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World Report 2011 - European Union

Events of 2010

The EU gained new architecture to protect human rights, with the Charter of Fundamental Rights entering into force in January, a greater role for the European Parliament, and the creation of an EU commissioner for fundamental rights. New commissioner Viviane Reding promised a "zero tolerance" policy for EU states violating the charter.

Infringement proceedings against Greece over its asylum system indicated the European Commission's willingness to hold member states to account for rights violations. The commission publicly faulted France over expulsion of Roma, emphasizing procedural safeguards when limiting free movement of EU citizens, rather than non-discrimination obligations.

The scale of the challenge to ensure full respect of human rights in the EU was underscored by evidence of growing intolerance – manifest in electoral success by far-right parties, including in ruling coalitions, and policies targeting Roma, Muslims, and migrants – and ongoing concerns over abusive counterterrorism policies, inadequate access to asylum, and uneven protection against discrimination.

Common EU Asylum and Migration Policy

Efforts to reform and harmonize asylum procedures across the EU remained stalled. Studies by the United Nations High Commissioner for Refugees (UNHCR) in March and the European Commission in September found significant differences and shortcomings in the way asylum claims are handled across the EU.

Around three-quarters of all irregular migrants entered the EU through Greece in 2009, with early estimates for 2010 suggesting a rising trend. Arrivals by sea dropped significantly in 2010, with the EU border agency, Frontex, reporting a 75 percent decrease in maritime arrivals in the first half of the year. Only 150 people reached Italy and Malta in the first quarter of the year, down from 5,200 in the same period in 2009. Sea arrivals in Spain were also down sharply.

The Dublin II Regulation, which requires asylum claims to be made in the first country of

entry into the EU, exacerbated the burden placed on Greece's already broken asylum system (discussed below). But European Commission-led efforts to initiate modest reform encountered strong opposition from some member states.

As of mid-2010 the European Court of Human Rights (ECtHR) had issued orders to states to suspend more than 750 "Dublin" returns to Greece, with thousands more pending or blocked at national level. In September the United Kingdom government halted all such returns to Greece. As of early November the Netherlands, Belgium, Finland, Sweden, Iceland, and Norway (the latter two not EU countries) had done the same.

In September the ECtHR heard a challenge to the policy brought by an Afghan returned by Belgium to Greece, where he claims he was subjected to ill-treatment and risked being returned to Afghanistan without proper examination of his asylum claim. A ruling is pending at this writing.

The European Commission's May action plan on unaccompanied migrant children called for a common European approach to ensure durable solutions in children's best interests.

The UK and other EU countries (as well as Norway) pursued plans to build reception centers in Kabul, Afghanistan, in order to repatriate unaccompanied children, despite concerns over security and lack of safeguards.

Dozens of rejected asylum seekers were returned to Iraq in at least three joint flights between April and September, despite objections by UNHCR. Frontex coordinated at least one of these charter flights. The UK and the Netherlands organized their own flights, in addition to participating in joint returns. In November the Netherlands announced a halt to such deportations after the ECtHR intervened. The UK said it would suspend removals if ordered to do so by the ECtHR.

New guidelines for Frontex operations at sea, adopted in April, included a ban on return to persecution and the obligation to consider the needs of vulnerable groups, including asylum seekers, children, and trafficking victims.

Malta withdrew from Frontex missions in March over the guidelines, which require those rescued in international waters to be taken to the mission's host country rather than the closest port. But in July, Malta participated in a controversial joint rescue operation with Libya, which led to some Somali migrants being returned to Libya, while others were brought to Malta.

The European Parliament approved an EU readmission agreement with Pakistan in September, despite serious concerns about respect for human rights clauses. There were also concerns that the agreement would facilitate the repatriation of Afghans, including children, who transited through Pakistan.

The European Commission signed a cooperation agreement with Libya in October, including €50 million (approximately US\$67 million) for border management and refugee protection, despite the forced closure of UNHCR's office in Tripoli in June.

