



European Union

Events of 2009

[Counterterrorism Measures and Human Rights](#)

[Common EU Asylum and Migration Policy](#)

[Human Rights Concerns in Select EU Member States](#)

[France](#)

[Germany](#)

[Greece](#)

[Italy](#)

[Malta](#)

[The Netherlands](#)

[Poland](#)

[Spain](#)

[United Kingdom](#)

Related Materials:

[Stuck in a Revolving Door](#)

[Lost in Transit](#)

External links:

[More Reporting on Human Rights in the European Union](#)

The European Union moved closer to stronger safeguards for rights during 2009 after the last member state, the Czech Republic, signed the Lisbon Treaty in November. The treaty makes significant changes to EU decision making and its Charter of Fundamental Rights binding EU law, and commits the EU to becoming a party to the European Convention on Human Rights.

EU institutions frequently showed a lack of will to hold member states to account for breaches of European standards on human rights. European Commission proposals for a new five-year EU justice and home affairs agenda in June lacked specificity and emphasized the rights of citizens, raising concerns over adequate attention to the human rights of immigrants; the European Council was due to adopt the agenda, known as the Stockholm Program, in December 2009. The European Parliament adopted a report in January 2009 deploring the refusal of member states to accept robust scrutiny of their human rights records and the consequent undermining of the credibility of EU foreign policy on human rights.

The Parliament gave its backing in April to a proposed anti-discrimination directive aimed at reducing discrimination in access to goods and services based on religion, belief, age, disability, or sexual orientation. At this writing the Council has yet to

approve the directive.

Many EU countries continue to pursue counterterrorism measures that violate human rights, including national security removals despite the risk of ill-treatment upon return, inadequate safeguards in detention, use of administrative measures to bypass due process standards for criminal suspects, and interference with the rights to freedom of expression and to privacy.

Migration and asylum policies remain focused on controlling borders, rather than on human rights, with several member states adopting measures to criminalize irregular immigration, lengthen administrative detention, and restrict access to asylum.

The growing popularity of far-right political parties, evidenced by results in the European Parliament elections in June, heightened concerns about racism and xenophobia, particularly targeting Roma and Sinti, migrants, Muslims, and Jews.

Counterterrorism Measures and Human Rights

Rulings by the European Court of Justice in December 2008, June 2009, and September 2009 highlighted concerns about the fairness of procedures for determining inclusion on the EU's terrorism blacklist, and led the European Council to remove the People's Mujahideen Organization of Iran from the list in January. In April the European Commission proposed reforms to the procedures.

Information continued to surface during 2009 about now-closed CIA secret detention centers on EU territory, including new allegations in August that the CIA held and questioned suspects in the Lithuanian capital Vilnius through 2005. In November the Lithuanian parliament launched a parliamentary investigation into the allegations. Romania repeated its denials of having hosted a secret CIA prison, despite credible reports in August that the facility was located on one of Bucharest's busiest streets. The Polish government failed to fully cooperate with a national prosecutor's investigation into an alleged secret prison near Szymany airport.

EU countries were slow to act on pledges to resettle detainees held by the United States at Guantanamo Bay who cannot be returned safely to their countries of origin. At this writing only Belgium, France, Portugal, and Ireland have accepted detainees (a total of six former prisoners), while Italy, Hungary, and Spain have indicated they might do so.

Common EU Asylum and Migration Policy

The failure of the European Commission to hold Italy and Greece fully to account for treatment of asylum seekers and migrants in breach of European standards undermined efforts toward the development of a genuine common asylum system. Commissioner for Justice, Freedom and Security Jacques Barrot offered only conditional criticism of Greece's dysfunctional asylum system during his June visit. Barrot was tardy in criticizing Italy's policy, enacted in May, of pushing back to Libya migrants intercepted at sea, his initial response being instead to propose reviving a deeply flawed idea to externalize EU refugee processing to countries like Libya. In September, however, Barrot used stronger language in calling the situation of migrants and asylum seekers in Libya unacceptable and reminding Italy of its nonrefoulement obligations.

There was limited progress toward the consolidation and improvement of a common asylum policy and standardized procedures throughout the Union. Following Commission proposals, in May the European Parliament adopted an "asylum

package" proposing amendments to the Reception Conditions Directive, the Dublin II Regulation, and the European fingerprint database for asylum seekers and irregular migrants, as well as endorsing the creation of a European Asylum Support Office. Negotiations to arrive at common positions are ongoing. Justice and Home Affairs Council meetings in June and September confirmed the lack of consensus on reform of the Dublin II Regulation, focusing instead on burden-sharing through voluntary resettlement and coordinated resettlement from third countries.

