



JANUARY 2007

COUNTRY SUMMARY

## European Union

Terrorism, and state responses to it, continue to pose serious challenges to human rights protections within the European Union. Restrictions on and, in some cases, mistreatment of migrants and asylum seekers are also of pressing concern in the region.

The threat of terrorism in 2006 induced several EU states to adopt laws weakening human rights protections; a number of states sought to deport foreign suspects to countries notorious for torture. Courts often acted as an effective check against abuse during 2006, together with parliaments in some cases, but courts failed to give sufficient weight to the importance of free expression in cases involving alleged incitement to terrorism.

Migration policy at EU and national levels remains largely focused on preventing migrants and asylum seekers from reaching EU territory and summarily returning those who do, rather than ensuring access to protection for those who need it. States continued in 2006 to routinely detain migrants, including in substandard conditions.

### Counterterrorism Measures and Human Rights

There was increased momentum during 2006 toward accountability for the complicity of EU states in the United States government's abduction and illegal transfer of terrorism suspects to places where they risked torture, and detention of "high-value" terrorism suspects in secret facilities. A June report from the Parliamentary Assembly of the Council of Europe (PACE) described a "spider web" of illegal transfers and detentions, and named EU states among those that could be held responsible for violations of the rights of specific individuals "rendered" by the US, including Germany, Italy, Sweden, and the United Kingdom.

In July the European Parliament considered an interim report by a special committee tasked with investigating the alleged use of current and soon-to-be EU countries by

the Central Intelligence Agency (CIA) for the movement and illegal detention of prisoners. The Parliament adopted a resolution on July 6 concluding that US government agents had been “directly responsible for the illegal seizure, removal, abduction and detention of terrorist suspects on the territory of [EU] Member States...” and determined that it was “implausible” that member states were not complicit in these operations. The committee continued its investigative work throughout 2006, visiting Germany in September, the UK and Romania in October, and Poland in November. A final report is expected in 2007.

EU governments continue to seek and secure “diplomatic assurances” against torture in their efforts to transfer terrorism suspects to countries where they would be at risk of ill-treatment (see sections below on the Netherlands and UK). This runs counter to the broad consensus among international human rights experts that diplomatic assurances do not provide an effective safeguard against torture and ill-treatment, as reflected in strong statements against their use during 2006 by the United Nations high commissioner for human rights and special rapporteur on torture, the Council of Europe commissioner for human rights, and the EU Network of Independent Experts on Fundamental Rights.

Some EU states moved in April to establish, through the Council of Europe’s Group of Specialists on Human Rights and the Fight against Terrorism, guidelines for the “acceptable use” of diplomatic assurances, but failed. Having considered mounting evidence that diplomatic assurances do not protect against torture, the Group of Specialists declined to issue such guidelines.

### **Common EU Asylum and Migration Policy**

Efforts to establish a common EU migration and asylum policy continue to raise concerns about standard setting that weakens or undermines the protections required by human rights and refugee law.

In December 2005 the EU’s European Council adopted the Asylum Procedures Directive without any of the 100-plus amendments proposed by the European Parliament. In response, the Parliament petitioned the European Court of Justice (ECJ) in March 2006 to annul the entire directive. A key element of the legal challenge is a provision establishing

an EU-wide list of “safe countries of origin,” which would oblige EU states to deem asylum applications by nationals of the listed countries “manifestly unfounded.” At this writing the court had yet to rule on the admissibility of the challenge.

The ECJ dismissed in June a complaint brought by the European Parliament in 2003 about the directive on the right to family reunification adopted the same year. The court ruled that provisions in the directive allowing member states to adopt stricter rules on family reunification than those laid down in the directive itself do not amount to disproportionate interference with the right to family life.

Countering irregular immigration remains at the top of the EU agenda. The EU’s response to the large-scale migration by sea to Spain, Italy, and Malta during the summer of 2006 revolved around securing borders, interception, and repatriation rather than ensuring that the rights of migrants and refugees are respected.

That approach formed part of the EU’s ongoing effort to “externalize” the control, processing, and hosting of migrants and asylum seekers to neighboring states outside its own borders, including through readmission agreements, by which states outside the EU agree to accept the return of migrants from third countries, who have transited their territory en route to the EU. In October 2006 the EU and Ukraine signed a readmission agreement. Implementation is delayed for two years, but human rights groups are concerned that the delay is insufficient for Ukraine to carry out reforms to safeguard the rights of migrants and asylum seekers.