Discrimination and Intolerance

The Roma, Europe's largest minority, continued to face discrimination, exclusion, and extreme poverty across the region. In April the European Commission adopted a communication on Roma for the first time, ahead of the second EU Summit on Roma held later that month in Spain, calling for more effective policies to address multiple sources of marginalization of Roma. EU countries, notably Germany, continued to repatriate Roma to Kosovo despite UNHCR guidelines, while France targeted Roma for repatriation to Eastern Europe.

Despite concerns about interfering with the right to freedom of religion and personal autonomy, efforts to restrict face-covering veils in Europe gained political momentum in

2010. France's parliament approved legislation in September banning the wearing of such veils in all public places and making it a crime to coerce women to cover themselves. The Constitutional Council ruled in early October that the law was compatible with France's constitution.

The lower house of the Belgian parliament approved similar legislation in May. At this writing, it has yet to be examined by the Senate. A ban was included in the coalition agreement in the Netherlands in September, with proposals also on the table in Spain, Italy, and Denmark.

In May Germany's interior minister ruled against a similar ban, but a December 2009 Federal Labor Court ruling, which upheld a ban on a teacher in North-Rhine-Westphalia wearing a headscarf in the classroom, underscored the continued presence of state-level restrictions on headscarves for teachers and civil servants.

Germany and other EU states blocked efforts to upgrade EU anti-discrimination laws to prohibit discrimination on grounds of religion, age, disability, and sexual orientation. National obstacles to ending discrimination against lesbian, gay, bisexual, and transgender people also remained, including in the Netherlands, where transgender persons could only officially change gender if they undergo irreversible sex reassignment surgery, and Italy, which still lacked explicit protection against discrimination on the grounds of sexual orientation.

Counterterrorism Measures and Human Rights

UN special rapporteurs on torture and on human rights while countering terrorism concluded in a joint February report that Germany (one case, 2002) and the UK (several cases, from 2002 onward) had been complicit in secret detentions of terrorism suspects. In June the Council of Europe commissioner for human rights criticized the lack of progress towards full accountability for complicity in United States abuses in Poland, Romania, and Sweden. A criminal investigation was launched in January in Lithuania after a parliamentary committee concluded in December 2009 that the CIA had established two secret detention facilities in that country in 2005 and 2006.

Resettlement of Guantanamo Bay detainees in Europe continued. Between January and September, 10 detainees were resettled in EU countries, three each in Spain and Slovakia, two in Germany, one in Bulgaria, and one in Latvia. Italy and Spain both pledged to take two more.

As part of the action plan to counter radicalization and recruitment to terrorism, the Council of the EU agreed in April to systematically collect and share information on radicalization, raising right to privacy concerns.

In September the EU General Court annulled a November 2008 European Commission terrorism finance regulation freezing the assets of Saudi national Yassin Abdullah Kadi, the second EU Court ruling against his asset freeze, in both cases for lack of procedural fairness.

Human Rights Concerns in Select EU Member States

France

In July the government launched a highly-publicized campaign to expel Roma from France following riots sparked by the fatal shooting of a member of the community of French *gens du voyage* ("travelers") that month by a gendarme (now under criminal investigation). By the end of August, 128 informal settlements had been dismantled – including those occupied by French *gens du voyage* – and almost 1,000 Roma sent back to Romania and Bulgaria. An August 5 directive from the interior minister, leaked in early September and subsequently annulled, ordered prefects to take "systematic action to dismantle illegal camps, priority given to those of Roma" linked to the expulsions,

showing discriminatory intent.

In September France agreed to improve procedural safeguards after the European Commission threatened infringement proceedings over its failure to properly implement EU law on freedom of movement. The changes have yet to be introduced at this writing.

Following its August review of France, the UN Committee on the Elimination of Racial Discrimination expressed concern over what appeared to be collective expulsion, as well as the difficulties Roma and French *gens du voyage* face exercising their rights and accessing education and decent housing. The committee also expressed broader concern about discriminatory political discourse in France and increased racist and xenophobic violence.