A significant drop in arrivals by sea was attributed to the global economic downturn, push-backs at sea, and joint patrols under the auspices of Frontex, the EU's external border agency. In at least one case Frontex assisted Italy's interdiction of boat migrants, whom Italy then pushed back to Libya.

Human Rights Concerns in Select EU Member States

France

A government-appointed committee in September released recommendations for reforming French criminal procedure. The committee recommended significant changes, notably elimination of the function of investigating judge, but failed to remedy insufficient safeguards against ill-treatment and impediments to an effective defense for terrorism suspects in police custody (with suspects held for up to six days with severely limited access to a lawyer). The French government is expected to use the committee's recommendations as a basis for legislation in 2010.

Tensions over Muslim veiling were heightened following President Nicolas Sarkozy's declaration that what he referred to as the burqa was not welcome on French territory and parliament's appointment of an ad hoc fact-finding committee in June to consider a possible public ban on face-covering veils. In June the European Court of Human Rights rejected as inadmissible complaints filed by four Muslim girls and two Sikh boys expelled from public schools in 2004 under a ban on religious headgear in school, once again failing to give proper weight to the religious freedom of non-Christian minorities.

The Paris Appeals Court overturned in February the 2007 terrorism convictions of five former Guantanamo Bay detainees after throwing out all evidence emanating from interrogations conducted at the US detention facility by French intelligence officers, citing a failure to disclose the evidence to the defense and other procedural irregularities.

French police dismantled a makeshift migrant camp in Calais in September, arresting nearly 300 people, including scores of unaccompanied children. All of those arrested were later released. In October France deported three Afghan men to Kabul on a joint charter flight with the UK.

Following its June review of France, the United Nations Committee on the Rights of the Child said it was "deeply concerned" about the situation of unaccompanied children held in airport waiting zones. Those arriving at Paris Charles de Gaulle airport were routinely detained with adults and deported, including to countries they had merely transited. Children were unable to challenge effectively decisions that put them at risk. Those seeking protection as refugees faced obstacles to filing a claim and appealing negative decisions based on fast-track evaluations.

Germany

Angela Merkel was reelected chancellor in September elections that gave her center-right Christian Democratic Union and its

new coalition partner the Free Democrats a majority in parliament.

A special parliamentary inquiry concluded in June that German authorities and intelligence agencies had no responsibility for the renditions by the United States and subsequent ill-treatment of Khaled el Masri, Murat Kurnaz, and Mohammad Zammar. A dissenting minority argued the federal government obstructed the investigation. The Constitutional Court ruled in July that the government, in having restricted the evidence it provided to the inquiry committee without giving sufficient justifications, had breached the constitution.

The federal government adopted new administrative regulations in September governing the Residence Act, endorsing the use of diplomatic assurances to deport individuals to countries where they face the risk of torture or ill-treatment. German courts have nonetheless struck down the use of such assurances, including in two cases in January and March.

The UN Human Rights Council under the Universal Periodic Review in March and the UN special rapporteur on racism in July drew attention to continuing problems of racism, xenophobia, and discrimination in Germany. Discrimination against migrants in housing and employment were identified as key concerns, with the special rapporteur on racism expressing his concern about overrepresentation of children with a migrant background in the lowest stratum of Germany's three-tiered education system.

A pregnant woman was stabbed to death and her husband seriously injured in a Dresden courtroom in July by the man she had successfully sued for calling her a "terrorist" and an "Islamist." The deceased, Marwa el-Sherbini, a German resident of Egyptian nationality, wore a headscarf. Her killer was sentenced in November to life in prison for murder, attempted murder, and grievous bodily harm; the prosecutor's office had cited hatred of non-Europeans and Muslims as the motive. The German Office for the Protection of the Constitution reported in May that right-wing extremist crimes rose significantly in 2008.

The UN special rapporteur on racism noted that bans on the wearing of religious symbols by public school teachers in some German states had a disproportionate impact on Muslim women who wear the headscarf. In August the Federal Labor Court ruled against a North Rhine-Westphalia educational social worker who had substituted her headscarf with a pink beret. The Court ruled the beret demonstrated the social worker's religious faith in contravention of North Rhine-Westphalia's 2006 law prohibiting teachers from wearing religious clothes and symbols in public schools.

