
European Union

The course of integration of the European Union hit a major obstacle in 2005 when voters in France and the Netherlands rejected the new Constitutional Treaty, leaving it endorsed by barely half of the twenty-five member states and prompting some of the undecided states to shelve their own referendum plans. The E.U.'s expansion project nevertheless continues, with human rights conditionality being a point of leverage in the negotiations that led to the opening of formal accession talks with Croatia and Turkey (see separate country chapters).

In matters such as migration and asylum, and counterterrorism, common E.U. approaches as well as policy and practice in individual E.U. states continue to reflect a tendency to circumvent international human rights obligations.

Counterterrorism Measures

The issue of counterterrorism in Europe was dominated in 2005 on the one hand by the terrorist threat taking on characteristics hitherto not experienced in E.U. states, and on the other by further developments in E.U. governments' counterterrorism policy negatively impacting fundamental human rights. The former was shown most vividly when London was struck on July 7 by three simultaneous bomb attacks on its underground train network, and a fourth on a bus, killing fifty-six people (including the four bombers), making it the deadliest attack in modern British history. It also marked the E.U.'s first experience of suicide bombers who were, moreover, British nationals.

On July 21, exactly two weeks later, there was a failed attempt to stage an almost identical attack, involving bombers on three London underground trains and a bus. The next day police shot dead a Brazilian man on a London underground train, having apparently mistaken him for a terrorist suspect. The incident, which raised questions about police surveillance methods as well as about application of a policy authorizing use of lethal force by police, was immediately referred for investigation by the Independent Police Complaints Commission. At the time of this writing, its report was expected at the end of 2005.

A Spanish court in September sentenced an alleged al-Qaeda leader to twenty-seven years' imprisonment for conspiracy to commit murder by having provided logistical support to the perpetrators of the September 11, 2001, attacks in the United States, and for being the leader of a terrorist organization. Seventeen co-defendants were convicted of belonging to or collaborating with a terrorist group. A terrorism trial opened in Belgium at the beginning of November, with thirteen defendants (all

Moroccans or Belgians of Moroccan descent) accused of providing support to the perpetrators of the 2004 Madrid train bombings and the 2003 bombings in Casablanca, Morocco.

At the beginning of November *The Washington Post*, citing U.S. government sources, reported that the U.S. had used secret detention facilities in Europe and elsewhere to illegally hold terrorist suspects without rights or access to counsel. While the article did not identify the locations, its allegations were consistent with Human Rights Watch's own research suggesting the existence of secret detention facilities in Poland and Romania (the former an E.U. member state, the latter an acceding state). Both the European Commission and the Parliamentary Assembly of the Council of Europe immediately announced investigations, and the International Committee of the Red Cross requested access to the alleged facilities.

Indefinite or Prolonged Detention

The U.K.'s highest court, the House of Lords Judicial Committee (commonly known as the "Law Lords") ruled in December 2004 that the indefinite detention without charge or trial of foreigners suspected of terrorism was incompatible with the U.K.'s Human Rights Act (which incorporates the European Convention on Human Rights into domestic law). In response, the U.K. government announced a "twin-track" set of alternatives to indefinite detention. This includes recourse to "control orders" that seriously restrict the movement and activities of any person who is suspected of terrorism-related activities (irrespective of nationality), and the use of "diplomatic assurances" to deport to their home countries foreign nationals who would be at risk of torture or ill-treatment upon return, despite clear evidence that assurances are an ineffective safeguard against such treatment (see below).

Human Rights Watch criticized the legislation introducing control orders on the grounds that there were insufficient procedural safeguards given the serious restrictions on liberty that could be imposed through the orders. The Prevention of Terrorism Act 2005 became law in March 2005.

The U.K. government in September published new draft counterterrorism legislation which included extending the maximum period that terrorism suspects could be detained without charge, to ninety days (from the current fourteen, already the longest in Europe), and adding a new criminal offence of "encouraging" terrorism (see below). The draft legislation passed in the House of Commons in November, although the government's proposal for the extension to ninety days had been defeated and an amendment approved instead whereby detention without charge for terrorism suspects would be extended to twenty-eight days. Human Rights Watch argued that the case for any extension had not been made, and that detention without charge for up to twenty-eight days could become a form of arbitrary detention, and might infringe the right of an arrested person to be informed promptly of any charge against him. At this writing, the draft legislation was being debated in the House of Lords.