In October the National Assembly approved a government draft immigration law weakening the rights of asylum seekers and migrants, despite criticism from UN Committee against Torture in May and ECtHR in 2009 about inadequate safeguards for fast-tracked asylum claims. The Senate is to debate the law in early 2011.

The bill also contained last-minute government amendments designed to widen the grounds for expelling EU citizens to include "abusing" France's welfare system, exploitation of begging, and "abusive" occupation of land. The amendments' timing and focus and statements made by government ministers strongly suggested the measures were aimed at Roma.

In late December 2009, French authorities expelled a Tunisian man to Senegal on national security grounds, despite an order from the ECtHR to suspend his removal. Earlier that month the court ruled that France would violate its obligations under the European Convention if it deported an Algerian man who served six years in France on terrorism charges. France complied.

In July the Constitutional Council declared the inadequate safeguards in ordinary criminal cases, including denial of the presence of a lawyer during interrogations, unconstitutional. In October the government introduced draft legislation to reform police custody. Legislation remains pending at this writing. The ECtHR subsequently ruled in October that the current rules violated fair trial standards. Also in October the Court of Cassation, the highest criminal court, ruled that weaker safeguards in terrorism, organized crime, and drug trafficking cases violate the right to an effective defense. At this writing the current draft law does not address these issues.

Germany

In a February report the UN special rapporteur on racism underscored persistent racism, xenophobia, and discrimination when it comes to housing, employment and education, living conditions, and movement restrictions for asylum seekers.

The Grand Chamber of the ECtHR ruled in June that Germany had violated the ban on ill-treatment when it only fined a deputy police chief (later promoted) and his subordinate for threatening a kidnapper with torture in 2002, concluding that the punishment lacked the necessary deterrent effect.

In a judgment that became final in May, the ECtHR ruled that a German law allowing convicted prisoners deemed dangerous to be detained indefinitely after they have served their sentences violated the right to liberty and prohibition on arbitrary detention.

In July Germany lifted its restrictions on the application of the UN Convention on the Rights of the Child, covering a variety of issues, including asylum-seeking children. German rights groups continue to call on the government to bring the treatment of unaccompanied migrant children in line with the convention, including ending accommodation with adults and detention pending deportation of those aged between

16 and 18.

Greece

In September UNHCR described the situation facing migrants and asylum seekers in Greece as a "humanitarian crisis." There were no concrete improvements despite the government's repeated commitments to overhaul its broken asylum system, restore appeal rights, ensure humane treatment for migrants, and police accountability for ill-treatment.

A presidential decree containing modest reforms, including addressing a backlog of more than 46,000 cases, remained stalled, in part because of the country's budget crisis. Only 11 of 30,000 applicants (0.04 percent) were granted asylum at first instance in 2009. Wider reforms have been pushed back to 2011 or later.

The European Commission continued infringement proceedings against Greece for its breach of EU asylum rules, sending the government a second letter of formal notice on June 24. In response to a request from Greece, Frontex deployed 175 border guards to the Greece-Turkey border in November.

Migrants and asylum seekers continued to be detained in substandard conditions. There is little or no assistance for unaccompanied migrant children and other vulnerable groups, many of whom live in destitution or on the streets, at risk of exploitation and trafficking. Following a visit in October, the UN special rapporteur on torture called conditions in many immigration detention facilities inhuman and degrading.

Violence by armed opposition groups, as well as strikes and demonstrations, marked a year of increasing economic crisis and austerity measures in Greece. There were several deadly bomb attacks against public buildings, killing a bystander in March and the assistant to the minister of citizen protection in June. Other attacks caused structural damage. In November police in Greece and elsewhere intercepted over a dozen letter bombs addressed to foreign embassies in Athens, the Greek parliament, heads of state, and institutions in Europe.

A policeman was sentenced in October to life in prison for intentionally shooting a 15-year-old boy in Athens during a demonstration in December 2008, sparking nationwide riots. Another officer was sentenced to 10 years in prison for complicity.

