



## E-bulletin on counter-terrorism and human rights, January 2008

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### E-BULLETIN ON COUNTER-TERRORISM AND HUMAN RIGHTS

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#### **Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights: Report on Northern Ireland launched**

On 31 January, the Committee on the Administration of Justice, which organized the Northern Ireland hearing of the Eminent Jurists Panel, published its report entitled "War on Terror: Lessons from Northern Ireland." The report contains oral and written testimonies submitted to the Panel, as well as CAJ's assessment of Northern Ireland's negative and positive experiences while dealing with terrorism.

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## AFRICA & MIDDLE EAST

### 1. Israel: Supreme Court approves fuel and electricity cuts to Gaza

On 30 January, the Supreme Court of Israel rejected a petition demanding that Israel stops cutting the supplies of electricity and industrial fuel to the Gaza Strip. On 29 November, the Supreme Court had allowed the government to restrict fuel to the Gaza Strip, but requested additional information on the impact of the electricity cuts. The petitioners, 10 human rights NGOs from Israel, the West Bank and the Gaza Strip (including ICJ Affiliated Organisations) argued that the restrictions amount to collective punishment of the Palestinian civilian population. The government argued that the shortages in fuel and electricity do not impact on the "vital humanitarian needs" of the population.

**Press release**

**Background Info**

**30 Jan. Decision** (Hebrew)

**29 Nov. Decision** (English)

## AMERICAS

### 2. United States: Supreme Court considers habeas corpus rights of Guantánamo Bay detainees

On 5 December, the Supreme Court heard arguments in two cases involving 37 detainees held at Guantánamo Bay detention center. The judges will consider whether the Military Commissions Act of 2006 validly stripped federal courts of their jurisdiction over these habeas corpus petitions. The verdict is expected in the summer.

**Transcript of Arguments**

**List of Amici Briefs**

**News article**

### 3. United States: Military commission hears the case of Salim Hamdan

On 19 December, a military commission ruled that Salim Hamdan, who has been detained in Guantánamo since July 2004, is an "unlawful enemy combatant." In June 2007, another military commission had rejected the case against him because he had been classified "enemy combatant" and not "unlawful enemy combatant." Martin Scheinin, UN expert on counter-terrorism and human rights, observed the hearing on 19 December. Salim Hamdan is now likely to be the first Guantánamo detainee to face a trial before a military commission.

**Decision**

**News article**

**UN press release**

### 4. United States: Former Guantánamo detainees challenge the use of torture

On 11 January, the D.C. Circuit Court ruled that four British citizens detained at Guantánamo Bay between 2002 and 2004 cannot sue the military officers who interrogated them if they have not exhausted administrative remedies. The court confirmed a district court decision that aggressive interrogations were incidental to the military officers legitimate employment duties, even if they amounted to "seriously criminal" conduct. The court annulled the lower court's position that foreign detainees held outside the US territory were "persons" whose religious beliefs could be protected.

**Judgment**

### 5. United States: José Padilla sentenced to 17 years in prison

On 22 January, the District Court of Southern Florida sentenced Jose Padilla to 17 years and four months in prison. He had been convicted in August 2007 on charges of conspiracy to murder, kidnap and maim individuals, providing material support to terrorists, and conspiracy. U.S. District Judge Marcia Cooke rejected the prosecutors' argument that the crimes deserved life prison sentences, noting that the defendant had not personally kidnapped or killed anyone. She also took into consideration the fact that Mr Padilla had spent 3.5 years in detention as an "enemy combatant" under harsh conditions.

**News Article**

**HRF Background Info**

### 6. Argentina: Federal Court condemns military officers in the "Battalion 601" case

On 17 December, the fourth Federal Criminal Court of First Instance convicted eight former officers of charges including kidnapping, torture and disappearance in the case of six individuals abducted by the military regime in 1980. During the so-called "Dirty War" dissidents were labelled as terrorists, and between 13,000 and 30,000 were killed or disappeared. It is the first time military and police officers

were convicted since the Supreme Court in 2005 declared the unconstitutionality of the amnesty laws passed in the 1980s that protected most perpetrators from prosecution.

**Decision**

**News Article**

**CELS (ICJ Affiliated Organisation in Argentina) analysis**

**7. Colombia: Venezuela parliament recognizes belligerent status to FARC**

On 17 January, Venezuela's National Assembly adopted a declaration endorsing President Chávez's proposal to reject the inclusion of the Colombian Revolutionary Armed Forces (FARC) and National Liberation Army (ELN) in the United States' list of terrorist organizations. The parliament also requested the Colombian government to recognize the belligerency status of the FARC and ELN, although since 2002 the Colombian government denies the existence of an armed conflict in Colombia. On 18 January, the Red Cross clarified that this recognition is not required for the application of international humanitarian law to internal armed conflicts.