In the first major initiative since its creation in 2005, the EU External Borders Agency FRONTEX was tasked with managing joint patrols off the coasts of Mauritania, Senegal, and Cape Verde. As the EU attempted to broker a similar agreement with Libya for joint patrols in the Mediterranean, and Italy reached a bilateral agreement with Libya for joint police operations at the Libyan coast, the human rights of asylum seekers and migrants received scant attention.

## Human Rights Concerns in EU Member States

### *France*

In July 2006 the French parliament adopted a new law on immigration and integration, increasing restrictions on family reunification for legal residents, and abolishing the automatic right to legal status for those living in France without papers for 10 years. It created an obligatory “integration contract” for those seeking temporary residency, and a proof of integration requirement for those seeking long-term residence.

In a report published in February, then Council of Europe Commissioner for Human Rights Alvaro Gil-Robles drew attention to overcrowding and unhygienic conditions in detention centers for immigrants, as well as in prisons. The holding center in the Palais de Justice in Paris, where Gil-Robles described conditions as “inhuman and degrading,” was closed in June.

The August expulsion of Adel Tebourski, a Tunisian man convicted on terrorism charges, illustrated France’s determination to rely on expulsion as a counterterrorism policy. Just prior to his completing a five-year sentence for terrorism offenses in July, Tebourski’s French citizenship (acquired in 2000) was rescinded and the interior minister ordered his immediate expulsion. Tebourski was detained pending deportation, and despite a request from the UN Committee against Torture that he not be removed until the risk of him being tortured upon return to Tunisia could be properly examined, he was expelled as soon as his application for asylum was rejected and preliminary hearings determined that he did not face a torture risk.

In June the Paris Correctional Tribunal convicted 25 men in the so-called “Chechen network” trial, some for “criminal association in relation to a terrorist enterprise” and others for falsifying documents and other lesser offenses. Saïd Arif, a 40-year-old Algerian, was sentenced to nine years’ imprisonment, despite the court throwing out his confession and other declarations obtained while he was detained in Syria on the grounds it was “nearly certain” they were obtained under torture. France’s leading magistrate in terrorism cases Jean-Louis Bruguiere had provided a set of questions to Syrian authorities, and traveled to Syria at the time of Arif’s interrogation in May 2004.

In April 2006, on the day it was expected to announce its ruling in the trial of six former Guantanamo Bay detainees on charges of criminal association with a terrorist enterprise, a Paris court postponed the verdict until May 2007 in order to examine the circumstances in which French intelligence officers had interrogated the individuals at the facility. The six French nationals spent between two-and-a-half and three years at Guantanamo before being handed over to French authorities in July 2004 and March 2005.

A counterterrorism law that came into force in January 2006 increases pre-charge detention for terrorism suspects from four to six days. Human rights groups expressed concern about the duration of pre-charge detention in view of the lack of appropriate safeguards, including limited access to a lawyer. A proposed reform of the justice system under discussion within the government during 2006 would require that all police and judicial interrogations in criminal cases be filmed as a safeguard against, among other things, prohibited ill-treatment and procedural violations. Interrogations of terrorism suspects would be excluded from this rule, however.

### *Germany*

The German government foiled a terrorist bombing plot in July 2006, involving unexploded devices found on trains heading toward Hamm and Koblenz. Interior Minister Wolfgang Schaeuble warned in August that the security situation in Germany was “exceptionally serious” and called for stronger counterterrorism measures. Measures under consideration by the government include enhanced video surveillance in public spaces and a counterterrorism database.

Federal prosecutors opened an investigation in February into Germany’s possible complicity in the abduction and rendition of Khalid el-Masri, a German citizen apprehended in Macedonia in 2003, handed over to US operatives, and subsequently held in secret detention in Afghanistan (his case is also the subject of investigations at the European Parliament and Council of Europe). El-Masri was released in Albania in May 2004, and never charged with a crime. He claimed that he had been beaten in detention and interrogated by a German official in Afghanistan.

