Wickenburggasse 14/7, A-1080 Vienna, Austria; Tel +43-1-408 88 22; Fax 408 88 22-50
e-mail: office@ihf-hr.org – internet: http://www.ihf-hr.org
Bank account: Creditanstalt-Bankverein 0221-00283/00, BLZ 11 000

Judicial Systems and Human Rights in the OSCE Region in 2001

Report to the

OSCE/ODIHR Human Dimension Seminar

Warsaw, 23-25 April 2002

International Helsinki Federation for Human Rights

(IHF)

The **International Helsinki Federation for Human Rights (IHF)** is a non-governmental organization that seeks to promote compliance with the human rights provisions of the Helsinki Final Act and its Follow-up Documents. In addition to supporting and providing liaison among 41 Helsinki Committees and cooperating organizations, the IHF has direct links with human rights activists in countries where no Helsinki Committees exist. It criticises human rights abuses regardless of the political system of the state in which these abuses occur. It has consultative status with the United Nations and the Council of Europe.

The IHF represents member and co-operating committees in Albania, Austria, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Finland, France, Georgia, Germany, Greece, Hungary, Italy, Kazakhstan, Kosovo, Kyrgyzstan, Latvia, Lithuania, Macedonia, Moldova, Montenegro, the Netherlands, Norway, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, Sweden, Switzerland, Ukraine, United Kingdom, and the United States. Other cooperating organizations include the European Roma Rights Center (Budapest), and Human Rights Without Frontiers (Belgium).

International Helsinki Federation for Human Rights (IHF)
Wickenburggasse 14/7, A-1080 Vienna, Austria
Tel: (+43-1) 408 88 22, Fax: (+43-1) 408 88 22-50
E-mail: office@ihf-hr.org
Internet: http://www.ihf-hr.org/

Bank account: Creditanstalt Bankverein 0221-00283/00

Preface

This report is based on information gathered for the IHF Report *Human Rights in the OSCE Region: the Balkans, the Caucasus, Europe, Central Asia and North America, Report 2002.* The report focuses on human rights developments in the OSCE region in 2001.

TABLE OF CONTENTS

INTRODUCTION

The **International Helsinki Federation for Human Rights (IHF)** has compiled this report for the occasion of the OSCE/ODIHR Human Dimension Seminar on “Judicial Reform and Human Rights,“ to be held in Warsaw on 23–25 April 2002. The report includes information collected by independent monitors and legal analysts on judicial systems and the rule of law situation in 35 OSCE participating States.

This report focuses, for example, on the following legal issues surrounding the independence of the Judiciary and Human Rights:

- In many formerly communist states legal reforms are not completed, as the old laws are still in force, or the judges still apply old laws instead of new ones.
- Judges are often poorly trained; most studied during the socialist era, so they have acquired little knowledge of international human rights standards. Judges are often poorly paid, which leads to corruption being a serious and wide-spread problem. Additionally, citizens in these societies lack confidence in and respect for judges, while the latter are overburdened with work.
- The judiciary is often dependent on the executive branch, and under constant political pressure. The appointment procedure is in many cases biased, as appointees are nominated by the ruling political class.
- In some countries, courts may hand down good verdicts that are never implemented.
- Judges and prosecutors often still perceive they ought to defend the “interests of the state”, not the interests of the individual.
- Courts are understaffed; many judges go to work in the private sector because of better pay and status
- Many countries have huge backlogs of cases, such as Croatia and Slovenia, but this also occurs in Western countries, such as Belgium and Italy.
- Many defendants spend years in pre-trial detention, for example, in Poland, where a man was in pre-trial detention for over 5 years for a drug offense.
- The main problems of detainees are excessively long detention periods, not being informed about their rights, and often having no access to lawyers, medical doctors, or relatives.
- An exceedingly long pre-trial detention period facilitates torture and ill-treatment, which is one of the most serious and wide-spread problems. Many courts use “confessions” and other information extracted under duress as evidence, and ignore allegations of torture.
- This report also dedicates a significant part to the state of the judiciary in Western countries, such as Great Britain, the USA and Germany after the 11 September 2001 terrorist attacks. Those attacks have led to legal changes that jeopardize or directly violate the right to a fair trial and the rights of detainees.

ALBANIA[1]

The Constitution provided for an independent judiciary. However, in practice, the judiciary was handicapped by a lack of resources and inexperienced staff. In addition, it was often subject to political pressure and widespread corruption – facts that hindered it from operating independently.

Judges were poorly trained in the enforcement of new legislation and often insensitive to human rights violations. In the first serious effort to curb widespread corruption within the judicial system, the Government initiated successful disciplinary actions before the High Council of Justice against over a dozen judges and prosecutors. In May, an attempt by the Government to impeach three judges of Albania's highest court for having allegedly favoured a suspected drug dealer, failed to pass a vote in Parliament. This was in part due to the Government's inability to substantiate the allegations.[2]

The undue prolongation of investigation and court proceedings was probably the main problem in the Albanian judicial system. Even simple cases that should have been able to be decided in two to four weeks (e.g. thefts, unsanctioned demonstrations and similar) often lasted for several months.

The main reason for postponing court proceedings was the failure of the prosecutor, lawyer, defendant or witnesses to show up in court.

Within a project carried out in co-operation with the Netherlands Helsinki Committee, the AHC monitored the human rights situation of persons in custody and in prisons. During the year, the AHC received 54 complains from inmates or their families.

According to the AHC, some positive developments took place regarding the rights of detainees and prisoners, in particular the improvement of legislation on pre-trial detention facilities, better treatment of inmates and some improvement in the operation of the police who underwent training in human rights.

Nevertheless, the conditions in pre-trial detention facilities left much to be desired.

Only one such facility had a separate sector for juvenile delinquents. Most facilities were overcrowded. In some police stations the physical conditions were totally substandard containing cells with high humidity, decayed walls and floors and extremely poor sanitary conditions. Some pre-trial detainees had no mattresses or blankets. The quality of food was poor and detainees were therefore dependent on food brought by their relatives – those who received none, were left in health-threatening conditions. Medical care was generally insufficient and necessary medication was either unavailable or only available from relatives of friends.

The violations of the detainees' rights included the failure to inform them of their rights; prohibiting their lawyers from being present during interrogations; and holding individuals in custody in excess of the legal detention period. Further, convicted prisoners were not always transferred to already overcrowded prisons but continued to be held in poorer conditions in police facilities, in violation of the law. Some were held there even a year after a court ruling.

On 15 January a convict escaped from the pre-trial detention facility in Lushje, after having been held there for a long time after the official court verdict. He was one of many convicted prisoners who had escaped from police facilities.

Given the poor conditions in pre-trial detention facilities, the Albanian Helsinki Committee (AHC) urged the authorities to take immediate measures to transfer convicted persons to prisons. It also urged that responsibility for pre-trial detention facilities be immediately moved from the Ministry of Public Order to the Ministry of Justice.

The AHC also recorded cases in which the police had violated Articles 251 and 252 of the Code for Criminal Proceedings regarding cases of *flagrante delicto*. While in such cases the alleged perpetrators must be caught in the act, legal provisions were misused to arrest people even months after an alleged criminal offence. In addition, houses were searched without warrants (in violation of

---

[1] Unless otherwise noted, based on the *Annual Report 2001* of the Albanian Helsinki Committee (AHC).
[2] *Human Rights Watch World Report 2002,* at http://hrw.org/wr2k2/europe1.html

Articles 202-205 of the Criminal Procedure Code); detention periods exceeded the legal 10 hours and the police did not always even record arrests: such cases were recorded in Kurbin, Kavaje, Kukes, Lezhe, Berat, Skrapar, and Vlore.

The right to legal defence, guaranteed by Articles 255 and 256 of the Criminal Procedure Code, was frequently ignored. In practice, numerous detainees interviewed by the AHC had made statements without the presence of a lawyer. According to the law, the police had to inform the detainees of this right, but in many cases this was only done by means of a written note. The detainees' relatives were often not informed about the detention.

The rights of minors (up to 18) were also violated. In all those police stations monitored by the AHC, Articles 35, 38, 255 and 256 of the Criminal Procedure Code had been violated: the parents or the guardians had not been contacted; and no legal or psychological support had been offered.

Some persons were found to have been tried *in absentia*. Some of them had attempted to avoid legal proceedings, others were not even aware of proceedings initiated against them. The AHC also found that many members of the judicial police (who investigate crimes prosecutors) failed to deliver court notices and decisions to litigants or convicts who had filed an appeal. Since under law there were specific deadlines for delivering court decisions, the failure to adhere to these led to significant violations of the rights of appeal of those concerned.

By law, the right to privacy and the inviolability of the person were guaranteed. However, at times authorities infringed upon these rights.

From 10-11 April, the AHC held a conference on alternative punishment and rehabilitation measures for sentenced criminals. It proposed, among other things, that community service and other alternatives forms of punishment be developed under the guidance of judicial authorities, the Prosecutor's Office, the Ministry of Justice and the Prisons Service, and in cooperation with NGOs. Another problem at issue was the treatment of juvenile delinquents, women and alcohol and drug addicts at police stations and pre-trial detention facilities as well state measures against trafficking in human beings and the treatment of its victims.

ARMENIA[3]

The judiciary remained largely dependent on the executive. In particular, the procedure for appointing judges and the system for monitoring the activities of courts provided the executive with powerful mechanisms for exercising influence on the judiciary.

Judges were appointed by a three-stage procedure. After examining the qualifications of applicants, the Ministry of Justice drew up a list of candidates. This list was submitted to the Council of Justice, which was composed of judges, prosecutors and research lawyers but chaired by the President and vice-chaired by the Minister of Justice, for comments. The President made the final appointments.

The Council of Justice was also charged with overseeing the activities of courts by examining complaints filed against judges. No official information on the number of complaints dealt with by the Council or the decisions reached by its members were published. According to unofficial sources, the Council examined 585 complaints in the year 2000.[4]

The PACE recommendations made prior to Armenia's accession to the Council of Europe stressed the necessity of reforming the judicial system in the republic so as to guarantee its independence. In particular, the PACE exhorted the Government to undertake a reform of the Council

[3] This chapter is based on information to the IHF from two main sources: Civil Society Development Union (CSDU) and the Armenian Helsinki Association (AHA). Contact information: CSDU, Artak Kirakosyan (President), 31 Moskovyan Str., apt.19, Yerevan 375002, Armenia, tel/fax: +374-1 53 32 83, mobile +374-9 40 36 09, e-mail csdu@csdu.am, www.csdu.am. AHA, Mikael Danielyan (Chairman), apt. 11, Papazian 24, 375012, Yerevan, tel: +374-1 536-797, tel/fax: 374-1 533-099, mobile: +374-9 417-113, e-mail mike@arminco.com, www.hahr.am

[4] Sara Petrossyan, Association of Investigative Journalists, January 2002.

of Justice within three years of accession.[5] A reform of the Criminal Code also lagged behind schedule, which meant *inter alia* that the death penalty remained in force.

Public attitudes towards the judicial system were markedly adverse. A national survey conducted by the Armenian Sociological Association indicated that over 80% of the population did not have confidence in judges.[6] In a survey from 1999[7] the respondents labelled the judiciary as the most corrupt state structure, and in a survey from the year 2000[8], 69% of the respondents said that, if a dispute they were involved in could not be solved between the parties, they would under no circumstances take it to court.

The physical conditions of courts were also miserable. The buildings were in extremely poor condition and the judges often cited poor working conditions when attempting to justify mistakes in their work.

Suspects were frequently not informed of their rights, in particular the right to legal counsel. Detainees who invoked this right were only granted access to a lawyer after official permission had been received from the investigator. Law enforcement officials often did not send any official notice to persons they wished to interrogate but summoned them only orally.

Meanwhile the status of witnesses remained problematic. The legislation in force failed to grant witnesses the right to refuse to be interrogated unless a lawyer was present. Interrogators used this legal loophole to call suspects as witnesses and pressure them into signing confessions. Judges usually left complaints about coerced confessions un-investigated; they simply asked the interrogator if any irregularities had taken place, and accepted his/her denial of this and dismissed the defendant's complaint. There were also cases where witnesses who refused to reiterate statements they had made under duress were threatened with charges of acting as false witnesses.

The parties in court did not enjoy equal procedural rights. While generally the prosecutor's word was trusted, defence lawyers had to provide a large amount of evidence in order to convince the court of the innocence of their clients. Sometimes the verdicts handed out were outright arbitrary, thus strengthening suspicions of corruption on the part of judges.

On 12 June, the National Assembly announced an amnesty to mark the 1700th anniversary of the adoption of Christianity as Armenia's state religion. In addition, a considerable number of prisoners had their sentences reduced. In total, some 2,000 prisoners were affected by the amnesty. Initially the amnesty was also extended to the defendants in the case of the 1999 National Assembly terror attack, but the trial continued.

On 18 May, the Appeal Court for Criminal and Military Affairs slightly reduced the seven-year prison sentences handed down in December 2000 to former Minister of Education, Ashot Bleyan, the leader of the opposition party Nor Ughi, and former head of the educational complex named Mkhitar Sebastatsi. He was found guilty of embezzlement and abuse of power. Both trials were marred by serious violations of due process standards. While no substantive evidence against the suspect was presented, he was denied the right to an effective defence, including legal counsel. During the appeal case trial, armed troops from the Ministry of the Interior were present in the courtroom. In July Mr Bleyan was released on the basis of Article 49 of the Criminal Code, which allows the release of a prisoner who has served a third of his/her prison sentence. Human rights organizations judged the case to be politically motivated.[9]

---

[5] PACE, The Parliamentary Assembly of the Council of Europe (PACE), Opi*nion No. 221*, 2000.
[6] Armenian Sociological Association, Survey on Citizen Participation, 2001.
[7] Carried out by the CSDU on public perception of corruption.
[8] Conducted by Versus.
[9] AHA and CSDU

AUSTRIA

The modification of the Criminal Procedure Code (*Strafprozessordnung)*, if adopted in the form proposed by the Justice Minister in April[10], would bring about important changes in the Austrian judicial system. According to the Justice Minister, it would provide the victims with, among other things, better chances to file cases as plaintiffs (*Privatkläger*), to have earlier access to their files and to require taking up specific evidence in their case. In addition, a suspect would have the right to consult a lawyer already before the initial interrogations, which is not the case in Austria under the present Code. Moreover, socially vulnerable victims of sex crimes or other violence would get the opportunity to receive free legal and psychological support.

Also, the reform would increase the powers of prosecutors and place on them responsibilities previously vested in the investigating judges (*Untersuchungsrichter*). These judges have the task of leading pre-trial proceedings. After the reform, a prosecutor would cooperate closely with law enforcement officials, for example in interviewing suspects and witnesses. The investigating judges would merely operate as watchdogs over the basic rights of the suspects. This function would include dealing with complaints of misconduct by police officers, and the monitoring of house searches and people.

A positive development is the fact that prosecutors would be obliged to substantiate the termination of judicial proceedings, an obligation that they do not have under the present Criminal Procedure Code. This omission had become an issue particularly in politically sensitive cases. On the other hand, according to the amendments, prosecutors would still be appointed by the Justice Minister, who could thus potentially have at least an indirect say in the proceedings.

AZERBAIJAN[11]

On 25 December, the Parliament ratified the European Convention on Human Rights (ECHR). As a result, Azerbaijani citizens will have the right to file complaints to the European Court on Human Rights for violations of their rights by the State.

During an expanded session of the Prosecutor's Office Collegium on 1 October, Attorney General Zakir Qaralov stated that a new Directorate on Support of State Accusation had been established within his Office, and the Directorates for Control over the Legality of Judgments in criminal and civil cases had been abolished. A new division on public relations was established to improve transparency in the work of the Prosecutor's Office.