Greece

The socialist party Pasok returned to power after winning a parliamentary majority in October elections, defeating the New Democracy party in power since 2004.

Demonstrations and riots broke out around the country in December 2008 and January 2009 after a police officer shot and killed a 15-year-old boy in Athens. Human rights groups complained that police used excessive force during crowd control, including during otherwise peaceful demonstrations. In June the European Committee for the Prevention of Torture noted persistent allegations of police abuse of criminal suspects during arrests and interrogations.

In February Council of Europe Commissioner for Human Rights Thomas Hammarberg criticized "grave and systematic deficiencies" in Greece's asylum procedure. Fewer than 1 percent of asylum claims are granted at first instance, and in June the

government abolished the right to lodge an appeal against rejection except in very narrow circumstances, leading the United Nations High Commissioner for Refugees to discontinue cooperation with the process. The government also increased immigration detention time limits to as long as 18 months.

Migrants are kept in deplorable detention conditions. The European Court of Human Rights condemned Greece in June for the unlawful detention of a Turkish asylum seeker in 2007, finding also that the conditions of his detention amounted to degrading treatment. The newly elected government closed the notorious detention center on Lesbos Island in November.

The authorities failed to protect unaccompanied children, who were routinely detained for prolonged periods, often with adults, and subjected to mistreatment. Authorities offered little or no assistance to migrant children who are vulnerable to exploitation and trafficking.

Greece launched a crackdown on migrants between June and August, systematically apprehending asylum seekers and other migrants, and summarily expelling many of them to Turkey where they are at serious risk of ill-treatment and refoulement.

Italy

In May Italy began intercepting boat migrants at sea and returning them to Libya, prompting widespread international criticism. No screening was conducted to identify refugees or vulnerable people in need of protection, in violation of Italy's international obligations. There were credible reports that Italian officials used undue force during the interdiction operations, and confiscated property and documents. All the migrants were detained upon arrival in Libya. Italy and Libya announced the beginning of joint naval patrols in Libyan territorial waters, under the terms of a "Treaty of Friendship" that entered into force in March 2009.

A Sicilian court acquitted in October three members of the German humanitarian organization Cap Anamur of abetting illegal immigration for rescuing boat migrants in 2004. In November seven Tunisian fishermen were acquitted of similar charges arising from a 2007 rescue. Two of the seven were convicted of resisting a public official and of violence against a military vessel.

Italy continued to deport terrorism suspects to Tunisia despite the risk of ill-treatment and 10 rulings in 2009 by the European Court of Human Rights that such returns put individuals at risk. In February the Court condemned Italy for the June 2008 expulsion of Essid Sami Ben Khemais in breach of interim measures issued by the Court requesting a suspension of the expulsion pending its examination of the case. In August Italy expelled Ali Ben Sassi Toumi also in breach of interim measures, prompting criticism from the Council of Europe.

Racism and xenophobia, characterized by violence as well as hostile political discourse, continued to be a serious problem. Attacks included the beating and setting on fire of an Indian immigrant, and assault by a large group of club-wielding men on four Romanians, leaving two in hospital. Emergency measures adopted since 2008 were made permanent in July 2009 when parliament passed the so-called Security Package: Irregular entry and stay in Italy were made crimes punishable by a fine of up to €10,000, and a national framework for officially-approved "citizens' groups" was created, arousing fears of violence by state-

sponsored vigilantes (some existing groups have close ties to the far-right). Elected officials have used inflammatory rhetoric, prompting President Giorgio Napolitano in May and the Roman Catholic Church to express concern about growing xenophobic discourse in Italy. Racism and xenophobia, discrimination and unacceptable housing conditions for Roma and Sinti, and anti-immigrant legislation were highlighted in a damning report by Council of Europe Human Rights Commissioner Thomas Hammarberg in April.

In October a Milan court convicted 23 US citizens, including the former Milan CIA station chief, and two Italian military intelligence officers for the 2003 abduction and rendition to Egypt of Hassan Mustafa Ossen Nasr (known as Abu Omar). Three of the 26 US citizens tried in absentia, including the Rome CIA station chief, were determined to enjoy diplomatic immunity. The judge said he could not pronounce a verdict against the other five Italian defendants because the evidence against them was covered by state secrecy, following a March Constitutional Court ruling.