A German parliamentary committee of inquiry was established in April to investigate the possible complicity of the German government in abuses by US agents in the context of counterterrorism, including whether the Federal Criminal Police Office questioned terror suspects being held abroad, and the cases of El-Masri and Mohammed Haider Zammar. A German citizen of Syrian descent, Zammar had been arrested in Morocco in 2001, transferred to US custody, and sent on by private plane to Damascus, where he is on trial before a security court. German intelligence and law enforcement officials interrogated Zammar in Syria in November 2002. The German chancellery issued new interrogation guidelines in October 2006, which no longer permit members of the German federal police to question terrorism suspects abroad.

Controversy surrounded the return of Murat Kurnaz, a German-born Turkish citizen, to Bremen in August 2006 after more than four years in US custody at Guantanamo Bay, because of revelations that he had been interrogated by German security officials during his detention, and claims by Kurnaz's lawyers that German authorities declined a 2002 offer from the US government to release him. In October 2006 the parliament's defense committee began an investigation of Kurnaz's claim that he was mistreated in US custody in Afghanistan, prior to Guantanamo, by members of the German army.

### *Italy*

In the first nine months of 2006, an estimated 16,000 migrants leaving from the Libyan coast either arrived on the island of Lampedusa, off the Sicilian coast, or were brought there after having been interdicted by Italian naval or coast guard vessels. At least 60 people died in two separate boat sinkings in August, including one incident involving an Italian coast guard ship; the incident was under investigation at this writing.

Despite pressure from civil society groups and parties within the ruling coalition, the government of Romani Prodi, elected in April 2006, declined to abolish mandatory detention for irregular migrants, although the government established a commission to investigate detention conditions. The government announced in May that Italy would not expel anyone to countries that have not signed the UN Refugee Convention, including Libya, marking a shift from the previous administration, which in some cases removed people without first giving them an opportunity to seek asylum.

In July Milan's chief prosecutor formally submitted an extradition request for 26 US citizens (25 suspected CIA agents and the former commander of a US Air Force base at Aviano, Italy) in the investigation into the February 2003 abduction of Egyptian Hassan Mustafa Osama Nasr (known as Abu Omar), rendered to Egypt by the CIA via Aviano. The justice minister, who must approve the request, had not taken any action at this writing. Prosecutors also accused 12 Italians of involvement, including the director and former deputy director of SISMI, the Italian military intelligence agency, and six SISMI agents. Milan prosecutors concluded their investigation in October, portraying the abduction as an illegal operation organized by the CIA with the help of SISMI. In October the Prodi government told a parliamentary commission of inquiry that the issue of possible contact between the US and Italian governments on the case was protected by state secrecy.

### *Malta*

In July, 51 African migrants rescued at sea by a Spanish fishing boat spent eight days in legal limbo after Malta refused to allow the ship to dock. Maltese authorities claimed they had no duty to admit the migrants because they were rescued outside the country's territorial waters. They were eventually allowed to disembark in Malta after Spain agreed to take the majority of the group, with Italy, the Netherlands, and Andorra accepting others. Malta had allowed a pregnant woman, a mother, and a two-year-old child to disembark earlier for medical treatment.

Officials from the office of the UN High Commissioner for Refugees (UNHCR) who visited these three migrants pending their onward travel stated publicly that they were "shocked" after they saw 11 men being held in a tiny, dark, unventilated room. The men were allegedly being punished for attempting to escape. Malta has a mandatory detention policy for asylum seekers and irregular migrants.

### *The Netherlands*

Nine alleged members of the Hofstad Group, a militant Islamist network, were convicted in March of membership in a terrorist organization; five others were acquitted. The only evidence used to convict five of the nine was internet and phone communications in which they promoted a violent version of Islam and called for holy war with the West. Judge Rene Elkerbout stated, "Anyone who preaches hate and

violence lays the basis for committing crimes directed at instilling fear among the people and destroying Dutch democracy.” Although seen as a major breakthrough in the Netherlands’ ability to secure terrorism convictions, the judgment gave rise to concerns that the five men were prosecuted for speech and association rather than participation in a criminal conspiracy. Among those convicted was Mohammad Bouyeri, already serving a life sentence for the murder of filmmaker Theo van Gogh in November 2004.