In February, the Secretary General of the Parliamentary Assembly of the Council of Europe (PACE) appointed three independent experts to investigate whether there were any political prisoners in Azerbaijan and Armenia. The experts concluded that there indeed were political prisoners in Azerbaijan, and proposed to elaborate upon the criteria for their definition. The Secretary General of the Council of Europe requested the Azerbaijani authorities to release all political prisoners.[12]

However, while the authorities denied the existence of political prisoners, they also pardoned many of them; 36 political prisoners were released on 17 August, three on 17 October, and 29 on 29 December.

---

[10] See the draft amendments at www.justiz.gv.at/gesetzes/download/strafproz_vorverf.pdf
[11] Based on the Human Rights Center of Azerbaijan (HRA), *Status of Civil and Political Rights in Azerbaijan in 2001*.
[12] SG/Inf(2001)34/24 October 2001.

According to the Human Rights Centre of Azerbaijan (IHF cooperating committee), there were about 670 political prisoners in Azerbaijan, of whom at least 54 were arrested after Azerbaijan's accession in Council of Europe. Other human rights organizations cited the total figures between 213 and 360.

There were about 18,000 prisoners in Azerbaijan, including at least 3,000 in pre-trial facilities (SIZO) as of the end of 2001. The 1 February amnesty covered 8,516 persons, including 2, 429 convicted prisoners, 4,703 court proceedings, and 996 in pre-trial investigation. The sentences of other 320, who had not served their term of imprisonment, were reduced, and 68 more persons were completely released from punishment. Further, in the period between August and December, 174 people were pardoned and 121 pre-trial detainees released. At least 68 political prisoners were among those pardoned. Unserved prison sentences of at least 53 were reduced.

On 19 June, the President decreed the establishment of a new Presidential Commission on Pardon Affairs. The 19-member Commission consists of clergy, members of Parliament, intellectuals, trade unionists, journalists, as well as two human rights activists.

BELARUS[13]

The judicial system was highly dependent on the executive branch. The executive continued to decide about appointments and dismissals of judges. Judges were poorly paid, and they did not enjoy a prestigious social status. While a poll indicated that 60% of the judges would like to change their job, it was very difficult to find persons to fill vacant positions, and many of them remained unoccupied. This situation contributed to undermining professionalism within the judicial system.

Arbitrary arrests were frequently carried out; persons were arrested for just about any reason and later charged with some offence that served to justify the arrest. Those arrested were also often subjected to abuse. Prosecutors and courts typically backed up the police actions.

Trials seriously violated international standards. Falsified evidence and confessions extracted by coercive means were readily accepted, while suspects were denied an effective defence. The practice of presuming suspects to be guilty also prevailed. Closed trials were held on dubious grounds, including an unreasonably broad definition of state secrets.

In particular, the features of cases involving prominent public figures gave rise for concern**.** A special commission was entrusted with examining these cases before they were taken up in court**.** The commission was composed of the heads of the Ministry of Interior, the KGB, the Prosecutor's Office, the Supreme Court and the Supreme Economic Court and reported to the President. The commission's activities were not transparent. Formally, courts did not cite the commission's or any authority's opinions when handing down a verdict. However verdicts on prominent cases usually followed previous statements of high state officials. At the same time, well-substantiated arguments of the defence were not taken into consideration.

Private persons often refrained from bringing legal cases to court due to high fees. For example, a person who wanted to file a complaint against the actions undertaken by a state official was requested to pay a fee equivalent to half the average monthly salary in the country. The fee also increased proportionally with every claim that a complaint consisted of.

---

[13] Unless otherwise noted based on Belarusian Helsinki Committee (BHC), *Annual Report 2001*.

Public confidence in the legal system remained low. During the year, over 5,000 persons complained to the Presidential Administration about investigations carried out and judgements issued.

.

BELGIUM[14]

Bar Associations and Lawyers

The independence of lawyers in Belgium also remained a problem in 2001. Lawyers continued to be obstructed and even prevented from acting on behalf of a client due to injunctions and commands of the presidents of local bar associations. No measures were taken to prevent this kind of abuse and manipulation of the judicial process. Lawyers dealing with sensitive issues or politically tainted cases were especially vulnerable to outside interference.[15] There were cases, which no lawyer would take because they feared retaliation from the bar association.

Basic human rights were denied to lawyers who faced charges. Theoretically, every citizen had the right to represent him/herself in court and appear "*pro se*"- however, lawyers were denied that right. They were not even allowed to act on behalf of their family members. Lawyers were also denied free access to the courts when they wished to summon a colleague for damage suffered through a tort or for breach of contract. These interdictions were upheld by the bar associations.

Court Malfunctions

In 2001, the Belgian State was convicted by the Court of First Instance in Brussels due to its failure to take adequate measures to resolve the backlog of cases and the damage which individual litigants suffered as a consequence.[16]

The Belgian judiciary and court system suffered from structural problems resulting in the inability of the judiciary to manage its caseload effectively, which was the main reason for the overwhelming backlog of cases. However, it was usually claimed that the backlog was caused by the high litigation rate and dilatory tactics of parties and lawyers.

Simple and straightforward cases could drag on for years because courts postponed cases and scheduled hearings for far-off dates; it was no exception to witness courts setting a hearing date in a minor case to 1.5 years after the moment of request.

The malfunctioning of courts gave the citizens the impression that no justice could be obtained and that courts thwarted the exercise of their rights. As a result, citizens lost confidence in the system and perceived it as corrupt. A case that significantly contributed to distrust towards courts was that of Marc Dutroux.

- In 1996 Marc Dutroux was arrested for suspected murder and leading a pedophile and child pornography trafficking ring. As of the end of 2001, Mr Dutroux and four other suspects remained under investigation pending trial that was scheduled to start in September 2002. Dutroux is a previously convicted child sex offender who is serving a 5-year sentence for theft and assault. The delays in proceeding with the pedophile and trafficking charges against Mr Dutroux raised serious doubts about adequate investigation and the judicial system in general.

---

[14] Based on Human Rights Without Frontiers, *Report on Human Rights in Belgium in 2001*.
[15] *De Standaard*, 24 April 2001, p. 9.
[16] Tribunal of first instance of Brussels, 6 November 2001, *Journal des Tribunaux*, 1st December 2001, p. 865.

Concerns about the independence of the judiciary were echoed by press reports about judges being members of secret societies such as Masonic lodges that traditionally have a strong influence on the Government and the judiciary in Belgium. Some court cases were allegedly settled and "arranged" within such societies.

In the aftermath of the paedophile scandals and the "Dutroux scandal", Belgium had to take some measures to appease the criticism and outrage of the population over the total failure of the judicial system. However, some of these measures appeared to be only window-dressing and did not bring about any real improvements. One such measure was the creation of a High Council for Justice (*Conseil Supérieur de la Justice*) which was supposed to act as a watchdog for judicial correctness. The two main tasks of the Council are to supervise the appointment of judges and to process complaints filed by citizens on abuses and miscarriages of justice.

The Council released its first report on 26 November 2001. Of the total amount of complaints filed with the Council during 2000 and 2001, 91% were declared inadmissible. Of the remaining complaints, only 43% were processed. Thus, over the surveyed period, less than 5% of the persons who filed complaints with the Council received an answer. It therefore appears that the High Council for Justice does not provide direct answers to the fundamental problems and issues with which the Belgian Judiciary is confronted with.

Reporting on the administration of justice in Belgium was troublesome. The judiciary and the Government did not keep any centralized records or statistics of the number of complaints received or the actions taken in disciplining magistrates.[17] Available reports were seriously biased, all official reports were prepared by the Government or government institutions, a fact that seriously compromised the objectivity and independence of these reports: the Belgian Government acted both as an auditor and the audited party.

BOSNIA AND HERZEGOVINA[18]

The police and judicial authorities in the RS and the Federation were under the control of the nationalist parties SDS, HDZ and SDA whose authorities abused their power.

The President and one of the Vice-Presidents of the BH Constitutional Court followed the policy of the nationalistic parties. The professional dignity of the Constitutional Court was defended primarily by its three international members (French, Austrian and Swedish) and the former President of the Court, the Bosniak Kasim Begic. In the meantime, the situation in the BH Supreme Court improved after it had hired experts and professionally independent persons.

The Sarajevo Canton displayed the most progress in the operation of courts after appointing to office Amir Jaganjac, the President of the Cantonal Court in Sarajevo. The courts began initiating proceedings in cases involving organized crime and corruption. However, the malfunctioning of the Prosecutor's Offices impeded the processing of cases due to political pressure exerted by the nationalist parties.

---

[17] UN Commission on Human Rights, *Report of the Special Rapporteur on the Independence of Judges and Lawyers*, 21 February 2000, E/CN.4/2000/61.

[18] Based on Helsinki Committee for Human Rights in Bosnia and Herzegovina, *Report on the State of Human Rights in Bosnia and Herzegovina, January-December 2001*, and Helsinki Committee for Human Rights in Republika Srpska, *Annual Report on the State of Human Rights in Republika Srpska*.

The courts in the Herzegovina-Neretva Canton had a large backlog of cases. Nonetheless, the judges were appointed by the SDA and the HDZ. The two parallel systems evident in the judiciary and law enforcement process – led by SDA and HDZ authorities, respectively – could be seen by the fact that the Bosniak and Croat judges and police officers received their salaries from different sources.

Those who disagreed with the policy of the SDA in the Una-Sana Canton could not exercise their rights before the courts. For example, 12 teachers in Cazin and Velika Kladusa were illegally dismissed but were unable to take their cases to court for two or three years.

BULGARIA[19]

In 2001, there was constant pressure from the Prosecutor's Office and the Ministry of the Interior for amendments in the legislation regulating detention measures during pre-trial proceedings. None of the drafts tabled in Parliament to this effect were passed by the end of the year.

The serious problems concerning the right to a fair trial and access to justice of indigent criminal defendants remained as acute as in previous years. No legislative amendments for the improvement of access to justice were undertaken. As a result, thousands of indigent defendants remained without a lawyer at all stages of the criminal proceedings and sentences were imposed in gross violation of fair trial standards.

The large number of people detained for lengthy periods of time without effective court sentences remained a serious problem in 2001. Not infrequently, years passed from the moment of indictment to the passing of the final sentence.

The legal framework for the accommodation of children in juvenile educational centres was also not improved in 2001. The Bulgarian Helsinki Committee's visits to these centres established gross violations of domestic procedure. In many cases, the municipal commissions for combating juvenile delinquency had either not held any meetings or had functioned without observing the legally established procedure.

CROATIA[20]

The judiciary was still not able to escape strong political influence. On the face of it, the problem could be attributed to the fact that in the past judges were often appointed on the basis of political rather than professional criteria. Some of these judges still had difficulties working in a manner that was not politically motivated. Furthermore, the public perception of political influence on the work of the police, the public prosecutors and the financial police was extremely high.

The professional level of the judiciary had not significantly improved during the last two decades. The "cleansing" of the judiciary, which had been carried out by the former regime according to political criteria and had brought to the courts numerous young and inexperienced judges, weakened the efficiency and quality of the work of the courts. This could clearly be seen from the figure of one million pending cases, the long duration of court procedures and the large number of decisions made by higher courts to annul the decisions of lower courts.

---

[19] Based on the Bulgarian Helsinki Committee *Annual Human Rights Report for 2001*. For the full report, see www.bghelsinki.org. Materials from the Tolerance Foundation and the Bulgarian Gender Research Foundation were also used.

[20] Based on the *Annual Report of the Croatian Helsinki Committee on the State of Human Rights in the Republic of Croatia in the Year 2001.*

- The CHC monitored a criminal procedure before the Zadar County Court against alleged war criminals who had committed crimes against prisoners of war. The accused persons were put on trial *in absentia,* were ruled guilty and sentenced to imprisonment. One of the accused, finding out about the sentence, filed a request for the renewal of the proceedings. His request was accepted, there was a new trial, and he was acquitted. Considering the sensitive nature of the circumstances surrounding the entire procedure and the environment in which it was executed[21], human rights observers concluded that the entire proceedings were carried out in a relatively correct manner. The only objection to the impartiality of the judiciary was witnessed when the sentence was read by the President of the Court. He stated, among other things: "The accused might be guilty, but we, for the time being, do not have any firm evidence."

CZECH REPUBLIC[22]

The number of prisoners in the country remained relatively high in 2001, with over 200 prisoners per 100,000 inhabitants. According to the Czech Helsinki Committee (CHC), imprisonment was used too often as punishment, especially in cases of minor crimes that cannot be considered a great danger to society. The CHC also deplored the fact that family and health conditions were not taken into account when persons found guilty of crimes were sentenced to imprisonment.

During the year, the CHC received 569 complaints from 420 persons regarding the penal system. Most frequently, problems concerned penal proceedings, rejection of cases, prison conditions and health care of inmates. Other problems included prison security and transfers between prisons.

The vague legal situation for persons awaiting deportation also remained a serious problem. As there was no particular legislation regulating detention in cases of this kind, persons to be deported often had to spend lengthy periods of time in custody, sometimes for periods of more than a year.

The high number of inmates had a negative impact on prison conditions. As there were not enough resources and trained personnel to meet all the needs of the prisoners, matters related to, for example, food, hygiene and leisure activities were subjected to much criticism from the prisoners and their relatives.

In a positive development, an amendment to the Criminal Procedure Code, due to enter into force on 1 January 2002, transferred the responsibility for the preparatory phase of criminal proceedings from police investigators to public prosecutors and judges. As a result, the police investigator offices were incorporated into the general police structure.

DENMARK[23]

A large number of criminal cases were processed in a courtroom with only the judge and the prosecutor present but no counsel for the defendant. According to Article 732 of the Code on the Administration of Justice, the court may find that the nature of the case was not sufficiently substantial for the accused to require a defence counsel. Such cases included a number of minor offences such as shoplifting.

---

[21] Zadar suffered great destruction and many casualties during the war.
[22] Unless otherwise noted, this section is based on the *Annual Report 2001* of the Czech Helsinki Committee.
[23] Based on the *Annual Report 2001* of the Danish Helsinki Committee.

Of further concern was the fact that those convicted in “minor cases” often received notification indicating that they now had a criminal record that will remain with them for up to five years. Since the early 90s, criminal records have been an increasing problem for many people wanting to enter the job market. Due to the fact that employers increasingly demanded from their employees a perfect record or a spotless police report, these petty crimes barred many from getting a job. Thus a case, which the courts considered to be ”minor” could have crucial significance for the future of an individual, who had been unjustly denied a defence counsel. The Society for Humane Criminal Policy (KRIM) recommended that the concept of petty crimes or misdemeanours be prosecuted as usual, but omitted from the police record.

In fact, the daily newspaper *Politiken*[24] reported that during the period between 1997-99, the number of people with criminal records increased by a staggering 40%. This continuing pattern was in line with the increases reported in previous years.

Lack of Compensation

Doubts remained as to the availability in Danish law of effective remedies for human rights violations as required by several human rights conventions, for example, Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination.

A recent report to the Ministry of Justice[25], which formed the basis for a revision of the Damages Liability Act, was silent on the question of compensation for human rights violations. According to the sparse information on this practice, compensation was awarded in cases of defamation of character, deprivation of liberty and sexual offences. The gravity of the abuse, combined with the nature of the act as well as consideration of the circumstances, all determined the amount of the sum awarded. The tort concept reserved compensation to instances where violence occurred in a particularly insulting or humiliating manner. As a result, many types of human rights violations were not covered by the relevant Article 26 of the Damages Liability Act. For example, in a case of discriminatory denial of entry to a discotheque, compensation was refused by the High Court and an application to the Supreme Court was declared inadmissible. Moreover, compensation could not be applied for even in cases of the gravest crimes of violence if the violence had not been carried out in the above-mentioned manner.