**Parliament Declaration** (in Spanish)

**News Article**

**ASIA - PACIFIC**

**8. Sri Lanka: Supreme Court limits government counter-terrorism practices**

On 7 January, the Supreme Court of Sri Lanka ordered the government to stop its cordon-and-search operations, in which security forces close an area before searching and arresting all residents. It is the first time the Supreme Court has placed limits on the emergency regulations "Prevention and Prohibition of Terrorism and Specified Terrorist Activities" of December 2006. Rights groups categorized the mass arrests in Colombo on 1 December as "collective punishment" of minority Tamils after two attacks by Liberation Tigers of Tamil Eelam rebels.

**News Article**

**MRGI Briefing Paper**

**EUROPE & COMMONWEALTH OF INDEPENDENT STATES**

**9. United Kingdom: House of Lords rejects application of the European Convention of Human Rights to a British detainee in Iraq**

On 12 December, the House of Lords rejected a claim by a British-Iraqi national that the European convention of Human Rights applied to his internment in Iraq. The court held that the right to liberty of Mr Hilal Al Jedda (under Article 5 of the Convention) should be protected to the extent possible by the UK, but could be infringed lawfully in case of "imperative reasons of security" as authorised by a UN Security Council resolution taken under Article VII of the UN Charter. It also agreed with the Court of Appeal that Iraqi law and not English law was applicable to the case.

**Judgement**

**JUSTICE intervention**

**News article**

**10. United Kingdom: Parliament considers bill extending pre-charge detention**

On 24 January, a new counter-terrorism bill was introduced before the House of Commons. This is the fifth piece of counter-terrorism legislation introduced in the UK since 2000. It gives additional powers to the Home Secretary, such as the temporary authority to extend pre-charge detention of terrorism suspects to 42 days. It also gives new powers to law enforcement and intelligence agencies, such as the possibility to question terrorism suspects after they have been charged. On 13 and 14 December, the Home Affairs Committee and the Joint Committee on Human Rights both released reports criticising the government's proposal to extend pre-charge detention and said current judicial safeguards are inadequate to protect detainees.

**Counter-Terrorism Bill 2007-08**

**Home Affairs Committee**

**Joint Committee on Human Rights**

**HRW press release**

**11. Germany: Supreme Court distinguishes between criminal and terrorist acts**

On 28 November, the German Supreme Court ruled that a "militant group", whose members had allegedly attempted to set fire to military vans can not be considered a terrorist organization, according to Article 129a of the German Penal Code. To be classified as terrorist, criminal acts would have to "fundamentally threaten" the order of the state, in accordance with the EU Council Framework decision on combating terrorism. The group's arson attacks on military vehicles lacked the serious threat element, therefore the group will be prosecuted as a criminal organisation under Article 129.

**Judgment** (in German)

**Background Info**

**12. Italy: Review Detention Tribunal refuse to consider hooligans as terrorists**

On 3 December, the Tribunal del Riesame, which reviews pre-trial detention orders, held that the case of three football hooligans who are accused of destroying property, vandalism and resistance to public officers lacked the aggravating factor of terrorism. The three hooligans were arrested on 12

November 2007, during riots following the killing of a football supporter by the police.

**News article 4 Dec.** (in Italian)

**News article 12 Nov.** (in English)

**News article 12 Nov.** (in Italian)

### **13. Turkey: European Court finds Turkey in violation of freedom of expression**

On 11 December, the European Court for Human Rights decided that the Turkish government disproportionately interfered with freedom of expression by condemning two journalists to a fine and banning their daily newspaper for one week after they published a picture and a statement by the leader of the PKK (Kurdistan Workers Party), an illegal organisation in Turkey. The Istanbul State Security Court had based its judgement on Anti-Terrorism Law N° 3713, which forbids "publishing statements of a terrorist organisation."

**ECHR judgement** (in French)

**News article**

### **14. Northern Ireland: Alleged Omagh bomber freed because of unreliable evidence**

On 20 December, a "Diplock" Crown Court cleared Sean Hoey of all charges of murder and causing explosions between March and August 1998. Sean Hoey was the only accused for the explosion causing the death of 29 people in Omagh on 15 August 1998. Justice Weir (sitting alone without a jury) considered that the techniques used to gather evidence were not reliable and that two police witnesses had lied, which prevented him from using this evidence to convict Sean Hoey.

**Judgment**

**News article**

### **15. The Netherlands: Appeals Court refuses to characterize Hofstad network as a terrorist group**

On 23 January, the Hague Appeals Court cleared seven men of charges of belonging to a terrorist group. The seven men included Mohammed Bouyeri, the murderer of Dutch filmmaker Theo Van Gogh. The court found that the new Article 140a of the Dutch Penal Code was not applicable because the members of the Hofstad network lacked organisation and could not be labelled as a "group". Moreover, they lacked "violent ideology", although they were disseminating seditious and threatening articles.