In May 2006 the Dutch House of Representatives approved new counterterrorism legislation. It was also adopted by the Senate, which began debating it in September, the new law would give police special surveillance powers upon an “indication” (as opposed to the higher standard of “reasonable suspicion”) that a suspect has committed a crime; increase the maximum period of detention without charge from three to 14 days; and allow multiple extensions of pre-trial detention for up to two years.

The Supreme Court, in a final decision in September, confirmed the ruling of a lower court halting the extradition to Turkey of Kurdistan Workers’ Party (PKK) member Nuriye Kesbir. The lower court had determined that diplomatic assurances of humane treatment and fair trial from the Turkish authorities were not sufficient to protect Kesbir from ill-treatment upon return.

A proposal in February by Rita Verdonk, minister of alien affairs and integration, to lift a moratorium on the deportation of rejected gay and lesbian asylum seekers to Iran was withdrawn in April after strong protests from Dutch civil society and international human rights organizations, including Human Rights Watch. In October, the Dutch government announced a major policy shift, recognizing gay and lesbian Iranians as a “special group” facing persecution at home and deserving protection in the Netherlands.

### *Poland*

President Lech Kaczyński called for the restoration of the death penalty in Poland and throughout Europe in a July radio statement, drawing condemnation from the European Commission and PACE. In August the League of Polish Families, a minority party in the ruling coalition, launched a campaign for a referendum in Poland on the issue.

In January 2006 the European Parliament, motivated in part by rising homophobia in Poland, adopted a resolution calling on EU member states “firmly to condemn homophobic hate speech or incitement to hatred and violence.” But overtly homophobic rhetoric from Polish government officials, coupled with attacks on lesbian, gay, bisexual and transgender (LGBT) activists, continued during 2006. The State Prosecutor in May ordered all prosecutors to review the financing of LGBT organizations after a parliamentarian from the League of Polish Families accused LGBT groups of associating with pedophiles and the narcotics trade. Minister of Education Roman Giertych dismissed the director of a teacher training center in June for using a Council of Europe publication that included sections on non-discrimination against sexual minorities, a move condemned by Council of Europe Secretary General Terry Davis. In April, despite the presence of police, LGBT activists were attacked in Krakow by a far-right group during a demonstration.

The “Vetting Act” signed by the president in November and aimed at identifying collaborators with security agencies of the Polish People’s Republic between 1944 and 1990 gave rise to human rights concerns including inadequate privacy protections and limited procedural safeguards for appeals.

### *Spain*

By September over 25,000 migrants had reached the Canary Islands, a five-fold increase on the total for the whole of 2005. Inadequate capacity in reception centers for migrants meant that hundreds of unaccompanied minors were placed in makeshift centers, which a European Parliament delegation described as a “real emergency” during a June 2006 visit.

The majority of migrants traveled through Senegal and Mauritania. Spain negotiated agreements with both countries for the return of their nationals. Senegal interrupted repatriations after the first group of Senegalese to be returned (99 persons in May) complained of ill-treatment by Spanish authorities; operations later resumed. At this writing, Spain was negotiating with both countries to permit the return of third country nationals who departed from their coasts, raising concerns that refugees and others at risk could be denied access to protection on Spanish soil.

After the Basque separatist group ETA declared a permanent ceasefire in March, Prime Minister José Luis Rodríguez Zapatero formally announced in June his government's intention to enter into negotiations to end nearly four decades of political violence over the status of the Basque region. Prosecutions of alleged ETA collaborators or members continued in the special terrorism court Audiencia Nacional, with several of the cases raising concerns about undue restrictions on freedom of expression and association. In February the court paved the way for the trial of seven staff members of the Basque-language newspaper *Euskaldunon Egunkaria* on terrorism charges when it rejected their appeal against indictment. The newspaper had been shut down in February 2003 and the staff members arrested on charges of collaborating with ETA. Batasuna leader Arnaldo Otegi was convicted in April of glorification of terrorism for a speech given in December 2003 in honor of an ETA leader killed in 1978.

In April 2006, a little over two years after the Madrid train bombings that claimed 191 lives and injured over 1,700 people, investigating magistrate Juan del Olmo formally charged 29 out of the 116 people under investigation. Eighteen of those charged are in custody. The trial is expected to begin in February 2007.