- In a judicial examination of the treatment of refugees in Copenhagen prisons, a separate report reviewed the alleged maltreatment of Himid Hassan Juma and Babading Fatty.[26] No reference was made to Article 26 - nor was this done at a much later date when a discretionary amount *ex aequo et bono* was paid to Mr Fatty.

The question as to whether the Damages Liability Act provides an effective remedy for human rights violations has been considered in complaints before the UN Committee on the Elimination of Racial Discrimination (CERD). In one case Denmark argued a communication inadmissible due to the failure to exhaust domestic remedies. The Committee did not accept the argument and found that there had been no remedy.[27]

[24] 26 May 2000.
[25] *Betænkning [Report] No 1383/2000*.
[26] Copenhagen, February 1992, pp. 223.
[27] CERD, *Communication No. 10/1997*, views adopted on 17 March 1999, at Para. 6.1, 6.2 & 10; reprinted in CERD compilation, CERD/C/390, p. 64.

The issue was discussed in more detail in a later communication with CERD.[28] Although the positions were similar, the CERD made a specific recommendation on effective remedies. That, however, was not considered by Denmark when revising the law.

In a later statement, CERD recommended that, although there had been no violation of Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination in the case under consideration, Denmark "[7…] take the measures necessary to ensure that the victims of racial discrimination seeking just and adequate reparation or satisfaction in accordance with Article 6 of the convention, including economic compensation, will have their claims considered with due respect for situations where the discrimination has not resulted in any physical damage but humiliation or similar suffering."[29]

Solitary Confinement

By law, persons in police custody awaiting trial could be placed in solitary confinement. The purpose of this long-standing practice was to prevent the detainee from influencing witnesses and alleged accomplices. A person in solitary confinement was deprived of contact with people inside and outside the prison: the only exceptions were prison staff, police and attorneys. The police usually allowed only supervised visits from close relatives to persons in solitary confinement. They also controlled all correspondence and access to newspapers, books and radio/TV. Solitary confinement was applied for several months in a number of cases and there were cases where it had been in effect for more than a year. Each year, several hundreds of people have been held in solitary confinement.

According to an investigation carried out by the Danish police in 1987-1997, solitary confinement in police custody caused strain and a risk to mental health. In May 2000 the law was amended in order to diminish the use of solitary confinement by extending the conditions for it, and limiting the maximum period of isolation to three months.[30] The limitations did not apply to the most serious crimes. Following the implementation of the 2000 provisions, there has been a 50% decrease in the use of solitary confinement.

The use of solitary confinement during police custody has been a subject of criticism on the domestic and international levels, including criticism voiced by the UN Committee Against Torture (CAT), the European Commission for the Prevention of Torture (CPT) and the UN Human Rights Committee, which in October 2000 expressed particular concern "about the wide use of solitary confinement for incarcerated persons following conviction, and especially for those detained prior to trial and conviction." The Committee stated that "solitary confinement is a harsh penalty with serious psychological consequences and is justifiable only in case of urgent need; the use of solitary confinement other than in exceptional circumstances and for limited periods is inconsistent with Article 10 (1) of the Covenant." It urged to reconsider the practice of solitary confinement and ensure that it is used only in cases of urgent necessity.[31]

---

[28] CERD, *Communication No. 17/1999, B.J. v. Denmark*, views adopted on 17 March 2000, 55 UN GAOR Suppl. 18 (A 55/18), Para 458 & Annex III.A, p.116, reprinted in CERD compilation, CERD/C/390, p. 77.

[29] CERD, Communication No. 17/1999, decision of 17 March 2000.

[30] By law, a person could be held in solitary confinement for four weeks if the crime he/she was charged with carried a prison sentence of up to four years; for eights weeks for a crime carrying a sentence of up to six years; and for three months for crimes carrying a sentence longer than six years. There was no limit for inmates suspected of the most serious crimes.

[31] UN Committee on Human Rights, *Concluding Observations of the Human Rights Committee: Denmark*. 31/10/2000. CCPR/CO/70/DNK.

ESTONIA[32]

Formal arrangements for reforming the judiciary were generally firmly established, and, in general, state officials, political parties, the media as well as the public acknowledged the independence of the judiciary. However, some matters remained of concern.

Firstly, the executive branch continued to closely administer district and regional courts, which enabled the Ministry of Justice to exercise indirect influence over decisions taken by the courts. This problem has already been discussed for several years in the country, and in late 2000 the Ministry of Justice sought to address it by proposing a new Courts Act. However, the draft law contained a number of troublesome provisions and most judges did not believe that it guaranteed sufficient institutional independence to the courts. In 2001 the examination of the draft law did not advance noticeably.

Secondly, the district and regional courts exercised no separate control over and were only to a minimal extent involved in the planning of their finances. At the same time the budgetary process was not regulated in detail, which left considerable discretion to the executive and legislative branches when allocating funds to the lower-level courts. There was also concern that improvements in the judges' salaries foreseen by the new Courts Act had only been included to encourage judges to refrain from criticising other aspects of the draft law.

Thirdly, remaining shortcomings in the functioning of the courts coincided with a trend of declining public confidence in the judiciary. Close to six percent of all administrative cases were still pending more than two years after their start and 20 percent of all criminal cases were pending for more than one year in the lower level courts.[33] Although the quality of court decisions in the lower instances improved, as evidenced by a growing number of decisions upheld upon appeal, some judges also continued to display uncertainty in their application of the law. It was therefore a positive step that a new strategy for training judges was adopted in February.[34] Further measures to reduce the backlog of cases and to improve the quality of the work of judges were particularly motivated in light of studies indicating that a clear majority of the public perceived courts as slow and inefficient.

FINLAND[35]

On 7 November the UN Human Rights Committee concluded its consideration of a 1997 communication submitted by two reindeer breeders of Sami origin from Finland. The plaintiffs were members of the Sallivaara Reindeer Herding Co-Operative, which had 286,000 hectares of state-owned land available for reindeer husbandry. The authors had brought a suit in the Lappi District Court of first instance against the National Forestry and Park Service (*Metsähallitus*), a state enterprise responsible for the administration of state-owned land and water areas. The suit sought to prohibit any logging or road-construction in the Mirhaminmaa-Kariselkä area (which was said to be the best winter herding lands of the Sallivaara Co-Operative) because the loggings would endanger reindeer herding in that area.

---

[32] Unless otherwise noted, based on the chapter on Estonia in Open Society Institute (OSI), *Monitoring the EU Accession Process: Judicial Independence*, September 2001, at www.eumap.org.

[33] Figures for the situation as of the beginning of 2001, European Commission (EC), *Regular Report on Estonia's Progress Toward Accession*, November 2001, at www.europa.eu.int/comm/enlargement/estonia

[34] EC, *Regular Report on Estonia's Progress Toward Accession*, November 2001.

[35] Unless otherwise noted, based on a report from the Finnish Helsinki Committee and on UN Human Rights Committee, *Communication No 779/1997: Finland*, 7 November 2001

On 30 August 1996, the District Court had decided to prohibit logging or road construction in Kariselkä, but to allow it in Mirhaminmaa. On Forestry Service's appeal to the Rovaniemi Court of Appeal court, the Forestry Board sought then exceptional measure of oral hearing. The Court granted this motion while rejecting the plaintiffs' motion that the Court itself conducted an on-site inspection. In July 1997, the Court allowed logging also in Kariselkä, and awarded court costs of 75,000 FIM (12,615 Euro) against the plaintiffs. The ruling, however, was partly influenced on allegedly distorted arguments presented by the Forestry Service to the Court claiming that the Human Rights Committee had not found a violation of Article 25 in a separate case.[36] The plaintiffs had not the brief because the Court had deemed their access to that particular information "manifestly unnecessary". In October 1997, the Supreme Court decided not to grant leave to appeal.

In December 1997, the Parliamentary Ombudsman decided that the municipality of Inari and its mayor had exerted inappropriate pressure on the plaintiffs by formally asking them to withdraw from the legal proceedings, but did not find that the Forestry Service had acted unlawfully or otherwise wrongly. In November 1998, the plaintiffs were ordered to cover the court costs of over 20,000 FIM (3,365 Euro): the sum corresponded to a major share of the plaintiff's taxable annual income.

On submission of their communication to the UN Human Rights Committee, the authors claimed a violation of Article 14 (1) (equality before the court and the right to a fair trial) and 14 (2) (presumption of innocence) under the International Covenant on Civil and Political Rights (ICCPR). They contended that the Appeal Court had not been impartial, having pre-judged the outcome of the case and violated the principle of equality of arms in allowing oral hearings while denying an on-site inspection; and taking into account material without providing an opportunity to the other party to comment on it. They also contended that the appellate level's award of costs against them, a party whose suit had been partly satisfied at the first instance, represented biased behaviour and effectively prevented other Sami from invoking Covenant rights to defend their culture and livelihood – in particular, as there was no state assistance available to impecunious litigants to meet court costs.

The authors also asserted that the Forestry Service had exerted improper influence on them while the case was before the courts. Moreover, the authors maintained that the Supreme Court's unreasoned decision to deny leave to appeal violated the right to an effective remedy under Article 2(3) even though a miscarriage of justice (in violation of Article 14) had been demonstrated. Finally, the plaintiffs claimed a violation of Article 27, contending that the permission to log in the herding lands, coupled with a reduction of the permissible number of reindeer, amounted to a denial of their right to enjoy their culture, in community with other Sami, for which the survival of reindeer herding was essential.

On 24 October 2001, the UN Human Rights Committee found a breach of Article 14(1) in conjunction with Article 2 of the ICCPR. The Committee held that a rigid duty on a court to award costs to the winning party may have a deterrent effect on the ability of persons who wish to pursue a remedy before a court. Thus, the Committee found that the imposition of substantial court costs against the plaintiffs at the appellate level constituted a violation of the right to an effective remedy. Further, the Committee found that the Court of Appeal had violated the principle of equality before the court and the right to a fair trial by failing to provide full opportunity to the authors to challenge the submissions made by the Forestry Service. The Committee was of the view that there had been a breach of Article 14 (1) both taken alone and in conjunction with Article 2.

---

[36] Jouni Länsman et al. v. Finland, *Communication No 671/1995: Finland*, 22 November 1996.

As regards the allegations of harassment and intimidation exerted by the Forestry Service, the Committee noted that there was not sufficient material to consider their substance and the possible effect on the proceedings. Likewise, the Committee found no violation of the plaintiffs' right to enjoy their culture as provided for in Article 27, referring to a lack of information to determine the factual importance of reindeer husbandry on Sami culture and the long-term impacts of logging on its sustainability. In conclusion, the Committee held that the authors were entitled to an effective remedy, and therefore Finland was under an obligation to refund to the authors the proportion of the court costs already recovered and to refrain from executing any further portion of the award. Furthermore, the Committee held that as the decision of the Court of Appeal was tainted by a substantive violation of fair trial provisions, Finland was obligated to reconsider the plaintiffs' claims. The Committee also obliged Finland to ensure that similar violations do not occur in the future.

FRANCE

Anti- Terrorism Legislation

In response to the 11 September terrorist attack on the US, new temporary measures were adopted by the French National Assembly on 31 October to strengthen the existing anti-terrorist plan named "Vigipirate". These amended the Day-to-Day Security Law (*Loi relative à la sécurité quotidienne*). Concern was expressed over the hastily prepared amendments, which afforded increased power to the police against potential criminals. These gave extended power to search private vehicles and bags and the obligation on the police to retain phone records, whilst the role of the judiciary in controlling police activity was diminished. Further, the law increased the powers of private security firms. The measures also permitted the retention of DNA records to extend to all crimes, not just sex crimes. The League of Human Rights (*Ligue des droits de l'homme,* LDH) argued that these moves were not only against the constitution by limiting citizen's rights but also may potentially have a negative impact on immigrants. Public denunciations against the law were also made by a group of 300 Parisian lawyers in December.

Several cases were brought to the European Court of Human Rights during the year concerning the protracted length of pre-trial detention and judicial proceedings.

- In July, the Court held unanimously that the criminal proceedings against Dris Zannouti lasting five years, ten months and ten days violated Article 6.1 of the European Convention (right to determination of civil rights within a reasonable time).
- A second case in July, found that civil proceedings in the case of Catherine Malve, which had commenced in January 1995 and were still pending on 31 July 2001, also violated Article 6.1. Further violations were pronounced in October.[37]

GEORGIA[38]

The high profile reform of the court system continued in 2000. However, many problems persisted.

[37] Cf Cases *Fransisco v France* (app.no. 38945/97); *Durand(2) v France* (app.no. 42038/98); *Parege v France* (app.no. 40868/98). For details, at www.echr.coe.int

[38] Unless otherwise noted, based on information received by the IHF and its affiliate, the Caucasian Centre for Human Rights.

The Parliament failed to restore the improvements brought about by the May 1999 Criminal Procedure Code that was in line with international human rights standards. Soon after the positive amendments, the Parliament modified almost half of the new Criminal Code provisions. As a result, many of the new provisions again severely eroded the rights of persons under investigation, narrowing access to courts of general jurisdiction during criminal investigations. These amendments particularly hampered the possibility to file complaints with a court for abuse during a criminal investigation. The repeal of the reforms was alarming given the frequent reports of serious abuse of detainees and other procedural irregularities during criminal investigations and widespread corruption also in the judicial system. In addition, the practice of restricting access to courts left law enforcement officials wide scope for coercing bribes from suspects while providing little or no recourse for an effective legal remedy to protest such misconduct.

The Council of Europe Parliamentary Assembly in 2001 expressed "its deep concern with regard to allegations of ill-treatment or torture of detainees in police custody and pre-trial detention, cases of arbitrary arrests and detentions, the violation of the rights of persons under police arrest or in pre-trial detention – in particular their right to consult a lawyer and to communicate with their family – complaints on violation of procedural rights, cases of intimidation, violation of the right to privacy, phone tapping, and so on".[39]

The criminal justice system continued to put great emphasis on isolating detainees during criminal investigations, and *incommunicado* detention was a serious concern. Visits by family members and other outside contact were severely limited during the pre-trial period and subject to the control of the prosecutor. What was more, defence lawyers often found it difficult to meet with their clients, and there were persistent complaints that investigators impeded lawyers from visiting their clients, or in some cases, prevented detainees from retaining lawyers of their own choosing. The amendments to the criminal procedure code severely weakened judicial oversight of the power of the prosecutor during the pre-trial period. The near absence of judicial oversight prior to trial was particularly troubling, as this was the time when most torture and ill-treatment occurred.[40]

HUNGARY[41]

Basic guarantees of independence and the functional separation of powers among the different branches were firmly established in constitutional jurisprudence, and broad powers of administration were located in the autonomous National Council of Justice. In general, respect for the principles of judicial independence and the role of judges in a free society were accepted by politicians and the public.