The Italian government introduced a new antiterrorism law in late July 2005, and, after a very brief parliamentary review, it entered into force at the beginning of August. It introduced a number of new

offenses, and increased penalties for others. Among its most troubling provisions, it extended the maximum period during which a suspect could be held for questioning without charge and without a lawyer present from twelve to twenty-four hours, and broadened the range of law enforcement authorities empowered to detain and question terrorist suspects. It also allowed authorization of senior police officers to order immediate expulsion of persons residing illegally in Italy who they determined were a threat to national security; appeals against such expulsions would be without suspensive effect.

Draft new antiterrorism legislation in France, presented to parliament in November, included a provision to reclassify “criminal association” in relation to a terrorist offense from a misdemeanor to a felony. The overly vague nature of the offense permits detention on the basis of limited evidence. Its use to detain suspects who are later released without charge has been widely criticized as a form of preventive detention. The reclassification would increase the maximum permissible pre-trial detention period from three years and four months, to four years and eight months. It would also double the maximum possible sentence, to twenty years. The proposed law would also increase the period that police are allowed to detain suspects in terrorism cases from four days to six.

Evidence Obtained under Torture

In October, the U.K. Law Lords began consideration of whether evidence extracted under torture that had been obtained from third countries is permitted in domestic British law. The case was an appeal brought by ten men previously subject to indefinite detention as terrorism suspects against an August 2004 majority decision by the Court of Appeal that the U.K. government was entitled to rely on torture evidence in special terrorism cases, provided that the U.K. “neither procured nor connived at” the torture, a decision contrary to international human rights law. Human Rights Watch was part of a coalition of fourteen human rights and anti-torture organizations that intervened in the House of Lords case. The Law Lords’ ruling, expected by the end of 2005, is likely to have profound implications for the worldwide ban on torture.

Refolement and Diplomatic Assurances

Important rulings were made against individual E.U. governments over their resort to “diplomatic assurances,” but governments continue to press ahead with strategies that both challenge head on, and seek to side-step, the absolute prohibition against refolement—the return of a person to a country where he or she would be at risk of torture or ill-treatment. This alarming trend prompted the Secretary-General of the Council of Europe in October 2005 to remind European governments that “the prohibition of torture...is absolute and applies in all circumstances. It is not negotiable.” In his annual report to the U.N. General Assembly, the U.N. Special Rapporteur on Torture, Manfred Nowak, likewise emphasized that “diplomatic assurances are unreliable and ineffective in the protection against torture and ill-treatment,” and called on governments to “observe the principle of non-refolement scrupulously.”

Five E.U. governments were reported to have united in a challenge to the landmark 1996 European Court of Human Rights (ECtHR) ruling *Chahal v. United Kingdom*, affirming the absolute prohibition against refoulement. The U.K., Italy, Lithuania, Poland and Slovakia obtained permission in October to intervene as interested parties in the case of *Ramzy v. Netherlands*, pending before the ECtHR at the time of writing, in which an Algerian man suspected of involvement in terrorism, Mohammed Ramzy, was challenging deportation on the grounds that he would be at risk of torture if returned to Algeria. Reportedly, the governments concerned were seeking to overturn *Chahal* in favour of the position that the right of an individual not to be tortured could be balanced against the national security interests of the state (the essence of the dissenting opinion by a minority of ECtHR judges in *Chahal*).

In May 2005 the U.N. Committee against Torture ruled that Sweden had violated the absolute prohibition on torture by expelling terrorism suspect Ahmed Agiza to Egypt in 2001. Sweden had sought to justify the transfer by saying that it had secured assurances from Egypt that Agiza would be treated humanely, but Agiza credibly alleged that after his forcible return to Egypt he was tortured. The U.N. committee concluded that the assurances Swedish authorities secured from Egyptian officials concerning Agiza could not be trusted as sufficient protection. It noted that Egypt had a well-documented history of torture abuses, especially when dealing with terrorism suspects, and that its routine use of torture, in combination with interest in Agiza by the U.S. as well as Egypt, should have led to a “natural conclusion” that Agiza was at risk of torture upon return.