In May the Council of Europe European Committee of Social Rights made public conclusions from December 2009 condemning Greece for widespread discrimination against Roma in access to housing. The same committee had condemned Greece in 2004.

Italy

Racist and xenophobic violence and hostile political discourse remained a pressing problem. In January, 11 African seasonal migrant workers were seriously injured in drive-by shootings and mob attacks over a three day period in Rosarno, Calabria. At least 10 other migrants, 10 law enforcement officers, and 14 local residents required medical treatment. Over 1,000 migrants left the town following the violence, most of them evacuated by law enforcement personnel. Numerous countries expressed concern about racism and xenophobia in Italy during its Universal Periodic Review at February's UN Human Rights Council (HRC).

Roma and Sinti continued to suffer high levels of discrimination, poverty, and deplorable living conditions in both authorized and unauthorized camps. Eastern European Roma, primarily from Romania and living in informal settlements, faced forced evictions and financial inducements to return to their countries of origin. In October the Council of Europe European Committee of Social Rights published conclusions from June condemning Italy for discrimination against Roma in housing and access to justice, economic, and social assistance.

Italy continued to deport terrorism suspects to Tunisia, including Mohamed Mannai in May, despite the risk of ill-treatment, persistent interventions from the ECtHR, and condemnation by the Council of Europe. A June resolution from its Committee of Ministers reiterated Italy's obligation to comply with European Court decisions.

The European Committee for the Prevention of Torture said in an April report that Italy violated the prohibition on refoulement when it intercepted boat migrants attempting to reach Italy and returned them to Libya without screening for people needing international protection. Two Italian officials faced prosecution in a Sicily court for their role in the return of 75 people to Libya on an Italian Financial Police boat in August 2009.

Italy failed to offer asylum to approximately a dozen Eritreans it had pushed back to Libya in 2009, where alongside hundreds of other Eritreans they suffered ill-treatment, abusive detention, and threat of deportation to Eritrea.

In May a Genova appeals court convicted 25 out of 29 police officers for violence against demonstrators at the 2001 G8 summit, overturning acquittals by a lower court. The Interior Ministry said it would not suspend the officers. Appeals against the May decision are pending at this writing.

The Netherlands

General elections in June left the anti-immigrant Freedom Party in third place with 24 parliamentary seats. In late September, after months of negotiations, the Liberal Party and Christian Democrats announced a center-right coalition government resting on Freedom Party support.

In October Freedom Party leader Geert Wilders appeared in court for inciting discrimination and hatred against Muslims, non-Western immigrants, and specifically Moroccans, as well as for group defamation of adherents to Islam. Later that month new judges were appointed following a challenge by Wilders over alleged bias; the case remains pending at this writing.

New rules in July extended the 48 hour accelerated asylum procedure to eight days while making it the default procedure, despite domestic and international criticism that eight days are insufficient for a proper assessment, particularly in complex cases and those involving vulnerable groups. In February the UN Committee on the Elimination of Discrimination against Women criticized Dutch accelerated procedures as unsuitable for women victims of violence and unaccompanied children, and urged the government to recognize formally domestic violence and gender-based persecution as grounds for asylum.

The ECtHR ruled in July that the expulsion to Libya of a Libyan man, acquitted of terrorism charges by a Dutch court in 2003, would violate the ban on returns to risk of torture.

In September, under a new policy announced in July, the government deported a Somali who had been refused asylum to Mogadishu, despite UNHCR guidelines advising against all returns to south-central Somalia.

Poland

Official flight records obtained by two national human rights groups in February confirmed that at least six CIA rendition flights landed in Poland in 2003. A criminal investigation launched in 2008 into complicity in a CIA secret prison continued, with reports suggesting the prosecutor was considering war crime charges against former president Aleksander Kwasniewski and other former senior officials. In September the prosecutor in charge of the case said his investigation would include the alleged detention and torture of a Saudi man while in CIA custody in Poland.