However, the positive changes initiated in the early 1990s and advanced by the reforms of 1997 were not yet completed and were partly revered: they included comprehensive reform of the judiciary in 1997, the creation of strong judicial autonomy through the National Council of Justice (thus separating it from the executive), and significant improvements in judges' social status. On the negative side, public criticism of the judiciary by Government officials, the delays in establishing appellate courts and the extension of lustration laws to the judiciary gave cause for concern, as did the executive's continued control of the budget process, sub-standard working conditions and enormous case-load of judges. There was also concern that the Government had unduly politicised judicial

---

[39] Ibid.
[40] Human Rights Directorate of Caucasus, *Georgia*, April-July 2001, Vol. 1, No. 1(A).
[41] Unless otherwise noted, based on the Hungarian Helsinki Committee, *Human Rights in Hungary 2001*.

reform in a manner that undermined its commitment to judicial independence. In particular, public criticism of the judiciary by Government officials, the delays in establishing appellate courts and the extension of lustration laws to the judiciary gave cause for concern, as did the executive's continued control of the budget process.

Statistics from the Public Prosecutor's Office showed that 850 cases of ill-treatment during official proceedings and 283 cases of forced interrogation were reported in 2000.[42] In accordance with the trend of previous years, only 11% of the reported cases of ill-treatment and 8% of the reported cases of forced interrogation ended with the Prosecutor's Office pressing charges against the accused police officers. The problem was aggravated by the fact that the sentences of the cases that ended up in court were lenient. According to statistics from the Ministry of Justice, out of 101 sentences for ill-treatment during official proceedings and forced interrogation, effective imprisonment was imposed in only two cases (or less than 2%) in 2000. Most perpetrators got away with suspended prison sentences and fines. By contrast, 68 of the 332 defendants (or more than 20%) found guilty of violence against an official received an effective prison sentence.[43] Figures for 2001 were unavailable at the time of writing.

IRELAND[44]

Emergency Legislation and Right to Silence

In August, the Hederman Review Committee, set up to review the Offences Against the State Acts, issued an interim report dealing with the role of the Director of Public Prosecutions (DPP) in certifying cases for trial by the Special Criminal Court. The interim report was prepared in order to assist the Government in making a response to the UNHRC on the case of Joseph Kavanagh.

- Mr Kavanagh was convicted by the Special Criminal Court in 1997 of a range of offences arising from the kidnapping of National Irish Bank Chief Executive, James Lacey. He was tried on foot of a certificate issued by the DPP to the effect that the ordinary courts were "inadequate to secure the effective administration of justice" which he had unsuccessfully sought to challenge by way of judicial review. The Supreme Court effectively found that it was all but impossible to challenge such decisions of the DPP unless *mala fides* could be shown which, in turn, was impossible as there was no obligation on the DPP to give reasons for so certifying cases.

  Mr Kavanagh then made an application under the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), and the UN Human Rights Committee adopted its views in April. The Committee found that Ireland was in breach of the ICCPR in that it failed to demonstrate that the decision to try Mr Kavanagh before the Special Criminal Court was based upon reasonable and objective grounds contrary to Article 26 of the Covenant. It said the state was obliged to provide Mr Kavanagh with an effective remedy and to give wide publicity to the decision. A ninety-day limitation period was imposed on the Government to inform the Committee as to how it proposed to give effect to its views. The Government responded to the Kavanagh decision at the very end of the 90-day limitation period. In its response it referred to parts of the majority opinion contained in the Interim

---

[42] 2001 statistics were not available at the time of writing.
[43] Statistical Department of the Ministry of Justice
[44] Based on a report from the Irish Council of Civil Liberties (ICCL) to the IHF, March 2002. For more information, please contact the ICCL, Dominick Court, 40 Lower Dominick St., Dublin 1, Tel. + 353-1-878 31 36, e-mail iccl@iccl.iol.ie

Report of the Hederman Review Committee. It made no reference to the views of a dissenting minority or to the existence of such a dissent. Those dissenting opinions called for an end to the Special Criminal Court and argued for a strengthening of measures to protect jury trial. Mr Kavanagh was offered compensation of IR£1,000 (1,269 Euro) which he rejected.

The remainder of the Hederman Report was eagerly awaited as of the time of writing. It will, among other things, consider the issue of the right to silence, which has already led to adverse findings against Ireland before the European Court of Human Rights in the cases of Quinn and Heaney & McGuinness against the Republic of Ireland. The UN Human Rights Committee has previously (in 1993 and 2000) called for an end to the jurisdiction of the Special Criminal Court in its concluding observations on Ireland's two periodic reports under the ICCPR.

Detention Periods

Section 4 of the 1984 Criminal Justice Act allowed for detention for up to 12 hours (20 hours if the suspect was held overnight and given time to rest or sleep), and section 30 of the 1939 Offences Against the State Act provided for detention for up to 48 hours. Most allegations of brutality against detainees arose out of "section 30 detention".

In 1998, in response to the Omagh bombing, the Government introduced further emergency legislation in the Offences Against the State (Amendment) Act. It provided for the extension of detention to three days on application to a court within 48 hours. No justification was put forward for the necessity of this longer period of detention and its only effect seemed to have been to put greater pressure on suspects to confess.

The 1996 Criminal Justice (Drug Trafficking) Act provided for seven-day detention for persons suspected of drug trafficking offences, including offences ranging from major drug importation to the supply of a small quantity of cannabis for a friend.

Police Misconduct and Accountability

There continued to be no independent body to investigate complaints relating to *An Garda Síochána* (police force). The procedures for making any such complaint were regulated by the 1986 Garda Síochána Complaints Act and this resulted in police officers being investigated by members of their own force, and any decision to prosecute a police officer was made by the Director of Public Prosecutions, which in practice had a close working relationship with *An Garda Síochána*. The system has been criticised by the European Committee for the Prevention of Torture and local NGOs have led calls for the establishment of an independent Garda Ombudsman, with powers to appoint its own investigating staff. In October, the Minister for Justice, Equality and Law Reform announced that a new Garda Inspectorate would be established to replace the Complaints Board, however no such Bill had been published by the end of 2001 and few details had been given regarding the powers of such an inspectorate.

A number of high profile instances of alleged Garda wrongdoing increased public disquiet about the lack of proper police accountability.

- In March the Government set up an *Oireachtas* (Parliamentary) inquiry into the shooting dead of John Carthy by the Garda Emergency Response Unit at Abbeylara in April 2000. However, in August the High Court, on an application by members of the *Garda Síochána* involved in the shooting, ruled that the *Oireachtas* inquiry was unconstitutional. Many NGOs continued to insist that an independent judicial inquiry was necessary in this case, but the

Government did not accepted such a need, even when the Garda representative bodies subsequently joined in calling for such an inquiry.

- In November, during the trial of Colm Murphy in the Special Criminal Court for involvement in the Omagh bombing, Judge Barr criticised two *gardaí* as being "discredited witnesses" because of falsification of interview notes and ruled their evidence inadmissible. In that case, the behaviour of the two *gardaí* concerned was described as "outrageous". The response of the *Garda Síochána* was to instigate another internal investigation into the circumstances of the investigation.

There were also allegations of wide-scale corruption, harassment and intimidation among members of the *Garda Síochána* in Donegal in what became known as the "McBrearty affair". Yet again there was an internal Garda investigation that has not been made public and no members of the force have been charged with any offences.

ITALY[45]

Italian courts continued to have a bad record concerning excessive delays in court proceedings. According to official data, the average length of a civil lawsuit in Rome was three years, not including any appeal. The final sentence was delivered usually after a period of eight years, compared to the European average of four years.

According to the Inter-Ministerial Committee on Human Rights, Italy was the country with the greatest number of violations of Article 6 of the European Convention on Human Rights (the right to fair trial within a reasonable time) in Europe. In 2001, the European Court of Human Rights issued 359 sentences against Italy (out of a total of 683 in all Council of Europe member States), and approximately 3,500 cases were pending in the Court as of the end of 2001.

Some members of the Extraordinary Parliamentary Committee for the Defence and Promotion of Human Rights in Italy, chaired by Senator Enrico Pianetta, proposed that the issue of long judicial proceedings be addressed and suggested the reform of the judicial system in order to avoid long delays.

On January 12, the General Prosecutor at the Supreme Court of Cassation, Francesco Favara, stated in his annual report on the administration of justice that the "Italian judicial system is still strictly monitored by the Council of Europe and by the European Court of Human Rights because of the length of the lawsuits, but the engagement of Italy to improve the situation is being recognized". Mr Favara added that new measures for the structural modernisation of the judiciary are being planned, and that a reduction of the flow of appeals to the Strasbourg Court could be reached through a "national filter" provided by the draft Law 7327/S – the so-called "Legge Pinto" – that has been approved by the Senate. Mr Favara also noted that excessively long court proceedings limit the deterrent and preventive effects of court judgments, emphasizing that both plaintiffs and defendants would profit from timely proceedings, which are also guaranteed as basic human rights.

On 18 December Minister of Justice, Mr Castelli, announced the establishment of a joint committee of the Supreme Council of the Bench and the Ministry of Justice, charged with identifying the productivity standards of the Italian judicial system by June 2002. Citing the huge number of Italian cases at the European Court of Human Rights, Minister Castelli said that Italy was obliged to take effective measures to improve its "services to citizens". In order to gain more efficient access to

[45] Based on the *Annual Report 2001* of the Italian Helsinki Committee.

necessary judicial data, the Ministry created a new General Department of Statistics. The Vice-President of the Supreme Council of the Bench, Giovanni Verde, noted that the joint initiative will be conducted with due respect for judicial independence.

More than 200 people who were arrested during the Genoa disorder in July 2001 were summarily judged by courts in accelerated procedures in the temporary headquarters of the police and *guardia di finanza* in the Bolzaneto district, and more than 50 in the Forte San Giuliano headquarters of the *carabinieri*. Most of the accused were fined or given short detention terms. Many non-Italian arrestees faced serious difficulties in obtaining legal aid and contacting their lawyers, consulates and families and receiving medical care; many were expelled after several days in custody. Doctors and health officers witnessed many of the arrested persons being wounded.

The Ministries of Internal Affairs and Justice initiated administrative investigations into allegations of the excessive use of force and violations of detainees' rights. The only consequence was that the Minister of Interior removed the Genoa head of police from office on 2 August, the head of national anti-terrorist department and the national vice-chief of police, who was responsible for public order in Genoa during the "G8 summit".

Illegal immigrants held in prison did not have sufficient legal assistance, could not defend their rights due to language problems, and did not always receive correct information.

KAZAKHSTAN

The judicial system remained weak and dependent on the executive power. The 2000 Law on the Judicial System and the Status of Judges granted the President wide-ranging powers in terms of the judicial system: including *inter alia* the right to determine the organisation of the system of district and local courts, appoint and dismiss judges, adopt regulations guiding the work of the boards deciding on qualifications of and disciplinary measures against judges, suspend the authority of the Supreme Court Chairman and sanction the prosecution of judges.[46]

Courts at all levels frequently issued verdicts to reflect the interests of the President and his close circles, and in several cases the judicial system was used as a weapon in the fight against the political opposition.[47] Corruption was also endemic within the judicial system.[48] However, in the spring, judges' salaries were increased significantly, a measure aimed at making them less vulnerable to bribes.[49]

The 1997 Criminal Code contained many features typical of the old Soviet system. The Code allowed police to detain suspects for up to 72 hours without bringing any charges against them. With the prosecutor's approval, the duration of detention could be extended by a further ten days. In practice, suspects were routinely detained for several months although they were not formally charged with any crime. Local police typically acted on the basis of orders from above, i.e. the Ministry of Interior, rather than the provisions of law.[50]

---

[46] Information from the Almaty Helsinki Committee.

[47] Kazakhstan International Bureau for Human Rights and Rule of Law, Amirzan Kosanov, "*Justice Has No Place in Kazakhstan*", On-line Newsbulletin, January 2001, at www.bureau.kz.

[48] Freedom House (FH), *Nations in Transit 2001*, at http://freedomhouse.org

[49] Information from the Almaty Helsinki Committee.

[50] FH, op.cit..

During trial, judges often applied laws that were in violation of the Constitution or outdated. The prosecutor's statements were generally accepted without critique, while the defendants were denied access to case materials and legal counsel. Complaints from the defendants that investigative methods were illegal or that they had been forced to confess were generally ignored. Cases were frequently returned for further investigation, and a considerable number of all court decisions were not implemented.[51]

The Ministry of Interior remained in charge of investigating allegations of abuse, although the agency itself was notorious for resorting to abuse. Only a few judges paid adequate attention to evidence suggesting that suspects were subjected to torture or ill-treatment in pre-trial detention.[52]

Kazakhstan ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1998. After examining the first report submitted by Kazakhstan under the Convention in May, the UN Committee against Torture recommended *inter alia* that the Government promptly propose amendments to the republic's penal law so as to provide for a definition of torture consistent with the definition included in Article 1 of the Convention; establish an independent complaints mechanism, and ensure prompt, impartial and full investigations and prosecutions in cases of alleged abuses by law enforcement officials; guarantee in practice absolute respect for the principle of inadmissibility of evidence obtained under duress; initiate a review of cases where sentences allegedly have been passed on the basis of coerced confessions; and make relevant declarations under the Convention so as to allow the Committee to examine complaints by individuals or other state parties.[53]

KYRGYZSTAN[54]

The absence of the rule of law was one of the main problems in Kyrgyzstan and led to people's mistrust in the democratic process. Generally, court decisions did not follow the law. Courts were dependent on the Presidential Administration, who appointed the judges, controlled their activities, and granted an attestation for their competence after regular checks. No trial of a political nature ended with a lawful ruling, and the courts ignored constitutional and international provisions.

It was claimed that nearly all judges were appointed on the basis of bribes and devotion to the present regime. For example, the Chairman of the Supreme Court was appointed because she blocked the participation of some big oppositional parties such as Ar-Namys, EL and others in the parliamentary elections. Furthermore, because of the low salaries the judges received, they were materially dependant on the authorities and corruption was widespread.

- On 22 January, the Martial Court of Bishkek sentenced Feliks Kulov, one of the main political opponents of President Akaev's regime, to seven years' imprisonment in hard conditions and confiscated his property. Kulov was also deprived of his Soviet-era military rank as a General. In August 2000, the same Court had dismissed the same charges against Mr Kulov. The Kyrgyz human rights community considered the new sentence politically motivated and aimed at removing Mr Kulov from the political scene of Kyrgyzstan.

---

51 Information from the Almaty Helsinki Committee and the Kazakhstan International Bureau for Human Rights and Rule of Law.
52 Ibid: and FH, op.cit.
53 UN Committee Against Torture, *Conclusions and Recommendations on Report of Kazakhstan*, 26th session, 17 May 2001.
54 Unless otherwise noted, based on the *Annual Report 2001 of the Kyrgyz Committee for Human Rights*.

- On 12 June, the Supreme Court ruled that the proceedings against Mr Dyryldaev of the KCHR be terminated. The decision was based on a complaint by Mr Dyryldaev and the prosecutor of the Pervomay Court, both requesting a termination of the proceedings. A few months earlier, the same prosecutor had initiated the proceedings against Mr Dyryldaev. However, when Mr Dyryldaev's lawyer later received the Court's decision in writing, it stated that the Court had ruled Mr Dyryldaev's appeal inadmissible.

LATVIA[55]

In an extremely disturbing development, Latvia witnessed the first murder of a judge in 2001.

- On 15 October an unknown assailant using a home-made machine gun and a pistol murdered Janis Laukroze, chairman of the Criminal Case Collegium of the Riga Regional Court. Laukroze had been in charge of organizing the review of criminal cases within the Riga Regional Court by dividing cases among other judges. Officials asserted that the murder was probably a work-related contract killing. On 16 October the Government announced a 10,000 lat (18,000 Euro) award for information leading to the apprehension of the perpetrator and allocated 50,000 lats (90,235 Euro) to the victim's family. By year's end law enforcement agencies had discovered four large weapons caches, but had not yet detained any suspects.