**News article**

**Judgement** (in Dutch)

### **16. Georgia: Unsuccessful presidential candidate charged with terrorism**

On 16 January, Georgian media reported that the Tbilisi City Court ordered that Badri Patarkatsishvili, businessman and defeated presidential candidate, should serve two months pretrial detention on charges of terrorism and conspiring to overthrow the government. The order was handed over in absentia, as Mr Patarkatsishvili lives outside the country. On 24 December, the Prosecutor General's office had released audiotapes suggesting the involvement of Mr Patarkatsishvili in a plot to have the interior minister arrested.

**News article 1**

**News article 2**

### **17. Russian Federation: Victims of the Beslan hostage-taking accused of extremism**

On 15 January, a Nazran court opened the trial of the association "Voice of Beslan", composed of mothers of victims of the Beslan school hostage-taking. The organisation is charged with extremist activities, including "slander of public officials" and "humiliating national pride" for a statement published in 2005 and accusing President Putin of refusing to launch an independent investigation into the battle ending the siege that killed many hostages. Concerns have been raised that the case is an attempt to shut down the organisation, and that the law on extremism amended in July 2007 is used to silence opposition.

**News article 1**

**News article 2**

## **UNITED NATIONS & REGIONAL ORGANIZATIONS**

### **18. United Nations: Human rights expert publishes report on impact of counter-terrorism on economic and social rights**

On 12 December, Martin Scheinin, Special Rapporteur on counter-terrorism and human rights, presented his annual report to the UN Human Rights Council. He encouraged states and intergovernmental organisations to promote economic, social and cultural rights as part of a long-term strategy to prevent terrorism. He recommended that, while adopting counter-terrorism measures, specific attention be given to the right to education, rights of women, and rights of indigenous peoples and minorities. He reaffirmed that the definition of terrorism should not include a reference to political aims of social movements, and that terrorism lists should be subjected to judicial review.

**Report**

### **19. European Union: Court of Justice is urged to exercise control over terrorism lists**

On 16 January, the Advocate General of the Court of Justice of the European Communities, Pío S. Maduro, argued that the Court of First Instance erred when it ruled that it had limited jurisdiction to review the EU regulation on the listing of terrorism suspects. The case concerns Yassin Abdullah Kadi,

who was automatically included on the EU terrorism list following his inclusion on the UN terrorism list. The Advocate General considers that the EU courts should review whether the listing complies with fundamental rights. In this case, Mr. Maduro believes that the Court should annul the regulation concerning Mr. Kadi, because it infringes his right to property, right to be heard and right to effective judicial review. The judges are now beginning their deliberations in this case.

#### **Opinion**

#### **Court press release**

#### **News article**

#### **20. Council of Europe: Committee of Ministers will not act on renditions**

On 16 January, the Committee of Ministers published its response to Recommendation 1801 (2007) of the Parliamentary Assembly on "secret renditions and illegal transfer of detainees". In contrast with the Secretary-General and Parliamentary Assembly's recommendations, the Committee is not requesting its member states or any Council of Europe body to undertake follow-up actions, nor does it condemn the practices described.

#### **Committee's response**

**ICJ Press Release** (June 2007)

#### **21. Council of Europe: Updated report claims procedures for blacklisting are flawed**

On 22 January, Dick Marty, Rapporteur of the Committee on Legal Affairs and Human Rights of the Council of Europe, published an addendum to his November 2007 report on the human rights impact of European Union and United Nations' terrorism "blacklists" targeting individuals or specific groups. The addendum gives updates on several cases mentioned in the report, and affirms that the effects of "blacklists" are more far-reaching than what had been foreseen in the November report.

#### **Addendum**

#### **Report**

### **IN BRIEF**

#### **22. New report denounces the use of torture in terrorism case in Egypt**

In December, Human Rights Watch published a report alleging that the Egyptian intelligence services subjected the members of the "Victorious Sect" to torture in order to have them confess about possible attacks against civilians.

#### **Report**

#### **23. NGO gives voice to a former CIA detainee**

In December, the Center for Human Rights and Global Justice released a report giving first-hand account from a detainee subjected to enforced disappearance and torture at several CIA "black sites."

#### **Report**

#### **24. New study on the impact of terrorism laws on freedom of association**

In December, the Euro-Mediterranean Human Rights Network published its "2007 Review on Freedom of Association" which presents the impact of legislation and practices, including counter-terrorism measures, on freedom of association in the Euro-Mediterranean region.

#### **Report**

#### **25. NGO raises concerns over fair trial rights in Israeli military courts**

In January, Yesh Din published a report on its findings after an extensive observation of proceedings in Israeli military courts, which have jurisdiction over civilians residing in the OPT. The report provides practical recommendations on how to ensure that fair trial rights are respected.

#### **Report**

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