Malta

The Maltese government continued to detain asylum seekers and irregular migrants, including unaccompanied children, pregnant women, and people in poor health, for prolonged periods. Delays in processing asylum claims and lack of access to legal aid persisted. Following its January 2009 visit to Malta, the UN Working Group on Arbitrary Detention concluded that Malta's detention policy is not in line with international law and described as appalling conditions in two detention centers. A protest in March by over 500 migrants detained at Safi barracks ended in violence.

Nine NGOs called on Maltese authorities to address racist violence in Malta after two Somali migrants were attacked in July, leaving one hospitalized.

Italy and Malta continued to dispute who is responsible for rescuing boat migrants in distress. The death of over 70 African migrants trying to reach Italy in August sparked widespread criticism of Malta for its failure to rescue migrants stranded at sea. The United Nations High Commissioner for Human Rights accused the Maltese government of falling short on its international human rights obligations.

The Netherlands

Reviews during 2009 by Council of Europe Human Rights Commissioner Thomas Hammarberg and the UN Human Rights Committee identified a range of human rights concerns in the Netherlands, including problematic counterterrorism measures, and the lack of safeguards in and excessive length of asylum procedures.

The government in July ordered a comprehensive evaluation of counterterrorism measures, following the conclusions of a temporary commission that efforts to combat terrorism were poorly coordinated and arbitrary. Pending the outcome of the review, parliament suspended consideration of draft legislation that would restrict the movement of terrorism suspects and impose reporting restrictions on them.

The government in April announced measures to dissuade immigration deportees from filing last-minute applications, including ending the right to remain in the country during review of a repeat asylum request in the absence of new facts or circumstances. Also, all asylum seekers without identity papers will have to convince authorities they did not destroy them or their asylum request will be rejected. Separate draft reforms to the asylum law, laid before parliament in July, would extend

the timeframe for evaluation of applications under the accelerated procedure from five to eight days in order to expand the number of fast-tracked claims. Hammarberg and the Human Rights Committee expressed concerns that the current procedure and the proposed changes did not give asylum seekers the opportunity to adequately support their claims.

In April the government announced it would no longer automatically grant temporary asylum to Somalis. The Dutch Council of State denied an Iraqi couple's request for temporary residency in May on the grounds that the situation in Iraq did not pose risks of random acts of violence. The decision followed a February judgment by the European Court of Justice on a referral of the same case, indicating that the EU directive on refugee recognition (Qualification Directive) does not require an applicant to prove he or she is specifically targeted when the level of indiscriminate violence in a country is sufficiently severe.

The government announced in October its intention to impose stricter language and integration tests for prospective spouses of Dutch residents from non-Western countries. The requirements have been criticized as discriminatory against Moroccan and Turkish migrants.

Poland

The European Commission referred Poland to the European Court of Justice in May for missing the deadline for implementation of three EU directives on gender discrimination. The latest draft of a comprehensive domestic anti-discrimination law raised concerns with respect to protection from multiple discrimination or discrimination based on sexual orientation. The government-controlled Office of the Plenipotentiary for Equal Treatment, created in 2008, lacks autonomy, and does not have a mandate to take complaints or assist individual victims, but the government resisted calls to establish an independent anti-discrimination body.

In a landmark decision in August, a regional court fined a woman for hate speech against her gay neighbor that had triggered harassment by others. Discrimination based on sexual orientation remains a serious problem, however, with hate speech apparently on the rise.

Poland continues to have one of the most restrictive abortion laws in Europe, and access to contraception and prenatal testing is limited. During a visit in May the UN special rapporteur on the right to health observed that women in Poland face significant barriers to accessing legal abortions and other reproductive health services. In September a court ordered a Roman Catholic magazine to compensate a woman it had publicly vilified for seeking an abortion on medical advice.

Spain

Counterterrorism measures in Spain continued to attract international criticism. The UN special rapporteur on human rights while countering terrorism and the Human Rights Committee, in December 2008 and January 2009 respectively, both expressed concerns over broad definitions of terrorism-related offenses and the continued use of incommunicado detention.

Spain extradited ethnic Chechen Murat Gasaev in late December 2008 to Russia on the basis of diplomatic assurances of humane treatment and a fair trial. Gasaev, whose extradition had been sought in connection with an attack on government buildings in Ingushetia in 2004, was released without charge in August, after 10 months in pretrial detention.