In 2001 the importance of the Constitutional Court as a human rights mechanism increased, because individuals could lodge applications with the court as of 1 July about violations of their basic rights. In the second half of 2001, the Constitutional Court received 314 applications from individuals, of which 121 were given to the Court's Collegium for review. Only 14 were given over for trial and, by year's end, the Court had adopted rulings on three cases. The first was from Juta Mentzen regarding Latvianisation of proper names, the second was from Andris Kiploks (a member of Thundercross who had been convicted) regarding compensation for time spent in prison, and the third was from Kaspars Zandbergs and Aivars Andersons regarding the banning of food parcel deliveries in prisons.

The large number of cases submitted to the Constitutional Court suggested that heretofore individuals had not had adequate opportunities to defend their rights. The Constitutional Court rejected many complaints by persons trying to use the Court as a last court of appeal. While this suggested a lack of understanding among many lawyers about the functions of this Court, it also illuminated certain problems in the Law on the Constitutional Court. Article 19 said that a "constitutional complaint may only be submitted if all other opportunities for defending one's rights have been exhausted", but also stated that the Court "may review" a case before then "if review of the constitutional complaint is of general importance." It was very unclear what the criterion of "general importance" meant, which led the Court to reject certain complaints on questionable grounds.

Problems in guaranteeing the right to a fair trial within a reasonable time within Latvia has prompted many individuals to lodge applications before the European Court of Human Rights, which passed its first judgments on cases from Latvia in 2001. While the Court had received over 200 complaints from Latvia, it had asked the Latvian Government to comment on about one tenth of those, ruling the remainder inadmissible. The largest number of cases declared admissible regarded possible violations of Article 6 (right to a fair trial) and Article 8 (right to respect for private and family life).

[55] Based on Latvian Centre for Human Rights and Ethnic Studies, *Human Rights in Latvia in 2001*, February 2002.

The first decision from the European Court of Human Rights came on 18 October and was a friendly settlement in which Nina Kulakova received 5,000 lats (9,23 Euro) compensation for an application based on Article 6. This decision was a wake-up call to the judiciary and political elite about the importance of the Court and the possible financial implications of inaction regarding judicial reform.

After three years of discussions, on 23 October Parliament finally adopted a new Administrative Procedure Law, which will enter into force on 1 July 2003. The task of the new law is to defend private persons from violations of their rights and legal interests by public bodies. Effective implementation of this law will require considerable training and awareness raising among the public and the legal profession.

The large number of prisoners in remand prisons (3,76 or 43% of all prisoners) continued to evoke concern, as did long pre-trial investigation periods and delays for appeals for adult prisoners. In February a number of prisoners in Matisa Prison began a hunger strike against slow criminal investigation of their cases.

LITHUANIA[56]

The judiciary was still in transition. While the independence of the judiciary was guaranteed in the Constitution, structural reforms of the court system were urgently needed. According to a 1999 ruling of the Constitutional Court, the extensive involvement of the executive branch in the administration of the justice was unconstitutional. However, as no new Law on Courts had been passed, it remained unclear how the courts were to be administered. As a result of a number of *ad hoc* solutions the executive's influence had decreased, but in some respects it still continued to interfere unduly in the operation of the judiciary. A draft Law on Courts foresees the transfer of the control of courts to the Council of Judges and the National Court Administration.

A 2001 Constitutional Court ruling declared a parliament decision to reduce the salaries of judges invalid, arguing that it threatened the economic independence of judges. However, courts still did not have effective control of their budgets, and the resources allocated to the judiciary remained insufficient. The courts also employed an inadequate number of judges, which contributed to excessive workloads for them. As of late 2001 there were 68 vacant judge positions in the republic.

The public's confidence in the judicial system was low, and negative attitudes were reinforced by the mass media. Politicians sometimes sought to exercise influence on court decisions, thus jeopardising the independence of judges. This tendency was particularly pronounced in economic matters. While the number of court cases continued to increase, the quality of legal proceedings varied considerably, a fact that at least partly was due to a lack of adequate training of judges. Suspects were often held for years in pre-trial detention, and sometimes the prosecutors initiated legal actions against suspects without having any concrete evidence. In many cases, the prosecutors publicly labelled the defendants as perpetrators, thereby violating their right to be considered innocent before proven guilty and causing irreparable damage to their reputations.

During trials, basic procedural rights were not always respected. Although court hearings were officially public, the judges often exhorted those who showed up in the courtroom to leave, allegedly

---

[56] Unless other noted, based on information from the Lithuanian Human Rights Association (LHRA) to the IHF and on information from the LHRA; Open Society Institute (OSI), *Monitoring the EU Accession Process: Judicial Independence*, September 2001, at www.eumap.org ;

because their presence had a negative impact on the proceedings. In particular, journalists were prevented from attending those trials, which prior to their commencement attracted much public attention. By law the State was obliged to provide legal counsels to defendants. As not enough public lawyers were available, private lawyers were required to provide a certain amount of counsel services to the State. Remuneration for these services remained very low.

Corruption remained a problem within the judiciary, in particular among district court judges who received the lowest salaries. The fact that bribes to judges often made up a considerable part of the legal costs contributed to discouraging ordinary citizens to bring legal cases. The courts also tended to hand out harsh sentences. According to the Lithuanian Human Rights Association, the average prison term was four years and six months, which was almost five times longer than the average prison term in Western European countries. Alternative forms of punishment were rarely imposed. While decisions in criminal cases normally were implemented effectively, judgements in civil cases were sometimes left unenforced.

MACEDONIA[57]

Courts appeared to struggle with the same problems as experienced in previous years, and even added to these. Dissatisfied with the working conditions and with their salaries, court officers and administrative clerks organised a strike that lasted for several months. This paralysed the court system completely. All scheduled court hearings were postponed, except for urgent cases. The strike added to the huge backlog of cases and delays in the settlement of the already slow court proceedings.

It appeared that the most serious problem in civil cases continued to be the failure to deliver court notices and documents correctly to the parties to litigation or to other participants in a trial, without which court hearings could not take place. This led to delays in court hearings without any adequate reason and long extensions of court cases.

In cases involving labour disputes, it appeared that courts - sometimes guided by reasons of social deprivation – were more inclined towards workers who demanded annulment by the court of their dismissal documents due to the breach of working discipline. The courts frequently allowed the dismissed workers to return to their jobs. On the other hand, in cases where hundreds of employees appeared as the plaintiff and large, important companies were the defendants, court hearings were typically adjourned, resulting in the cases pending over several years.

In cases involving alleged terrorism, the defendants were often charged without any relevant evidence. The courts accepted the practice of bad or unlawful police procedure, which did not provide sufficient evidence obtained through legal means. Despite the lack of well-substantiated evidence, the courts rendered effective prison sentences.

A particular cause for concern was the unequal sentencing policy used towards Macedonians and ethnic Albanians for the same criminal acts. In most cases, these actions violated Article 396 of the Criminal Code relating to illegal possession of arms and explosives. Many cases proved that ethnic Albanians received heavier sentences than ethnic Macedonians. Such a biased sentencing policy led to legal insecurity and distrust in the judicial system.

European Commission, *Regular Report on Lithuania's Progress Toward Accession*, November 2001, at www.europa.eu.int/comm/enlargement/lithuania; Freedom House, *Nations in Transit 2001*, at www.freedomhouse.org

[57] Unless otherwise noted, based on the Helsinki Committee for Human Rights of the Republic of Macedonia, *The 2001 Annual Report on the Practice of Human Rights in the Republic of Macedonia,* January 2002.

Upon signature of the Framework Agreement, President Trajkovski granted immunity from prosecution and detention for former NLA combatants, who disarmed by 26 September. However, persons suspected of war crimes subject to the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY) at The Hague were not covered by this immunity provision. In December, the Macedonian Government pardoned 64 persons out of 88 detained for crimes committed as members of the NLA.

MOLDOVA[58]

The new Government stressed the need for improvements in the functioning of the judicial system, and Ion Morei, Minister of Justice, advocated a reform aimed at reducing the number of courts and appeal levels. However, as of the end of the year, an official proposal was yet to be made.

The lack of financial independence of the judicial system remained an area of concern. While the Supreme Court exercised control over its own budget, all other 84 courts of the country remained financially subordinated to the Ministry of Justice. Meanwhile, the funds allocated to the courts were clearly insufficient and the judges underpaid. The total budget for the judiciary amounted to about 21,2 million Lei (1,9 million Euro) and the average monthly salary of a judge was the equivalent of 100 Euro.

As a result of a revision of the Law on the Judiciary and the Law on the Status of the Judge, the procedure for appointing court presidents and vice-presidents changed. According to the new provisions, both presidents and vice-presidents were to be appointed by the President upon a proposal from the Supreme Council of Magistrates. In a rewording that gave rise to serious concern. Article 11(4) of the Law on the Status of the Judge also stated that the President could either reject a candidate who was proposed by the Supreme Council of Magistrates or later present reasons for his/her dismissal. This provision went against Article 2 of the same law, which established the principle that judges cannot be removed from their posts, as well as the constitutional guarantee for a protected status of judges.

In another worrisome development, Article 12 (6) of the Law on the Status of the Judge was amended in order to prohibit a judge from swearing the judge oath for a number of reasons, including expression of his/her opinion on current political matters in the press or in TV and radio programmes.

There was no noticeable progress in trial standards from the previous year, and arbitrary arrests remained a grave concern.

According to the legislation in force, the police could arrest a person for a maximum of three hours in order to establish his/her identity. However, police officers often used this possibility as a means of obtaining information needed for formal charges. Typically, suspects were arrested and interrogated without having been informed of their rights, including the right to remain silent. It was also common practice that suspects were interrogated under the guise of them being heard as witnesses, and threatened with sanctions for untruthful statements. Later, the same persons were heard as suspects on the basis of the information they had given.

---

[58] Unless otherwise noted, based on the Moldovan Helsinki Committee (MHC), *Report on the Respect of Human Rights in the Republic of Moldova (including Trans-Dniester) in 2001*, January 2002.

Sometimes the police arrested and detained persons for more than three hours without invoking any formal grounds. In most cases, these arrests were not officially registered. Reportedly, detainees were also subjected to psychological pressure and physical abuse when interrogated.

During trial, due process rights were not properly respected and the proceedings could not always be considered impartial and fair. From time to time, defendants were not granted access to case files. Moreover, in serious violation of international due process standards, defendants were sometimes not allowed to be present in the courtroom in order to defend their interests in person or through a legal counsel of their own choice despite the fact that they were formally granted the right to any defence.

An ineffective execution of decisions was also a matter that gave rise to concern. According to MHC, many rulings obliging local authorities to restore property confiscated during the Soviet era were not enforced, while as many as 60% of all rulings in civil cases remained unimplemented. The failure to execute decisions was partly due to inactivity or corruption on the part of the responsible authorities, but mainly due to a lack of adequate implementing mechanisms.

- In the Hvalina and Zaiat cases, the defendants neither received invitations to court hearings in a case dealing with restitution of bank deposits nor were they informed about the date of the ruling and its contents. As a result, they could not appeal the court decision.
- Also in the Paris, Raiu, Calincov and Maistruc cases**,** the defendants did not receive any official invitation to the court hearings. As a result, they were not aware of the date of the hearings and could not be present in the courtroom to oversee their defence. All the defendants were either fined or sentenced to shorter periods of detention. Since the defendants in the Paris and Maistruc cases were not able to pay their fines within the set time limit, the court transformed their sentences into detention. In addition, they were ordered to pay 5,40 lei for each day spent in an isolation facility.

As of late 2001, 3,394 persons were held in pre-trial detention. While 452 of these were still having their cases investigated by the prosecuting authorities, the cases of 1,632 were pending in a court of first instance, and 1,310 were awaiting a decision by a higher-level court on appeal.

POLAND[59]

In October, the so-called misdemeanours boards were liquidated. Since 1951 these boards had been functioning as extra-judicial elements in connection with district courts, making decisions in cases of petty offences. The liquidation measure was in accordance with Article 237 of the Constitution, which limited the period of the boards' operation to another four years after it had entered into force in 1997. The misdemeanours boards numbering 372 in total were replaced by 314 municipal district court divisions, which took over the handling of cases of petty offences.

The number of such cases was estimated to be about 600,000-700,000 a year. This was largely considered too heavy a load on the judicial system in place. Ministry of Justice officials believed that the rearrangement would require that at least 600 new positions for judges be established. The Chairman of the National Council of the Judiciary, Wlodzimierz Olszewski, also feared that proceedings before the district court divisions would be lengthier and more complicated than

---

[59] Unless otherwise noted, based on information from the Polish Helsinki Foundation for Human Rights and the Helsinki Committee in Poland for the IHF.

proceedings before the misdemeanours boards had been and that this would result in a large-scale prescription of petty offences.[60]

Another problem within the judicial system was the failure of courts to pay lawyers for *ex officio* services due to the lack of resources. The minimum rate for *ex officio* counsels amounted to 500 *Zloty* (138 Euro) for the first day of defence, and 100 *Zloty* (28 Euro) for every consecutive day. According to the normal procedure, the lawyers were only reimbursed after the legal proceedings had been completed. The Chairman of the National Bar Council confirmed that several courts were late in paying lawyers for *ex officio* services.[61] The situation was particularly dire in the Warsaw District Court, which had a debt to lawyers totaling hundreds of thousands of *Zloty* (tens of thousands of Euro). The court's payments to experts, probation officers and lay judges were also overdue. Some lawyers offering services to the court reportedly considered starting a "strike".

The right of citizens to file complaints under the Constitution continued to be almost non-existent. The provisions establishing the mechanism were strict and, amongst other things, prohibited complaints against the faulty interpretation of the law if the legal grounds for a particular decision had been quoted correctly. In addition, the Constitutional Tribunal jurisprudence further restricted the right to file a complaint. For example, in an October ruling the Tribunal established that complaints against discriminatory legal provisions were not admissible unless the provisions in question were also found to be in violation of some other constitutional rights or freedoms apart from the right to equal treatment.[62]

Corruption among Judges

Judges were not free from corruption either, although such cases were marginal. Typically, judges (like many other professional groups) tended to close their eyes when it came to corruption charges against their colleagues. Professional associations were obviously reluctant to strip judges of their immunity.

- Judge Zbigniew Wielkanowski, Head of the Criminal Division of the District Court in Torun, has close relations with the local mafia boss. He also favours two lawyers when appointing *ex officio* defense counsels and issuing penal payments to the local rifle club where judges, prosecutors and mobsters frequently drank together. The District Prosecutor's Office in Gdansk discontinued a part of proceedings against Judge Wielkanowski considering that it was not in the position of indicting him for being friends and drinking with a mobster and for transferring payments to the rifle club. However, according to the Prosecutor's Office, such conduct was beneath the dignity of the profession of judge. As of early 2002, the Office intended to charge Mr Wielkanowski for false accusations related to a brawl and the judge's beating a Torun radio journalist. In the first instance, the court stripped the judge of his immunity and the decision was upheld in the second instance. Also disciplinary proceedings initiated against Mr Wielkanowski are still pending at the time of writing.

Draft Legislation

In October, the President vetoed draft amendments to three legal codes, the Penal Code, the Criminal Procedure Code, and the Punishment Execution Code. The final drafts had been prepared

---

[60] "Gwozdz wykroczen" (The Problem of Petty Offences), *Gazeta Wyborcza*, No. 243, 17 October 2001; "Pytanie o wykroczenia" (A Question about Petty Offences), *Gazeta Wyborcza*, No. 243, 17 October 2001.
[61] "Zwiastun buntu" (The Omen of Revolt), *Gazeta Stoleczna* (special edition of Gazeta Wyborcza). No. 260, 7 November 2001.
[62] E. Letowska, "Czy warto bylo jesc ta zabe. O mizerii skargi konstytucyjnej" (Was it Worth the Trouble? The Misery of the Constitutional Complaint), *Rzeczpospolita*, 6 March 2002.

during the run-up to the September parliamentary elections and their foremost supporter had been former Minister of Justice, Lech Kaczynski.