In July, citing "a total lack of prosecution evidence," the Supreme Court overturned the 2005 terrorism conviction of Hamed Abderrahman Ahmed, a Spanish citizen who had spent over two years at Guantanamo Bay, and ordered his immediate release. The court also noted lack of sufficient evidence in June when it overturned the separate 2005 conviction of Syrian-born Spaniard Imad Yarkas for conspiracy to commit the September 11 terrorist attacks in the United States, but upheld his conviction for membership in al Qaeda and his 12-year prison sentence. Ruling on other appeals by those convicted in the same 2005 trial of alleged members of an al Qaeda cell in Spain, the court acquitted three individuals entirely, but upheld the conviction of Al Jazeera correspondent Taysir Allouni.

The Audiencia Nacional began an investigation in June 2006 into the alleged use of Spanish airports in the illegal transfer of terrorism suspects by the CIA.

In a positive move, Spain ratified the Optional Protocol to the Convention against Torture in March 2006. Less than a month later, however, parliament rejected a proposal to eliminate provisions of the Criminal Code that allow terrorism suspects and others charged with serious crimes to be held virtually incommunicado (with extremely limited access to a lawyer, and no right to communicate with family members) for 13 days.

### *United Kingdom*

Counterterrorism laws and measures implemented by the UK government came under judicial scrutiny in 2006, with the courts generally striking down measures that violated fundamental human rights protections. In December 2005 the UK's highest court, the House of Lords Judicial Committee, ruled in the case of *A and Others* that evidence extracted under torture can never be used in court proceedings, reversing an August 2004 majority decision by the Court of Appeal.

Claims by the UK government that it had foiled a major transatlantic airline bombing plot in August led to the arrest and detention of a number of terrorism suspects and the first test of extended detention powers under the Terrorism Act 2006, which became law in March and permits 28 days' pre-charge detention for terrorism suspects. The Act also criminalizes speech that "encourages" terrorism—including statements that "glorify" terrorism or are believed to indirectly encourage it—even where the statements do not directly incite violence. The restrictive nature of the new law poses a serious risk of infringing legitimate free expression.

The parliamentary Joint Committee on Human Rights published an assessment of the government's compliance with the Convention against Torture in May 2006, concluding that its policy of seeking diplomatic assurances against torture in "memoranda of understanding" with countries to which the UK wants to deport alleged terrorism suspects—Jordan, Libya, and Lebanon, to date—was likely to put those returned under the agreement at "substantial risk... of actually being tortured" as well as undermining the prohibition on returns to risk of torture.

The first legal challenge to a "memorandum of understanding" commenced in May in the case of Omar Othman, a Jordanian terrorism suspect also known as Abu Qatada,

whom the UK government wishes to deport to Jordan. Othman's lawyers argued before the Special Immigration Appeals Commission (SIAC) that he would be at risk of torture, unfair trial, and possible rendition to a third country if transferred to Jordan based on that country's inherently unreliable promises of fair treatment.

The SIAC dismissed the appeal of an Algerian man ("Y") against his deportation to Algeria on national security grounds in August, ruling he would not face a real risk of torture if returned because he would be covered by a new amnesty law. "Y" is a torture survivor granted refugee status in the UK. He was acquitted by a UK court in 2005 of charges related to an alleged terrorism plot. At this writing, the SIAC's decision was under appeal.

In August the Court of Appeal upheld a lower court ruling quashing "control orders" against six terrorism suspects on the grounds that they constituted a deprivation of liberty contrary to the European Convention on Human Rights (ECHR). The orders, authorized under the Terrorism Act 2005, imposed 18-hour curfews and other restrictions of movement on the six. The home secretary subsequently issued new orders with a 14-hour curfew period. The same month, the Court of Appeal reversed a lower court ruling that the judicial scrutiny and standard of proof required for the imposition of a control order violated the right to a fair hearing under the ECHR.

The Crown Prosecution Service, following the completion of its review into the death of Jean Charles de Menezes (mistakenly killed by the Metropolitan Police in London the day after foiled terrorist attacks on July 21, 2005), announced in July 2006 that it would not prosecute any individual police officer for murder, manslaughter, or any other criminal offense in connection with the shooting, but indicated it would prosecute the office of the Metropolitan Police Commissioner over the death using health and safety laws.