evidence in trials; and corruption is an integral part of the investigation, trial and appeal. The report showed that the death penalty has played an important role in the clampdown on "religious extremism" in Uzbekistan. Since 1998 at least 38 -- and possibly many more -- death sentences have been passed on people, who were accused of having committed capital crimes and labelled "religious extremists". The report also raised concern about the targeting of relatives of death row prisoners that has in many cases involved torture, ill-treatment and rape threats, and about the cruel and inhuman treatment of relatives of

death row prisoners who are not informed of the date of the execution in advance and are never told the location of the place of burial. The report also featured cases of people who were sentenced to death after the authorities of Kazakstan, Kyrgyzstan, the Russian Federation, Tajikistan, and Turkmenistan had returned them to Uzbekistan.

### *Statistics of death sentences and executions*

The authorities still failed to disclose comprehensive statistics including figures on the number of death sentences and executions. By the time of writing, AI had recorded 20 death sentences and 28 executions for 2003. However, these figures are believed to reflect only a fraction of all cases as it is very likely that most death row prisoners and their families do not have access to individuals or organizations that will record, disseminate information about or take action on their case. Several local human rights groups believed that more than two hundred people were executed in Uzbekistan every year.

### *Reduction of death penalty articles in the Criminal Code underway*

In December the *Oliy Majlis* (Parliament) passed a draft law entitled "Amendments and additions to several legal acts of the Republic of Uzbekistan" reducing the number of articles in the Criminal Code of Uzbekistan punishable by death from four to two. However, the law had reportedly not come into force by the end of the period under review. The Articles that were dropped – "genocide" (Article 153) and "initiating or waging of an aggressive war" (Article 151 part 2) – had not been in use, to AI's knowledge.

### *Concerns expressed by United Nations bodies*

On 4 July Bertrand Ramcharan, acting United Nations High Commissioner for Human Rights, publicly urged the authorities of Uzbekistan "not to carry out the execution of detainees who have

appealed their convictions to the United Nations Human Rights Committee." In a press release later that month the Human Rights Committee (HRC) reminded the authorities that "it amounts to a grave breach of the Optional Protocol to execute an individual whose case is pending before the Committee." These statements were made following the executions between 5 May and 5 June of four men on whose behalf the HRC had intervened. These executions brought the number of prisoners executed in Uzbekistan despite HRC interventions to at least nine.

The families of seven death row prisoners (Zholmurza Bauetdinov, Evgeny Gugin, Shukrullo Inogamov, Abror Isayev, Nodirbek Karimov, Iskandar Khudoberganov, and Rustam Makhkamov) were informed by the HRC that the authorities of Uzbekistan had given assurances in November and December that the men would not be executed until their cases had been considered by the Committee.

#### *Authorities stop death penalty conference*

The authorities stopped the conference "Death Penalty: Analysis, Tendencies and Realities" organized by the Uzbekistan-based non-governmental group Mothers against the Death Penalty and Torture scheduled to take place in Tashkent on 5 December.<sup>9</sup> The conference was aimed at initiating a public debate about the death penalty and at creating a platform for dialogue with the authorities. The group had invited representatives of the authorities, foreign diplomats, representatives of intergovernmental organizations as well as local and international human rights activists to speak at the conference.

On 3 December a representative of the hotel where the conference was to take place told the group that his company had been informed by the authorities that it would have a "negative impact" on their business if they provided a venue for the

conference. Shortly afterwards the Foreign Ministry told diplomats that the conference was cancelled because it was organized by an unregistered organization. Mothers against the Death Penalty and Torture – as is the practice with many other human rights groups in Uzbekistan – had repeatedly been denied registration by the authorities. The group had already faced obstacles throughout the preparation of the conference. Approximately a week before the conference was to open, an international business centre, whose premises the group had initially wanted to rent, withdrew although the contract had already been signed. In addition, the group found it was almost impossible to get material for the conference printed, including the group's latest bulletin and AI's report '*Justice only in heaven' – the death penalty in Uzbekistan*. Several printing houses refused to publish, fearing repercussions by the authorities.

#### *Death row prisoner visited by Russian Orthodox priest*

In December a Russian Orthodox priest was given permission to visit death row prisoner Evgeny Gugin in Tashkent prison. The administration of the Central Asian diocese of the Russian Orthodox Church based in Tashkent had repeatedly asked for such permission. While AI welcomed this step, the organization is not aware of any other case where a death row prisoner's wish to be visited by a minister of his religion has been granted, in spite of requests for such permission. Article 137 of the Criminal-Execution Code of Uzbekistan entitles death row prisoners to a visit by a minister of religion and Article 12 stipulates that prisoners may carry out the religious rites of their faith with the assistance of a minister of religion.

<sup>9</sup> See AI Index: 62/020/2004.