While reflecting the former Minister's view on the need to launch a fight against crime, the amendments to the draft Penal Code introduced stricter penalties, *inter alia,* in the form of prison sentences for offences previously not punishable with imprisonment. When vetoing the amendments, the President referred to his consultations with experts who had deemed the proposed legislation to involve many flaws and poor solutions and to be inconsistent with both the Constitution and European standards.[63] Already in 2000 more than forty lawyers and law professors had protested against the planned toughening up of the criminal law, stressing that such a measure only raised unrealistic hopes of improvements in general safety, while diverting attention from the real causes behind the growth in crime.[64]

The Helsinki Foundation ascribed the increase in the number of detainees to the unduly strict criminal policy prevailing under former Minister of Justice, Lech Kaczynski, as well as to lengthy legal proceedings, especially in large court districts.

RUSSIA[65]

One of the main pre-election promises made by President Putin was to initiate a thorough judicial reform. In line with this, he established and charged a special commission, headed by his aide Dmitrii Kozak, with the matter in early 2001. During the year a number of legislative proposals were submitted to Parliament.

The most important draft legislation dealt with by the Duma was a new criminal procedure code to replace the one from 1960, which has long been outdated. The new code would introduce several positive changes; for example, prosecutors would no longer have the right to order search and arrest warrants without a court decision, and evidence obtained from a defendant in the absence of a counsel could be declared inadmissible upon a request from the defendant. However, the draft code also contained provisions that could have a harmful effect on legal process standards. These include the ban on non-professional counsels from offering defence during trials (in light of the fact that there is a lack of trained lawyers and that many people cannot afford their services), and a change in the composition of the council which decides on the dismissal of judges so as to include members recruited from outside the court system (this could make judges more susceptible to political pressure).

New legislation to increase the number of judges and their salaries, institutionalise jury trials throughout the country, and facilitate the prosecution of corrupt judges was also examined by the Duma.

The MHG welcomed the reform as an essential step in the right direction, but also stressed that the legislative proposals put forward would not solve all the major problems of the judiciary system, including the prevailing disrespect for the right of suspects to be presumed innocent, the readiness with which courts accept confessions extracted under torture, and the insufficient review of legal decisions. In early 2002 there were reports indicating that the active lobbying by the Prosecutor-Generals Office against fundamental features of the draft legislation, which would reduce the powers

[63] "Prezydent zawetowal kodeksy karne", 9 October 2001, at www.prezydent.pl
[64] See IHF, *Human Rights in the OSCE Region 2001,* p. 244.
[65] Unless otherwise noted, based on information from the MHG to the IHF.

of prosecutors, had met with response in the Parliament. In total the judicial reform was estimated to cost about 42 billion rubles (approximately 1,6 billion Euro).[66]

TAJIKISTAN

Although the 1994 Constitution provided for the independence of the judicial branch, the judiciary was not independent in practice. The President continued to appoint and dismiss judges, with the formal agreement by the Parliament, and the judges depended to a high degree on the executive branch in their work.[67]

The so-called Council of Justice, which was established in 2000 to deal with personnel questions within regional level courts, reportedly prohibited judges to communicate with international organisations and requested them to obtain special permission to participate in seminars and conferences, in particular if these were held outside the republic.[68]

Corruption within the judiciary was also widespread, and politicians and paramilitary groups intimidated and intervened in the work of judges at all levels. Most judges were not adequately trained. The work to draft a new Criminal Code continued. However, progress was slow, and no date for the completion of the work had been set. [69]

The legislation in force granted broad powers to prosecutors and placed few checks on their exercise of powers. Prosecutors, and not judges, ordered arrests and detentions as well as extensions of detentions. Arbitrary arrests were common, and members of opposition movements were regularly detained on trumped-up charges. Many detainees were not granted prompt access to a lawyer, and sometimes they did not receive any legal counsel at all. The legislation also presumed suspects to be guilty, and enabled courts to remit cases for additional investigation instead of acquitting defendants due to lack of evidence Typically, pre-trail detention was long. During trials the prosecution and the defence were not treated equally, *habeas corpus* was almost never applied and judgments of acquittal were rare.[70]

Police and security forces were notorious for brutal abuses and ill-treatment.[71] Torture was regularly used to coerce detainees to confess crimes, and sometimes also to extract incriminating statements from persons summoned as witnesses. Law enforcement officials not only beat their victims but also used special instruments for the purpose of torturing them. As a rule those guilty of torture were not brought to court, although some cases were initiated against law enforcement officials who allegedly had committed abuses, including a case involving seven police officers in the region of Sogd.[72]

TURKEY

The constitutional amendments adopted in October introduced the right to a fair trial into the Constitution. They shortened the detention period between the moment of arrest and being brought

---

[66] *RFE/RL Newsline Endnote*, Sophie Lambroschini: "Russia's Judiciary – Reform and Its Resistors", 26 April 2001.
[67] Freedom House (FH), *Nations in Transit 2001*, at www.freedomhouse.org/research/nitransit/2001/pdf_docs.htm
[68] Information to the IHF from Tajikistan.
[69] FH, op.cit.
[70] Ibid.; and information to the IHF from Tajikistan.
[71] *Human Rights Watch World Report 2002.*
[72] Information to the IHF from Tajikistan.

before a judge to 48 hours or, in ”cases of offences committed collectively” to four days (previously seven), but these periods can still be extended under the state of emergency. Such regulations do not fulfil European standards which provide that a detainee be brought promptly before a judge. The European Court of Human Rights has ruled that detaining a person for four days and six hours constitutes a failure to allow prompt presentation to a judge. [73] Moreover, according to European Committee for the Prevention of Torture (CPT), the provisions were ignored in practice.[74]

Further, the amendments did not abolish incommunicado detention for detainees suspected of certain political offences. In practice it meant that detainees still had no access to legal counsel, medical care and visits by family members during this period – a fact that facilitated torture.[75]

The state security courts dealt with cases involving, for example, alleged terrorist acts, membership in illegal organizations, disseminating illegal ideas endangering the ”unity of the State", cases under the Anti-Terror Law and some provisions of the Criminal Code concerning freedom of expression (e.g. topics the media were not supposed to criticize, see above). The courts did not have to respect usual due process standards such as open hearings.

The constitutional amendments did not contain measures removing governmental influence on the judiciary through the High Council of Judges and Prosecutors – as had been suggested in Turkey's ”National Program of Action for the Adoption of the EU Acquis”.[76]

Another problem for the Turkish media was the authorities' willingness to pursue journalists for alleged insults to the country's judiciary.

- On 6 February, Metin Munir, a freelance journalist, appeared before the Bakirkoy Criminal Court accused of insulting the country's judiciary. Mr Munir was charged with violating Article 159 of the Penal Code after writing an article for the now-defunct daily *Yeni Binyil*, which criticized the appointment of a state prosecutor who had been cited by officials for alleged impropriety.[77]
- In July, the Council of Europe adopted an interim resolution regarding numerous judgements by the European Court of Human Rights on violations of the freedom of expression. Its Committee of Ministers urged the Turkish authorities to erase the criminal records and put an end to restrictions on civil rights of successful applicants to the Court. Further, it urged the Government to bring Turkish legislation up to par with European standards.[78]
- In July, two months before the adoption of the constitutional amendments, the European Court delivered its judgement on the case of the former Kurdish MPs Hatip Dicle, Orhan Dogan, Selim Sadak, and Leyla Zana, who were sentenced in 1994 to 15 years' imprisonment for the non-violent expression of their conscience (classified as treason by the authorities). The Court held that they had been subjected to an unfair trial in breach of Article 6 of the European Convention on Human Rights (ECHR).[79] It stipulated that the military court sentencing them constituted neither an independent nor impartial tribunal (according to the requirements of

---

[73] Amnesty International (AI), *Turkey: Constitutional Amendments – A Long Way to Go*, 1 January 2002.
[74] *Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Turkey from 2 to 14 September 2001 and Response of the Turkish authorities*, at www.cpt.coe.int/en/reports/inf2002-03en.htm
[75] AI, op.cit; HRW, *Human Rights Watch Analysis of the 2001 Regular Report on Turkey*.
[76] Human Rights Watch (HRW), ”Turkey: Parliament Misses Big Chance for Reform, Falls Short on Death Penalty, Free Speech, and Torture,” press release, 28 September 2001.
[77] International Press Institute, *2001 World Press Review.*
[78] Council of Europe, Committee of Ministers, Interim Resolution ResDH(2001)106, 23 July 2001, at http://cm.coe.int/ta/res/xh/2001/0-299/2001xh106.htm
[79] *Human Rights Watch World Report 2002*

Article 6.1). In addition, the imprisoned former deputies were not informed about the change in the charges against them made at the last moment of the proceedings, thus preventing them from preparing their defence adequately (in breach of Article 6.3.a).[80]

The military frequently used its power to limit the independence of the executive or judiciary branch of the government with the justification that, according to Chief of Staff of the Turkish Armed Forces General Kivrikoglu, while and whenever there is a ”reactionary danger" to the unity and secularism of the State and the nation, the military would be ready ”for a thousand years” to intervene in the state affairs and politics.[81]

- On 7 September, a military court acquitted 17 intellectuals and artists who had placed their names as publishers of a book entitled *Freedom to Thought 2000*. The respective book was claimed to violate Article 155 of the Penal Code in discouraging people from wanting to carry out their military service. In earlier hearings the defendants justly had stated that the opening of proceedings against them before a military tribunal constituted a breach of the independent and impartial tribunal provision 6.1 of the European Convention, and insisted on their case being referred to the Constitutional Court. Their requests, however, were rejected. In addition, no one, except the closest relatives, was allowed in the courtroom, in violation of the right to a public hearing. A complaint against this violation was taken into consideration only in so far as three people directly concerned with the case of the accused were then later permitted to attend the final hearing on 7 September 2001. However, on 27 September, Istanbul State Security Court No. 5 opened a retrial of 16 people who had signed the booklet as publishers.[82]

According to the International Press Institute (IPI), a draft law was created requiring Internet websites to submit their pages to the authorities prior to publication. According to it, website operators would be forced to hand over copies of pages to a prosecutor and a governor's office before they post them on the Internet. All electronic broadcasts carrying text or pictures would be affected by the proposed legislation. In addition, the draft law would oblige new Internet service providers to obtain permission from the authorities before starting operations.[83]

The EU Accession Partnership required that "all necessary measures to reinforce the fight against torture practices" be made short-term priorities (to be implemented within one year). However, the NPAA made the reform of detention procedures a medium term priority (officially 3 years but interpreted by some officials as five years).[84]

In July the Minister of the Interior sent a circular in which he emphasized the necessity to take measure to abolish torture and ill-treatment. However, according to the CPT, it appeared that the circular was ignored, and it seemed apparent that, for example, judges and prosecutors did not feel themselves bound by its provisions.[85]

Torture and ill-treatment remained widespread practices at police detention centres in Turkey, particularly in the south-eastern emergency region inhabited mainly by Kurds. The victims included suspected opponents of the ”F-type” prisons, as well as pro-Kurdish, Islamist or leftist activists.[86]

---

[80] AI, op.cit.
[81] HRW, *Human Rights Watch Analysis on the 2001 Regular Report on Turkey*.
[82] Human Rights Foundation of Turkey (HRFT), ”Freedom to Thoughts 2000,” 10 September 2001.
[83] IPI, *2001World Press Freedom Review*.
[84] HRW, *Comments on Turkey's National Program for the E.U. Accession Partnership Agreement.*
[85] *Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Turkey from 2 to 14 September 2001 and Response of the Turkish authorities.*
[86] AI, *Concerns in Europe, January-June 2001,* at web.amnesty.org/ai.nsf/Index/EUR010032001?OpenDocument&of=REGIONS\EUROPE

In most cases reports concerned individuals, who were subjected to torture during the first days of detention when they were held incommunicado.

In 2001, Amnesty International announced increasing reports on the use of excessive force during mass arrests, torture with the aim of recruiting informers and, in the case of arrested members of the Islamist armed group Hizbullah, prolonged police detention for several weeks or months.[87]

Even children were victims of torture and ill-treatment in Turkish detention centres. If they were arrested under suspicion of offences, falling under the jurisdiction of state security courts, they were treated like adults and were deprived of special safeguards.

- In the town of Viransehir (in the province of Urfa in south-eastern Turkey), 29 young Kurdish people, among them 24 children, were arrested on 8 January, accused of chanting slogans for the Kurdistan Workers Party (PKK). They were allegedly beaten and ill-treated, and detained in cruel, inhuman and degrading conditions. They were reportedly forced to stand for two to three hours with their faces to the wall and their hands above their heads, and were not allowed to look around or speak. They were also threatened and verbally abused but. No one was allowed access to a lawyer, but they were made to sign documents which they did not fully understand and some could not read at all. Later, all but one was remanded into prison. Thirteen faced trial, and six remained in prison until 15 February 2001. It appeared that they were arrested and prosecuted solely on grounds of their ethnic identity and the main ”evidence” against them was their own statements and ”confessions” that were apparently given during ill-treatment or coercion.[88]

Police officers who resorted to ill-treatment and torture were rarely brought before justice. Furthermore, the 1999 law on the prosecution of civil servants and other public employees gave the local governor the power to block the prosecutions of security force members for torture, sexual assault, and unlawful killings. In contrast, victims were often charged with insulting the police, security forces or the army. The December 2000 amnesty law allowed the suspension of investigations and trials against officers accused of ill-treatment. It appeared that for this reason most perpetrators who faced criminal proceedings were charged with ill-treatment and not with torture, as the amnesty law did not cover those sentenced for torture.

TURKMENISTAN[89]

The judiciary was fully dependent on the executive branch. The President appointed judges at all levels and oversaw that the courts functioned in line with the interests of the regime. The public prosecutors were granted broad powers and were involved in all phases of the judicial process. Defendants were routinely denied due process rights, such as the right to a public hearing, to receive legal counsel and to be represented by a lawyer, to have access to evidence and to call witnesses to testify on their behalf. Almost all lawyers available were employed by the State. According to some reports, defendants were coerced to confess the crimes they were charged with. While corruption pervaded the judicial system, no effective measures were taken to tackle the problem, although the President carried out media covered drives to rid state bodies of bribed officials from time to time.

---

[87] AI, *Concerns in Europe, January-June 2001.*
[88] Ibid.
[89] Based on FH, *Nations in Transit 2001*, and on RFE/RL, Vitaly Ponomarev, "'Lawlessness' in Turkmen Prisons", *Turkmen Report*, 23 July 2001.

In December, in connection with the holy month of Ramadan, some 9,000 prisoners were released under a general amnesty similar to those of the two previous years. The authorities claimed that the measure reduced the prison population to one half.[90] However, while the media praised the President's "humanitarian action", there were allegations that the process of selecting prisoners to be released had been largely corrupt: authorities, including heads of prison colonies, security committee officials, Prosecutor's Offices and courts, reportedly took bribes for adding names to the amnesty list that was signed by the President.