Discrimination based on race, gender, and sexual identity remained serious problems. In June the Council of Europe's European Commission against Racism and Intolerance (ECRI) expressed concern over Poland's failure to adequately address discrimination against Roma and non-citizens in education, housing, employment, and health. The European Commission referred Poland to the EU Court of Justice in May for failing to implement the EU directive on race equality. At this writing a government-sponsored anti-discrimination bill is pending final approval in parliament and is expected to come into force in January 2011. A coalition of 40 rights groups criticized the bill as failing to protect against discrimination on the basis of sexual orientation, disability, age, or religion in a variety of spheres, or against gender discrimination in education.

Warsaw hosted a landmark gay rights rally in July. The first EuroPride parade in a former Eastern Bloc country was peaceful, despite strong opposition. In December 2009 the UN Committee on Economic, Social and Cultural Rights had expressed concerns about discrimination against lesbian, gay, bisexual, and transgender persons in Poland. The ECtHR ruled in March that Poland discriminated unlawfully against same-sex couples by denying them the same protection in relation to housing and succession rights afforded to unmarried heterosexual couples.

In a May report the UN special rapporteur on the right to health criticized Poland over the lack of access to legal abortions, contraception, and prenatal testing.

Spain

The violent Basque separatist group ETA announced a unilateral ceasefire in early September after a year of relative inactivity and significant arrests under continuing France-Spain cooperation. A French gendarme was killed in March near Paris in a shoot-out with suspected ETA members. In January the Spanish Supreme Court ruled that 2006 negotiations between elected Basque officials and Batasuna, the Basque nationalist party declared illegal in 2003 for alleged ties to ETA, did not constitute a crime. Three ETA members were convicted for the December 2006 bombing of a Madrid airport. They will serve a maximum of 40 years in jail each, despite the symbolic 1,000 year sentences.

Spain rejected recommendations from peer governments during its Universal Periodic Review at the HRC in May. The rejected recommendations included the improvement of safeguards for terrorism detainees held without access to communication and the implementation of the 2008 justice reform in terrorism cases recommendations made by the UN special rapporteur on human rights while countering terrorism. The Spanish government similarly rejected recommendations to create an independent police complaints mechanism.

Parliament approved in June an overhaul of Spain's criminal code effective December 2010, increasing sentences for over 30 crimes, creating a new system of post-sentence "supervised liberty" for terrorism and sex offenses, and creating a new crime of disseminating information to "provoke, foment or foster" the commission of a terrorism offense.

Judge Baltasar Garzón, known internationally for his efforts to bring former Chilean dictator Augusto Pinochet to justice, was suspended in May and faced trial for investigating alleged cases of illegal detention and forced disappearances of more than 100,000 people during Spain's civil war and under the subsequent Franco regime, despite a 1977 amnesty law. The UN Working Group on Enforced or Involuntary Disappearances expressed concern in May over Garzón's suspension and criticized Spain's amnesty law.

Around 200 unaccompanied migrant children, mainly from sub-Saharan Africa and Morocco, remain in "emergency" centers set up in 2006 in the Canary Islands despite repeated pledges by the local government to close them. Around half live in La Esperanza, a substandard, large, isolated former detention facility. The UN Committee on the Rights of the Child expressed concern in September over inadequate reception conditions and neglect of children in the Canaries. It recommended that Spain establish child-friendly centers and introduce effective complaints mechanisms for children in

care to report ill-treatment.

A new law came into force in July removing restrictions on abortion to make it legal on request up to the fourteenth week of pregnancy. It also increased access to, and information about, reproductive rights and family planning. Prior to the reform, abortion was lawful only on the grounds of serious health risks for the woman, fetal malformations, or in rape cases.

United Kingdom

General elections in May resulted in a coalition between the Conservative and Liberal Democrat parties, Britain's first coalition government since 1945.