The transfer of Agiza and another man, Mohammed al-Zari, had been undertaken by U.S. intelligence operatives to whom Swedish officials handed custody of the two men at Stockholm’s Bromma Airport, and as such amounted to “extraordinary rendition.” In March, a report by the Swedish chief parliamentary ombudsman concluded that the Swedish security service and the airport police “displayed a remarkable subordination to the American officials” and “lost control of the situation,” resulting in the ill-treatment of Agiza and al-Zari, including physical abuse and other humiliation, at the airport immediately before they were transported to Cairo. The U.N. committee said that the ill-treatment at Bromma Airport should have made it clear to Swedish authorities that the men would be at risk of torture if they were returned to Egypt.

An appeals court in the Netherlands ruled in January 2005 against the extradition to Turkey of Nuriye Kesbir, a high-level member of the former Kurdistan Workers’ Party (PKK), who was subject to an extradition warrant from Turkey alleging that she had committed war crimes as a PKK military operative in the civil war in Turkey’s southeast. In May 2004 a lower court had determined that although Kesbir’s fears of torture and unfair trial in Turkey were not completely unfounded, there were insufficient grounds to halt the extradition. The court gave exclusive authority to the government to either grant or reject the extradition request, but advised the Netherlands minister of justice to seek enhanced diplomatic assurances from Turkey against torture and unfair trial. The appeal court concluded that diplomatic assurances could not guarantee that Kesbir would not be tortured or ill-treated upon return to Turkey.

The ECtHR Grand Chamber issued a decision in February 2005 in the case of *Mamatkulov and Askarov v. Turkey*, in relation to which Human Rights Watch and the Advice on Individual Rights in Europe (AIRE) Centre had submitted an amicus curiae brief. The two men had been extradited from Turkey to Uzbekistan in 1999 based on assurances against torture and unfair trial by the Uzbek authorities. It had been anticipated that the Grand Chamber might rule on the reliability and/or sufficiency of diplomatic assurances against torture from the government of Uzbekistan, but the court determined that it did not have sufficient information before it to rule on whether Article 3 of the European Convention on Human Rights (prohibiting torture or ill-treatment) had been violated; the court did not engage in a discussion of the reliability or sufficiency of the assurances. Nevertheless, the decision concluded that Turkey should have been bound by a ECtHR request to delay the men's extradition until the court had an opportunity to review the men's application.

The U.K. government, in August and October 2005, signed memoranda of understanding (MOUs) with Jordan and Libya containing undertakings that people deported to those countries from the United Kingdom would not be tortured or ill-treated there. The U.K. government also confirmed that it was seeking such arrangements with Tunisia, Lebanon and Algeria, and there are credible reports that a similar agreement was being sought with Egypt.

In August, the U.N. special rapporteur on torture expressed "fears that the plan of the United Kingdom to request diplomatic assurances for the purpose of expelling persons in spite of a risk of torture reflects a tendency in Europe to circumvent the international obligation not to deport anybody if there is a serious risk that he or she might be subjected to torture," adding that "diplomatic assurances are not an appropriate tool to eradicate this risk."

The ineffectiveness of diplomatic assurances as a safeguard against torture, and the danger that such assurances pose to the absolute nature of the non-refoulement obligation were extensively documented by Human Rights Watch in an April 2005 report titled, "Still at Risk: Diplomatic Assurances No Safeguard against Torture," as well as in subsequent statements critical of the U.K.'s bilateral agreements based on blanket diplomatic assurances.

Between August and October, more than twenty foreign nationals suspected of involvement in terrorism were detained pending their deportation on the grounds of national security, including persons previously subject to indefinite detention in the United Kingdom. Some of the men, who originate from Jordan, Libya, and Algeria among other countries, had previously been granted asylum in Britain. Four of the Algerians were released on bail in October, but the majority remained in detention at this writing. No deportations had taken place under the agreements at this writing, and it remained unclear what weight the U.K. courts would attach to the promises of humane treatment when evaluating the risk of torture in future appeals against deportation brought by the detainees.

New Offenses of Incitement

The London bombings gave impetus to legislative and other initiatives directed towards confronting terrorist recruitment. Some of the proposed measures had troubling implications for freedom of expression. At the level of common E.U. policy, the tone was set by a September 2005 commission communication on “Terrorist Recruitment: Addressing the Factors Contributing to Violent Radicalization.” The European Council was to adopt a strategy on this issue by the end of the year, as part of its action plan on terrorism. A new Council of Europe Convention on the Prevention of Terrorism, adopted in May, requires states to criminalize “public provocation to commit a terrorist offense,” whether or not involving direct advocacy of terrorism, when such “provocation” is done with intent.