UKRAINE

The Constitution guaranteed the independence of the judiciary, but in practice the judicial system remained under strong influence from the executive branch. The courts were funded via the Ministry of Justice and an overload of work and a lack of funding and staff on their part rendered them vulnerable to political pressure. Some judges also continued to function according to old Soviet norms and to without questions implement guidelines originating from the executive branch. Some courtrooms were in a very bad shape and lacked adequate equipment.[91]

In the summer, the Parliament passed a number of amendments to the legislation regulating the system of justice. These amendments replaced interim constitutional provisions, which expired end of June, and represented a progressive development. Under the amendments a unified court system with four levels was established: local courts, regional courts, specialized high courts and the Supreme Court were to function in a hierarchy. The specialized high courts included the former arbitration courts, which were turned into commercial courts, and military courts, which were charged with all cases involving military officials. The Constitutional Court remained outside the general court system. The amendments also provided for a new appellate process according to which regional courts were to function as appellate courts for lower-level courts. The regional courts were thus granted the right to independently reconsider cases examined by the lower level instances and to rescind decisions taken by these. Moreover, the amendments transferred the right to issue arrest and search warrants from prosecutors to courts, which was a measure aimed at curbing the overly extensive powers previously enjoyed by the prosecutors.[92]

During the year the Parliament also adopted a new Criminal Code, which entered into force on 1 September. The new code firmly established the principle of *corpus delicti* and penalized a number of offences that previously had not been punishable, including interference with private correspondence; obstruction of legal political, civil and trade union activities, and failure to pay salaries and social benefits for more than a month. Penalties for many other crimes were reduced, and a number of alternative forms of punishment were introduced, e.g. detention for one to six months, public work assignments and limitations of the freedom of movement. Further, the new code contained an explicit ban on death penalty, which had not been applied in the republic since 1997, and stated that life term imprisonment could not be used in terms of persons under age, persons older than 65 and women who were pregnant when committing the crime they were charged with or at the time of the court verdict.[93]

The Ukrainian Committee Helsinki-90 welcomed that the Criminal Code finally was revised but regretted that some of the most questionable provisions from the old law were retained in the new law

---

[90] RFE/RL, "Turkmen Prison Amnesty Starts", *Turkmen Report*, 5 December 2001.
[91] Information from the Ukrainian Committee Helsinki-90.
[92] Ibid.; and Infobank News Agency, *Ukraine Today*, 9 July 2001.
[93] *NTV*, 1 September 2001, at http://www.ntvru.com/world/01sept2001ency ; and Infobank News Agency *Ukraine Today*, 9 April 2001.

and that some of the new provisions actually were worse than those previously in place. For example, the wording of an article on "disclosure of information damaging the State's reputation" seemed to motivate the targeting of critical voices, including human rights activists.[94]

It remained a concern that trials often dragged out and that detainees were held for lengthy periods in pre-trial detention. Although provided for by law, release on bail was rarely used. By law detainees also had the right to receive legal counsel from the time they were arrested, and to have the costs covered by the State if they could not afford to pay for it themselves. However, in practice this right was regularly violated and detainees were interrogated without the presence of a lawyer, which exacerbated the risk of police officers resorting to verbal and physical abuse against the detainees. Reportedly detainees were also sometimes denied the right to communicate in private with their lawyers and to inform their relatives about their arrest.[95]

In court the position of the prosecution remained disproportionately strong and confessions extracted under torture were regularly admitted. Some judges also ignored relevant legal norms and applied outdated legislation, including Soviet era provisions. Meanwhile standards laid down in the Constitution and international human rights treaties were rarely invoked. Cases were also frequently remitted for additional investigation. In criminal cases unreasonably strict sentences were sometimes handed out, and in civil cases court decisions often remained unimplemented, in particular if they contradicted the interests of the ruling elite.[96]

UNITED KINGDOM

Anti-Terrorism Legislation

On 19 February, the Terrorism Act 2000 came into force. This made permanent the various pieces of existing anti-terrorism legislation and notably gave the Home Secretary the novel power to proscribe (thus making membership illegal) organisations "concerned with terrorism" in the UK or abroad. The provisions have been criticized by various civil rights organisations for the extensive powers given to the authorities and the wide and subjective definition of terrorism (thus carrying with it the possibility of official abuse); the power afforded to the police to issue court orders on journalists to hand over information or reveal their sources (thus potentially compromising freedom of expression); the additional emergency legislation only applicable in Northern Ireland which is held to undermine the Multi-Party Agreement of 1998; and the possibility of longer detention periods. Liberty particularly pointed out that "Banning organizations and criminalizing membership is a serious attack on basic rights of free speech and assembly."[97]

On 13 December, a new Emergency Anti-Terrorism Bill, the Anti-Terrorism, Crime and Security Act was adopted in response to the 11 September terrorist attacks. Human Rights Watch condemned this development as "another step in the U.K.'s retreat from human rights and refugee protection obligations."[98] Proposals published by the Home Office a month earlier caused furore amongst national and international civil rights organisations and created tension during parliamentary readings between the Government (notably Home Secretary David Blunkett) and the House of Lords,

---

[94] Information from Ukrainian Committee Helsinki-90.
[95] Ibid.; and AI, *Ukraine Before the UN Human Rights Committee*, 15 October 2001, at http://www.web.amnesty.org/ai.nsf/index/EUR500012001?OpenDocument&of=COUNTRIES\UKRAINE.
[96] Information from the Ukrainian Committee Helsinki-90.
[97] *Guardian*, "UK Finally Complies with Rights Convention", 20 February 2001, at www.guardian.co.uk/humanrights/story/0,7369,444649,00.html
[98] Human Rights Watch, "UK: New Anti-Terror Law Rolls Back Rights", at www.hrw.org

culminating in a slightly modified final version. The Act brought in a further range of measures additional to the Terrorism Act, permitting the extension of government powers to exchange information on individuals, abolishing certain privacy on the Internet and, most controversially, permitted the detention without trial of non-nationals suspected by the government of being terrorists. One of the main complaints of civil rights organisations concerns the latter, which affords a potential violation of international human rights law. Clause 23 could permit indefinite detention of suspects without an adequate or effective appeal procedure. Amnesty International (AI) argued that the internment of people on grounds of national security whom the Government does not intend to prosecute and cannot deport violates human rights.[99] There is to be no explicit judicial scrutiny of the Secretary of State's decisions, which themselves will be based on vague wording within the Act; the definition of "terrorist", which includes those who "support and assist" terrorists, remains ill-defined despite calls for it to be modified.[100]

Those detained have access to a Special Immigration Appeals Commission (SIAC) but this is not immediate and access to judicial review before a court is limited to questions of law. More importantly, the SIAC was permitted to receive secret information concerning the reasons for detaining the suspect and may hold secret proceedings without the applicant nor his lawyers present. The process, it was argued, could be abused in particular in respect of asylum seekers who may as a result be deprived of individual determinations on the merits of their claim and thus full international refugee protection. Further the measures required derogation under Article 5(1) of the ECHR (the right to a fair trial) and thus entailed the formal declaration of a state of an emergency.

Immediately after adoption, immigration officials and police raided several homes in the UK and placed ten people in detention, in violation of the rights to liberty and fair trial.[101]

UNITED STATES[102]

Anti-Terrorism Measures

By November, over 1,100 people, mostly Arab or Muslim men, had been detained in connection with the government's investigation into the 11 September attacks and its efforts to preempt further acts of terrorism. The government stopped updating the tally of those detained so firm figures were unavailable. After refusing to make any information about the detainees public, including their names, location of detention, or the nature of charges against them, Attorney General Ashcroft finally announced on November 27 that 548 detainees were being held on immigration charges and that federal criminal charges had been filed against 104 people. Senior law enforcement officials acknowledged that only a small number of those in custody were believed to have links to terrorism. The immigration charges were primarily for routine immigration violations, such as overstaying a visa, and the criminal charges also were primarily for crimes that seemed unrelated to terrorism, ranging from credit card fraud to theft. Another two dozen or so people were being detained as

[99] Amnesty International , "UK, A Shadow Criminal Justice System Is Unacceptable", 16 November 2001, www.amnesty.org/ai.nsf/Index/EUR450202001

[100] Human Rights Watch, op.cit.

[101] Amnesty International, "United Kingdom: Concern over Anti-terrorist Arrests", 19 December 2001, at http://web.amnesty.org/ai.nsf/Index/EUR450282001?OpenDocument&of=COUNTRIES\UK

[102] Regarding human rights developments in the United States, the IHF relies upon the research results of the Americas Division of Human Rights Watch (HRW). According to the HRW internal division of country responsibilities, Europe and Central Asia Division of HRW, that is affiliated with the IHF, does not monitor human rights developments in the United States. Reporting period: November 2000 through November 2001. First published in *Human Rights Watch World Report 2002*, January 2002, at www.hrw.org/wr2k2/us.html.

material witnesses. An unknown number of individuals were held in local and state facilities in relation to the investigation of the 11 September attacks.

The government's refusal to reveal all the locations where the detainees were being confined and its failure to grant access to known places of detention to independent monitoring groups left many questions unanswered about the detainees' treatment. Individual detainees reported problems with obtaining prompt access to legal counsel, harsh conditions of confinement, and verbal and physical mistreatment – especially in local jails used by the federal government to house detainees with criminal inmates – but by the end of November it was still too early to determine if there was any pattern of mistreatment.

The apparent refusal of some detainees to answer questions about possible links with the al-Qaeda network led to a debate in the media about the possible need for torture, "truth serums," or sending the detainees to countries where harsher interrogation tactics were common. The Federal Bureau of Investigation (FBI) denied press reports that it had discussed such possibilities. Former military officials, various political and criminal justice analysts, and others publicly argued that "extraordinary times require extraordinary measures." As of late November there were no reports of abusive interrogation measures used against the detainees, but the public debate over such measures underscored the need for greater transparency regarding the location and treatment of the detainees.

The administration successfully secured from Congress a new anti-terrorism law, the U.S. Patriot Act of 2001, that gave the attorney general unprecedented powers to detain non-citizens on national security grounds. Under the law, the attorney general could certify and detain non-citizens if he had "reasonable grounds to believe" they had engaged in any of a broad range of terrorist acts or otherwise threatened national security. After seven days, such individuals had to be charged with a crime or an immigration violation or else be released. Certified aliens who could not be deported could be held in custody indefinitely until the attorney general determined that the person in question no longer presented a threat to national security. The government released no information about the number of people certified under this law.

The possibility of indefinite administrative detention of non-citizens was also raised by the terms of a new interim Immigration and Naturalization Service (INS) rule issued on 17 September. This increased from twenty-four to forty-eight hours the period a non-citizen could be detained by the INS before it had to make a determination whether the detainee should remain in custody or be released on bond or recognizance and whether to issue a notice to appear and warrant of arrest. But "in situations involving an emergency or other extraordinary circumstances," the new measure stated, the forty-eight hour rule is suspended and the determinations must simply be made "within a reasonable period of time." The language triggering the exception was signally vague, the time limit for the exception was open ended, and there was no provision for judicial review of the detention – raising the possibility that non-U.S. citizens could be subjected to arbitrary and prolonged indefinite detention without charges or recourse.

On 31 October, the Justice Department issued a new rule that permitted the federal government to monitor communications between inmates in federal custody and their attorneys. Inmates were defined to include not only persons convicted of a crime but anyone held as "witnesses, detainees or otherwise." Under the rule, communications could be monitored when the attorney general had "reasonable suspicion" that the inmate would use communications with counsel to "further or facilitate" acts of terrorism. In abrogating the confidentiality of attorney-client communications and subjecting those communications to government surveillance, the rule directly infringed on the right to counsel. Nevertheless, the administration contended the right to counsel was protected because the inmate would be notified before the monitoring began and a court order would be required before any non-privileged information could be used by investigators or prosecutors.

On 13 November, President Bush issued a highly controversial military order authorizing the use of special military commissions to try non-citizens accused of supporting or engaging in terrorist acts.[103] Citing the danger to national safety posed by international terrorism, the president claimed it was "not practicable" to try terrorists under "the principles of law and the rules of evidence" that apply in the U.S.'s domestic criminal justice system. Military commissions – *ad hoc* tribunals not subject to the rules governing regular military courts-martial and their due process safeguards – could function swiftly and secretly. There need be no presumption of innocence, nor protection against forced confessions. Under the president's order, persons convicted by such commissions would have no right of appeal to a higher court, a key fair trial requirement under international law, and they could be sentenced to death by a two-thirds majority of the presiding officers. The language of the order suggested the president may also have sought to preclude *habeas corpus* petitions. The precise rules under which the commissions would function had not been publicly issued by the end of November.

The order authorized military detention and trial for violations of the laws of war or other "applicable laws" of anyone who is not a U.S. citizen if the president should determine that "there is reason to believe" such an individual is or was a member of al-Qaeda; had engaged in, aided or conspired to commit acts of international terrorism; or had harbored terrorists. Terrorism, however, was not defined in the president's order. The order permitted military jurisdiction over non-citizen civilians in the U.S. who otherwise would be subject to regular criminal trials with the full panoply of due process safeguards that accompany such proceedings. Unlike the other domestic anti-terrorism measures, the order provoked strong protests from across the political spectrum. Some members of Congress urged the administration to rescind the order, and Judiciary Committee hearings were scheduled for the end of November and December to assess the order as well as other administration actions following the 11 September attacks.

UZBEKISTAN

Trials were conducted without much regard to international standards, in particular when they involved defendants charged with carrying out activities contrary to the policies of the Government. Journalists and representatives of human rights organisations were often prevented from attending trials, while the accused were denied an adequate defence.[104] Frequently, suspects were denied a lawyer of their choice, or the lawyer was granted access only after the suspect had spent several days in custody and under strictly limited conditions.[105] In addition, it was not uncommon for detainees to be held *incommunicado*, sometimes for up to six months.[106]

The fabrication of charges was widespread, and those on trial were, as a rule, presumed guilty.[107] The courts regularly accepted planted evidence, such as drugs, weapons and illegal religious leaflets, and confessions extracted as a result of torture.[108] In particular, these practices were important

[103] See also the IHF open letter to President George W. Bush, 17 November 2002, at www.ihf-hr.org/appeals/011118Bush.htm
[104] IHROU, *About Political Prisoners in Uzbekistan*, August 2001.
[105] AI, *Uzbekistan – The Rhetoric of Human Rights Protection, Briefing for the UN Human Rights Committee*, June 2001, at http://web.amnesty.org/ai.nsf/Index/EUR620062001?OpenDocument&of=COUNTRIES\UZBEKISTAN
[106] *Human Rights Watch (HRW) World Report 2002*, at www.hrw.org/wr2k2/
[107] Institute for War and Peace Reporting, Adolat Ramzieva (pseudonym), “Uzbek Activist Speaks Out”, in *Reporting Central Asia*, No. 92, 10 December 2001.
[108] IHROU, *About Political Prisoners in Uzbekistan*, August 2001; and HRW, *And It Was Hell All Over Again: Torture in Uzbekistan*, December 2000, at www.hrw.org/reports/2000/uzbek/

elements in the campaign against "anti-state activities". Evidence put forward by the defence during trial was routinely ignored.[109]

Torture and ill-treatment were rampant in detention facilities and prisons. Physical abuse was not only used to extract confessions from detainees, but also to force victims to incriminate or reveal the whereabouts of others, mostly relatives.[110] Typical forms of torture included electric shocks, suffocation and sexual abuse.[111]

Although the Constitution guaranteed everyone the right to complain to competent authorities about violations of their fundamental rights, there were no effective procedural safeguards against police abuse within the criminal justice system. By law, detainees had the right to appeal unlawful detention or protest ill-treatment at the hands of police officers only after their cases were taken up in court. As a rule, access to doctors for documentation of evidence of torture was denied.[112] In addition, the authorities charged with examining complaints, including the acting Ombudsman, Sayora Rashidova, remained reluctant to investigate allegations of ill-treatment.[113] As a result, police officers guilty of torture were virtually never brought to justice.