In July the new government announced a judge-led inquiry into allegations of complicity of UK intelligence agencies in torture, and for the first time published guidance for intelligence officers on interrogating detainees abroad. The inquiry, whose detailed terms of reference have yet to be published at this writing, is not expected to begin until all ongoing criminal investigations into alleged complicity by British agents in overseas torture were resolved. In November the UK's top prosecutor announced there was insufficient evidence to prosecute a Security Service (MI5) officer over the abuse of Binyam Mohamed. The same month the government announced it would pay former Guantanamo Bay detainees compensation to settle civil suits and avoid disclosure of classified documents, without UK authorities admitting culpability.

Concerns remained that current guidelines on overseas interrogations give too much latitude to intelligence officers, appear to create ministerial discretion to permit use of abusive techniques, and foresee assurances as a means of mitigating the risk of torture or ill-treatment, despite their inherent unreliability.

The Equality and Human Rights Commission warned the government in September that it would seek judicial review by the courts if the guidance was not amended. Lawyers representing civilians detained and allegedly tortured by British forces in Iraq also threatened action because the guidelines do not unequivocally prohibit hooding, an issue central to the public inquiry into the 2003 death of Iraqi hotel receptionist Baha Mousa while in British military custody in Basra. The inquiry's hearings ended in October and a final report is pending at this writing.

Heavily redacted documents were published in July and September following a High Court order in a civil case brought against the UK government by six former Guantanamo Bay detainees. The documents provided evidence that the government was aware as early as January 2002 of allegations that UK citizens and residents were being tortured in US custody but failed to object to transferring UK nationals to Guantanamo Bay. The documents also included 2002 guidance to UK intelligence officers that if they observed the "mistreatment" of prisoners in foreign custody "the law does not require you to intervene to prevent this."

In July the Home Office launched a review of much-criticized counterterrorism measures, including control orders, extended pre-charge detention, stop and search without suspicion, and deportation with assurances. At this writing the government has yet to present its reform proposals to parliament. The government suspended the terrorism stop and search power in July, following the ECtHR's confirmation that the powers violated privacy rights, was too broad, and lacked safeguards.

Despite the Home Office review, the coalition government agreement endorsed the use of diplomatic assurances to deport terrorism suspects.

In May the Special Immigration Appeals Commission (SIAC) blocked the deportation on the basis of diplomatic assurances to Pakistan of two Pakistani terrorism suspects. In July the US government began extradition proceedings against one of the suspects. The case is ongoing at this writing. SIAC ruled in September that an Ethiopian terrorism

suspect could be safely deported to Ethiopia despite the risk of torture, the first case involving a 2008 agreement between the two countries. An appeal is pending at this writing.

In June the UK High Court confirmed a moratorium on transfers of terrorism suspects to the National Directorate of Security (NDS) facility in Kabul following allegations of torture. In March the ECtHR ruled that the UK violated the rights of two Iraqis by transferring them from UK military custody in Basra to Iraqi authorities in December 2008. The court rejected the UK government's appeal in October.

The prime minister publicly apologized in June for the "unjustified and unjustifiable" 1972 killing of 14 unarmed protestors in Northern Ireland by British soldiers, following the long-awaited report from the Bloody Sunday Inquiry published the same month. The 12 year inquiry concluded the soldiers did not face any threat and gave no warnings before firing.

The death in October of an Angolan man as he was being deported by private security guards working for the Home Office prompted an inquiry by the Parliamentary Home Affairs Committee into restraint techniques used during such removals. A criminal investigation into the death was ongoing at time of writing.

Children continued to be detained in immigration centers despite the government's pledge in May to stop the practice. Women, including survivors of sexual violence in Pakistan, Sierra Leone and Uganda, continued to be placed in the "detained fast-track" asylum procedure unsuited to considering such complex claims.

The Supreme Court ruled in July that two gay asylum seekers from Iran and Cameroon could not be denied protection on the grounds that they could conceal their sexuality in their countries of origin. The Home Office announced new rules to prevent removals to countries where individuals face persecution based on their sexual orientation or gender identification.

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