The draft new counterterrorism legislation published in September by the U.K. government included a new offense criminalizing speech that amounts to “encouragement,” including speech that justifies or glorifies terrorism, and the closure of places of worship used to “foment extremism.” Human Rights Watch was concerned that such measures would undermine the right to nonviolent expression by criminalizing speech even where there is no intention to incite violence. Denmark in September initiated the first case under an antiterrorism law enacted in 2002 that forbids instigation of terrorism or offering advice to terrorists, and carries a penalty of up to six years in prison. The accused, a Moroccan-born Danish citizen, was charged in relation to having downloaded from the Internet and distributed inflammatory speeches and images including beheadings carried out by Iraqi insurgents.

In August the U.K. government announced a list of “unacceptable behaviours” added to the list of national security grounds for the deportation or exclusion of foreign nationals. These included the speech or publication of views deemed to “foment, justify or glorify terrorism,” provoke others to commit terrorist acts, or “foster hatred” that might lead to inter-community violence in the United Kingdom. This went further than a July 2004 law in France allowing the expulsion of foreigners who engage in acts that “explicitly and deliberately” incite discrimination, hatred or violence. While expulsions under French law were subject to appeal, an expulsion order was not automatically suspended while the appeal was pending, and there were cases in which persons had been expelled to their countries of origin, only to have the expulsion order overturned on appeal. In Germany, a new immigration law entered into effect on January 1, 2005, allowing authorities to expel those who publicly endorse or promote terrorist acts or incite hatred “in a manner conducive to disturbing public safety.”

On November 9, 2005, after thirteen consecutive nights of rioting across France, Interior Minister Nicolas Sarkozy announced that all adult foreigners convicted of involvement in the rioting, including those with residence permits, would be deported.

Asylum Seekers and Migrants

As Human Rights Watch has consistently acknowledged, migration into the E.U. poses clear challenges for European governments, and few would question the legitimacy or urgency of policies to address

these. However, common E.U. policy in this area continues its development exclusively in the direction of keeping migrants and asylum seekers out of and away from Europe. Moreover, exclusionary practices stepping beyond the rule of law are seen in at least two E.U. states, Italy and Spain, which have actively engaged in expulsions without respect for the individual right to seek asylum. These and other E.U. states also implement returns with scant regard for whether the receiving countries could offer effective protection.

Common E.U. Immigration and Asylum Policy

The European Commission in September published a proposal for a directive on “common standards and procedures for returning illegally-staying third-country nationals.” While the draft directive contains improved language on human rights protection in comparison to the previous iteration of the proposal, a number of concerns remain. The text also falls short of meeting the criteria laid out in a set of common principles of return developed by a coalition of human rights and European refugee nongovernmental organizations, including Human Rights Watch. Key concerns include the absence of a mandatory right of appeal against removal with suspensive effect, and the imposition of a re-entry ban that could amount to a double penalty with potentially far-reaching consequences for the principle of non-refoulement. At the time of writing, this directive was pending “co-decision” by the European Council and the European Parliament.

The Asylum Procedures Directive, agreed by the European Council in April 2004, was submitted for consultation with the European Parliament, which in September 2005 expressed “severe reservations” and called for over one hundred amendments to the document. In a reaffirmation of the principle that an asylum seeker should have his/her claim individually assessed, the Parliament argued that any applicant should have the right to “rebut the presumption of safety” associated with the proposal for “safe third country” lists. Human Rights Watch and others had called in March 2004 for withdrawal of the draft directive on grounds that the “most contentious provisions are all intended to deny asylum seekers access to asylum procedures and to facilitate their transfer to countries outside the E.U.” The European Parliament’s proposed amendments were not binding on the council. At this writing there had been no further movement towards adopting the draft directive.