In July the European Court of Human Rights upheld, as a legitimate and proportionate interference with freedom of

association, a 2003 ban on Basque political parties Batasuna and Herri Batasuna on the grounds they were linked to the ETA. On the same day, the Court ruled against the applicants in two related cases, finding that their inability to stand for election due to links to the banned political parties did not violate their right to freedom of expression.

Cooperation with France led to more ETA members being arrested in 2009, including Jurdan Martitegi Lizaso in April, the fourth military leader to be arrested since May 2008. ETA claimed responsibility for three separate car bomb attacks over the summer that claimed the lives of a police officer and two civil guards, and destroyed a Civil Guard barracks.

In April the Audiencia Nacional acquitted 10 out of 14 men accused of helping some of the alleged perpetrators of the March 11, 2004 Madrid train bombings to flee Spain, finding the case against them insufficient after excluding email correspondence that was intercepted without proper authorization. The other four were convicted and sentenced to prison terms ranging from two to nine years.

Police unions denounced pressure to arrest irregular immigrants on the basis of quotas, and the use of racial and ethnic profiling in identity checks. In a landmark decision in July the Human Rights Committee held Spain responsible for race discrimination in the 1992 identity check of Rosalind Williams, an African-American who became a Spanish citizen in 1969. The decision is the first international ruling that racial or ethnic profiling violates the right to non-discrimination.

Arrivals by sea were down in the first half of 2009, in part due to increased surveillance and interceptions. Unaccompanied migrant children in the Canary Islands were still housed long-term in substandard accommodation designed as temporary shelter. Spain suspended deportations of unaccompanied children to Morocco in 2008 following numerous court decisions blocking such returns. In September 2009 a court ruled that Spain had to allow back a Moroccan national illegally expelled as a child in 2006.

United Kingdom

Allegations of complicity by UK intelligence services in extraordinary renditions and the torture of terrorism suspects, including UK nationals, dogged the government throughout the year. The Parliamentary Joint Committee on Human Rights and the House of Commons Foreign Affairs Committee issued critical reports in August. The Joint Committee and human rights groups called for an independent inquiry into all allegations, calls the government has rejected.

In March the attorney general ordered a criminal investigation into alleged collusion by Security Service (MI5) agents in the torture and ill-treatment of Binyam Mohamed, an Ethiopian UK resident released from Guantanamo Bay and returned to the UK in February. Police are also investigating a separate case involving alleged complicity by Secret Intelligence Service (MI6) personnel in the abuse of an unnamed foreign national. The UK High Court ruled in February that it could not publish summaries of classified intelligence documents from the United States that support Mohamed's allegations of torture while in Pakistan, due to concerns about disrupting UK-US intelligence cooperation.

In June the Law Lords ruled that reliance by the government on secret evidence to impose control orders on terrorism suspects restricting their liberty violated the right to a fair hearing. The ruling followed a February judgment from the European Court of Human Rights against the UK for its now-defunct policy of indefinite detention, in which the Court stressed that denying terrorism suspects the right to know the case against them violates their rights.

Since June the High Court has quashed three control orders-including two in November where it rejected government arguments that less restrictive orders did not require disclosure of the evidence on which they were based-and obliged the government to modify another, while the government lifted another order rather than reveal all the evidence. In September the government asked the independent reviewer of terrorism legislation to conduct an assessment of the control order regime.

Three men were sentenced to life imprisonment in September for conspiring to kill thousands of people in 2006 by using home-made liquid bombs to explode airplanes flying from London to the United States. A fourth man was sentenced to a minimum of 22 years.

Efforts to deport terrorism suspects on the basis of unreliable diplomatic assurances of humane treatment continued. In February the Law Lords ruled the government could deport two Algerians and Jordanian Omar Othman (known as Abu Qatada) under the terms of assurances provided by the governments of their respective countries of origin. Abu Qatada appealed the ruling to the European Court of Human Rights, which at this writing has yet to hear the case. The UK government signed a Memorandum of Understanding with Ethiopia containing similar diplomatic assurances in December 2008.

The government announced in April 2009 it would increase the number of detention facilities for failed asylum seekers and those being processed under the "detained fast-track" procedure. Particularly vulnerable asylum seekers with complex claims, including women who survived sexual violence, were routed through this accelerated procedure and faced detention and removal without adequate consideration of their claims. The UK continued to detain migrant children with their parents, with demonstrable negative impact on their mental and physical health.

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