YUGOSLAVIA (SERBIA, KOSOVO, MONTENEGRO)

SERBIA[114]

Some of the most important promises made by the opposition before coming into power on 5 October 2000 included the creation of a State governed by law, the establishment of the rule of law at all levels, the formation of an independent judiciary, and thus also the establishment of the responsibility of all those who had violated the law. The functional and personnel reconstruction of courts and the Prosecutor's Office, named "the cleaning up of the judiciary" and announced as such prior to the adoption of the packages of laws regulating the sphere of the judiciary in November 2001, stopped at several dismissals and at a large number of judges having their employment terminated on personal requests or due to the fulfilment of conditions for retirement. Such acts by the new authorities, all under the motto of "there is no revanchism", produced a dual negative effect. First of all, it was precisely this kind of "removal" of people that created a climate of revanchism, since their responsibility for abuse was not legally or judicially established (except in a few cases), thus raising doubts about the legality of the dismissals. Secondly, the profoundly dissatisfied citizens, who had experienced ten years of unlawful arbitrariness by judges and the flagrant violation of basic rights and freedoms, could not even get the smallest degree of satisfaction from procedures that aimed at establishing their potential responsibility.

Unfortunately, this unfavourable climate persisted even after the adoption of the package of new, considerably better laws, which came into force on 1 January 2002. The reason for this was the conduct of the Serbian Justice Minister who, when these laws were being adopted in November, published lists of judges to be dismissed without previous consultations with representatives of courts or judges. These lists provoked the outrage of all judges, not only because the mentioned act represents veritable political pressure on the body that is to decide on the dismissals, but also because of the obvious arbitrariness and vague criteria the Ministry was guided by when compiling the list.

---

[109] IHROU, *About Political Prisoners in Uzbekistan*, August 2001.
[110] AI, *Uzbekistan – The Rhetoric of Human Rights Protection, Briefing for the UN Human Rights Committee*, June 2001.
[111] HRW, *And It Was Hell All Over Again: Torture in Uzbekistan*, December 2000.
[112] HRW, *And It Was Hell All Over Again: Torture in Uzbekistan*, December 2000.
[113] AI, *Uzbekistan – The Rhetoric of Human Rights Protection, Briefing for the UN Human Rights Committee*, June 2001.
[114] Based on the *Annual Report 2001* of the Helsinki Committee for Human Rights in Serbia.

A particular problem in the functioning of the judiciary was the lack of legal presuppositions for the work of the Constitutional Court of Serbia, and actual preconditions for the proper work of the Supreme Court of Serbia, as the court of highest instance in the republic, as well as the fact that there was no republican public prosecutor - since the beginning of 2001, the Constitutional Court had not had a quorum for taking decisions. As a result, there was no court that could formally decide on the constitutionality and legality of adopted acts. As there was no quorum, none of the old cases or of the 120 or so new requests filed in 2001 were processed. In view of the fact that many of those who had submitted proposals and initiatives to the Court believing that their rights had been violated by the acts adopted by the new authorities, were deprived of the protection of their rights, one can presume that the elimination of this legal obstacle was dependent on daily political needs.

The situation was identical to that in the Federal Constitutional Court which only reached a quorum for decision-making in November 2001, and whose existence and operation is dependent on the resolution of problems at the federal level.

The problem of the operation of the Supreme Court of Serbia was more of factual than of legal nature. First of all, at least half of the seventy or so judges in the Supreme Court had “earned” their position owing to many years of loyal service to the previous regime. As a result, only a small number of those working at this court, including the president, were professionally and morally competent to judge and take decisions of the last instance. The second problem was related to the Supreme Court’s competencies in the process of establishing the grounds for terminating the employment of judges and for their dismissal. Under the 1991 Law on Courts, valid until the end of 2001, the court president and a session of all judges for judges of the given court, the president of the immediate higher court, the Justice Minister and the responsible body of the National Assembly could submit a request of dismissal to the Supreme Court. This Court carried out the procedure for establishing whether or not there existed grounds for dismissal and informed the National Assembly thereof. However, in order to establish, for instance, someone’s negligence and incompetence as grounds for dismissal, the Supreme Court’s Rules of Procedure stipulated that this must be done at a general session of the Supreme Court, which required the presence of two thirds of the total number of judges, and decisions were taken by a majority of the total number of judges of the court. In view of the procedure envisaged for dismissal, as well as the personnel structure of the judges who were to decide on their own dismissals and the dismissals of others, by establishing their own “incompetence and negligence” and that of others, it was clear why the work of the Supreme Court was blocked even in this segment of its competencies.

Since the new Law on Judges stipulates that the establishment of grounds for the dismissal of judges falls under the jurisdiction of the Grand Personnel Council comprising nine judges of the Supreme Court, it is obvious that the composition and decisions of the Supreme Court will be decisive in dismissal procedures.

Following the dismissal of the republican public prosecutor on 14 February 2001, these duties were performed by an acting public prosecutor. Under the law, the republican public prosecutor was directly responsible for the entire prosecution system in the republic and the person most responsible for prosecuting criminal offences and protecting legality in the sphere of lawsuits and misdemeanour proceedings. The special importance attached to his function was reflected in the fact that he was to be the main link between the police and the court. The failure to appoint a republican public prosecutor, and the maintenance of a situation where such an important institution was headed by an “acting prosecutor”, intentionally or not, paralysed the work of the entire prosecution and the prosecution of the perpetrators of criminal acts.

A serious obstacle to the establishment of an independent judiciary was the extremely poor financial position of judges and of the judiciary in general. Courts were poorly equipped as regards the basic means needed to work, while judges' salaries were below the minimum level necessary to ensure an adequate standard of living for them and their families.

In situations where the judiciary was faced with high-risk challenges such as trials for abuse and fraud of one-time politically, but still financially powerful people, trials related to war crimes, corruption and organized crime, the question was whether judges and prosecutors would be able to resist the pressure, threats and corruption if their salaries remain at the present level.

KOSOVO[115]

In May, the UNMIK promulgated a Constitutional Framework for Provisional Self-Government in Kosovo. Among other things, it provided for the structure of the Administrative Department of Justice, which includes three directorates: the Directorate for Administration of Courts and Public Prosecuting Offices; the Directorate of the Correctional Service; and the Directorate of Professional and Legal Development. The Justice Department, as well as all the other four key governmental segments such as the police and defense affairs, foreign relations and financial policy, will remain under direct control of the international administration also after the formation of the Government and Parliament of Kosova

According to Chapter 8 of the Constitutional Framework, the Kosovar justice system remained under the direct authority of UNMIK, and the International Administrator was the supreme authority. The Framework set up the Judicial and Prosecuting Council, which was authorized to counsel the International Administrator on all relevant issues.

As of the end of 2001, there were 29 regular courts, 23 courts for misdemeanours and 13 public prosecutors' offices functioning in Kosovo. Further, the Supreme Court of Kosovo operated, with one of its sections also dealing with constitutional questions. In addition, there was the Court for Economic Matters, five district courts, and 22 communal courts and the High Court for Misdemeanours.

The judicial system of Kosovo recuperated from the war and managed to reach its fully developed institutional form, with the help of the international community. However, there were still a number of courts and other judicial organs that were in a very poor condition.

The international community dispatched international judges and prosecutors to Kosovo in order to avoid and/or remedy potential bias and partiality of the judiciary in cases where parties were of different ethnicity, and to provide the necessary experience of a modern judiciary. Ten international judges and six public prosecutors were appointed to the Supreme Court, to the Office of Public Prosecutor and to all district courts, to deal with war crimes, inter-ethnic and other more complex cases. Their numbers, however, were still too small and did not even remotely meet the needs.

The legal system became operational and functional, although with considerable difficulties. Despite the appointments of multi-ethnic judges, the personnel were still mono-ethnic. Risks and difficulties faced by judges and other judicial personnel representing minorities discouraged non-Albanians from serving in the judicial system: in general, Serbs constituted no more than 2% of judicial staff, while in public prosecutors' offices and misdemeanour courts they were not represented at all.

[115]Based on Kosovo Helsinki Committee for Human Rights, *Report on Human Rights Situation in Kosovo 2001*

Serb judges and judicial personnel generally rejected jobs within the Kosovar judicial system and set up a parallel Serbian judiciary in Serbian enclaves in Kosovo. This happened despite the fact that the international administration and its Department of Justice supported the idea of minority judges and prosecutors being incorporated into the existing system, permitting them to have a full and active role in the delivery of justice in a fair and impartial manner.

MONTENEGRO[116]

The autonomy of Montenegro brought about a series of problems in the application of different laws, especially of laws passed by the Yugoslav Federal Parliament in the year 2001. Since the Montenegrin authorities rejected the July 2000 Constitution, as well as all federal laws in accordance with it or stemming from it, problems emerged in areas where Montenegro had not passed its own laws. This was especially true in the sphere of criminal justice. The Federal Parliament already adopted such laws during 2001 (which will enter into force in March 2002), but the Montenegrin Parliament reiterated that it would not recognize on its territory the applicability of the Federal Constitutions and the laws passed pursuant to it. This statement of rejection caused great confusion, which was primarily due to the fact that the Montenegrin courts, including the Supreme Court, had already announced that they would apply the new Federal Criminal law. Yet, the Montenegrin Parliament had not adopted a final decision on the matter by the end of 2001.

The federal authorities had blocked the Montenegrin judges' and other experts' participation in the adoption of the criminal law in question, many provisions of which are in conflict with the Constitution of Montenegro. One of these contradicting clauses authorizes the police to keep a person in detention for up to 48 hours before a detainee is brought before a judge in order to have his/her detention reviewed. Further, another provision of the respective law allows the police to tap and record telephone conversations, to open mail and monitor people with only the permission of an investigating judge. The latter is completely prohibited by the Montenegrin Constitution and can be done only after a decision taken by a competent court (i.e. an independent and impartial court – something that an investigating judge cannot qualify for). The draft Montenegrin Law on Police provides that the kind of restrictions on human rights mentioned above will be possible in the future only after a decision passed by the Supreme Court

In violation of both the Federal Constitution and the Constitution of Montenegro, military courts still existed in Montenegro (as well as in Serbia). The entire election procedure of judges and prosecutors, as well as court proceedings and jurisdiction were contrary to international standards. In particular, the military courts' privilege to try civilians was in breach of the standards for a fair trial and the independence of the judiciary enshrined in Articles 6 and 14 of the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR), respectively.

[116] Based on the *Annual Report 2001* and other information from the Montenegrin Helsinki Committee for Human Rights.

APPENDIX

Relevant International Standards

OSCE Commitments

The 1990 Copenhagen Conference on the Human Dimension of the Conference for Security and Co-operation in Europe (CSCE, later the Organization for Security and Co-operation in Europe, OSCE) decided the following:

(1) The participating States express their conviction that the protection and promotion of human rights and fundamental freedoms is one of the basic purposes of government, and reaffirm that the recognition of these rights and freedoms constitutes the foundation of freedom, justice and peace.

(2) They are determined to support and advance those principles of justice which form the basis of the rule of law. They consider that the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression.

(3) They reaffirm that democracy is an inherent element of the rule of law. They recognize the importance of pluralism with regard to political organizations.

(4) They confirm that they will respect each others right freely to choose and develop, in accordance with international human rights standards, their political, social, economic and cultural systems. In exercising this right, they will ensure that their laws, regulations, practices and policies conform with their obligations under international law and are brought into harmony with the provisions of the Declaration on Principles and other CSCE commitments.

(5) They solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following:

(…)

(5.3) - the duty of the government and public authorities to comply with the constitution and to act in a manner consistent with law;

(…)

(5.5) - the activity of the government and the administration as well as that of the judiciary will be exercised in accordance with the system established by law. Respect for that system must be ensured

(…);

(5.7) - human rights and fundamental freedoms will be guaranteed by law and in accordance with their obligations under international law;

(…)

(5.9) - all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground;

(5.10) - everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity;

(…)

(5.12) - the independence of judges and the impartial operation of the public judicial service will be ensured;

(5.13) - the independence of legal practitioners will be recognized and protected, in particular as regards conditions for recruitment and practice;

(5.14) - the rules relating to criminal procedure will contain a clear definition of powers in relation to prosecution and the measures preceding and accompanying prosecution;

(5.15) - any person arrested or detained on a criminal charge will have the right, so that the lawfulness of his arrest or detention can be decided, to be brought promptly before a judge or other officer authorized by law to exercise this function;

(5.16) - in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone will be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law;

(5.17) - any person prosecuted will have the right to defend himself in person or through prompt legal assistance of his own choosing or, if he does not have sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(5.18) - no one will be charged with, tried for or convicted of any criminal offence unless the offence is provided for by a law which defines the elements of the offence with clarity and precision;

(5.19) - everyone will be presumed innocent until proved guilty according to law;

(5.20) - considering the important contribution of international instruments in the field of human rights to the rule of law at a national level, the participating States reaffirm that they will consider acceding to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other relevant international instruments, if they have not yet done so;

(5.21) - in order to supplement domestic remedies and better to ensure that the participating States respect the international obligations they have undertaken, the participating States will consider acceding to a regional or global international convention concerning the protection of human rights, such as the European Convention on Human Rights or the Optional Protocol to the International Covenant on Civil and Political Rights, which provide for procedures of individual recourse to international bodies.

(11) - The participating States further affirm that, where violations of human rights and fundamental freedoms are alleged to have occurred, the effective remedies available include

(11.1) - the right of the individual to seek and receive adequate legal assistance;

(11.2) - the right of the individual to seek and receive assistance from others in defending human rights and fundamental freedoms, and to assist others in defending human rights and fundamental freedoms;

(11.3) - the right of individuals or groups acting on their behalf to communicate with international bodies with competence to receive and consider information concerning allegations of human rights abuses.

The 1990 CSCE-Paris Summit adopting the "Charter of Paris for a New Europe" decided the following:

Human Rights, Democracy and Rule of Law

(…)

We (the Heads of State or Government of the States participating in the Conference on Security and Co-operation in Europe) undertake to build, consolidate and strengthen democracy as the only system of government of our nations. In this endeavor, we will abide by the following:

Human rights and fundamental freedoms are the birthright of all human beings, are inalienable and are guaranteed by law. Their protection and promotion is the first responsibility of government.

Respect for them is an essential safeguard against an over-mighty State. Their observance and full exercise are the foundation of freedom, justice and peace.

(…)

Democracy, with its representative and pluralist character, entails accountability to the electorate, the obligation of public authorities to comply with the law and justice administered impartially. No one will be above the law.

We affirm that, without discrimination,

> *every individual has the right to freedom of thought, conscience and religion or belief,*
> *freedom of expression,*
> *freedom of association and peaceful assembly,*
> *freedom of movement,*

no one will be:

> *subject to arbitrary arrest or detention,*
> *subject to torture or other cruel, inhuman or degrading treatment or punishment;*

everyone also has the right :

> *to know and act upon his rights,*
> *to participate in free and fair elections,*
> *to fair and public trial if charged with an offence,*
> *to own property alone or in association and to exercise individual enterprise,*
> *to enjoy his economic, social and cultural rights.*

International Covenant on Civil and Political Rights

Article 9.3 of the ICCPR states:

"Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release…"

Article 14 of the ICCPR states:

"1. All persons shall be equal before the courts and tribunals…everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. (…)

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;
(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country. "

Article 15.1 of the ICCPR states:

" No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby."

European Convention on Human Rights

Article 6.1 of the ECHR states:
"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. "