Readmission Agreements

Human Rights Watch research in countries on the E.U.’s new eastern frontiers confirmed concerns that some of the new E.U. member states do not have systems offering full and fair asylum determination procedures, or policies and practices in place to ensure that no person is sent back to a place where his or her life or freedom is threatened. As documented in the November 2005 Human Rights Watch report, “On the Margins—Ukraine: Rights Violations against Migrants and Asylum Seekers at the New Eastern Border of the Europe Union,” border guards in Poland and Slovakia who intercept persons crossing from Ukraine interview and process them generally within forty-eight hours, with no genuine effort to identify them by name, origin or status, and without their having access to lawyers or interpreters or the possibility to challenge a decision by the border guard to return them to Ukraine.

Effected under bilateral readmission agreements between the E.U. states concerned and Ukraine, some of these returns lent substance to concerns that, while in theory readmission agreements are not designed to interfere with the right to asylum, in practice those liable to return can include asylum seekers whose protection needs have not been determined.

European Community readmission agreements (applicable to all E.U. member states except Denmark, where an abstention applied) were concluded with Albania and Russia in April and October respectively, and were being negotiated with four other countries including Ukraine and Morocco.

Processing Migrants and Asylum Seekers Outside the E.U.

A communication from the European Commission on Regional Protection Programmes (RPPs) was hailed by the E.U.'s Justice and Home Affairs Council in October as the E.U.'s first step "in improving access to protection needs and durable solutions for those in need of international protection, as quickly and as close to their home as possible." Pilot RPPs were due to be launched before the end of 2005.

In its November 2005 report on Ukraine (located in the region covered by the first pilot RPP), Human Rights Watch noted that RPPs offered the possibility of real improvements to the target countries' protection capacity, but raised concerns that the RPPs might undermine the right to seek asylum in the E.U., by resulting in premature designation of the target countries as "safe third countries," which would then expedite the return of asylum seekers who had transited them without first considering their protection needs. Similarly, the office of the U.N. High Commissioner for Refugees (UNHCR) welcomed the RPP proposal, but stressed the need for guarantees that RPPs would be complementary to existing asylum provisions in E.U. states.

The E.U. continues to press ahead with programs for strict control of access to Europe, and its migration policies towards neighbouring countries emphasize enforcement rather than protection.

By bilateral arrangement with Libya, Italy continue to expel—without a proper assessment of their asylum claims—people who arrive from North Africa and were being held on the island of Lampedusa under Italy's mandatory detention policy for illegal migrants and asylum seekers. In March 2005, nearly five hundred Egyptians were expelled to Libya and seventy-six directly to Egypt, handcuffed and blindfolded for their charter flights. Nearly two hundred persons were expelled to Libya in May and June. The expulsions ignored the evidence that, as a place in which the basic human rights of migrants are frequently violated and that has not ratified the 1951 Convention relating to the Status of Refugees, Libya cannot be regarded as a "safe third country" for return.

The Italian Minister of Interior told the Italian Parliament after the March expulsions that the government's actions were in full compliance with their human rights obligations, but they were criticized by UNHCR, whose officials had been denied access to Lampedusa at that time. A delegation of Members of the European Parliament (MEPs) visiting the Lampedusa facility at the end of June queried

the appropriateness of third countries' consular officials being involved in detainee identification procedures there, given the danger this presented to a potential asylum seeker, and were informed that "nobody" had recently claimed asylum, an assertion the MEPs described as "incredible," as this would make Lampedusa "the first centre in Italy where this does not happen."

In early October, faced with mass attempts by undocumented migrants to force entry into Spain's North African enclaves of Ceuta and Melilla, the Spanish government expelled to Morocco at least 73 people who had reached the enclaves, including several who had sought to claim asylum. The expulsions were reportedly carried out without an individual assessment that would have enabled presentation of asylum claims. On October 23, Morocco deported forty-nine Malians from this group to their home country despite the fact that at least two had applied for asylum in Morocco. There are alarming reports of human rights violations against migrants deported to Morocco from Spain or detained in Morocco as they tried to enter Ceuta or Melilla, including expulsions in inhumane conditions to the desert borders with Algeria and Mauritania. At least eleven people were shot dead as Spanish and Moroccan troops attempted to block entry to the enclaves. Morocco admitted that its border guards were responsible for four of the fatalities, while an internal Spanish inquiry exonerated Spanish forces. Human Rights Watch called for independent investigation into the deaths, as did the U.N. Special Rapporteur on the Human Rights of Migrants, Dr. Jorge Bustamante, who also called on Morocco to end collective deportations.