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EU

Europol given the power to initiate criminal investigations

- EU Council of Ministers agree to ignore legal and constitutional niceties

At the meeting on 28 September the JHA Council adopted as an "A" Point (that is, without debate) a Recommendation to allow Europol to request EU member states to undertake criminal investigations. It went through unnoticed and unreported.

The Treaty on European Union (as amended by the Amsterdam Treaty) says, in Article 30.2.b, that steps should be taken to allow "Europol to ask competent authorities of the Member States to conduct and coordinate their investigations in specific cases". The special EU Summit on justice and home affairs in October last year in Tampere, Finland, said Europol should be authorised to "ask Member States to initiate, conduct or coordinate investigations" (conclusion 45). It also says, as a broad policy, that Europol's role should be strengthened "to receive operational data". A similar provision is made in TEU Article 30.2.a and Tampere conclusion 43 for Europol to be allowed to "support" joint investigative teams.

Article 30.2. also sets out that these provisions should be in place within five years of the treaty coming into effect (that is, by April 2004) - it was clearly envisaged that the implementing decisions would involve either framework decisions or amendments to the European Convention which because of parliamentary scrutiny would take several years. The TEU also lays down four decision-making instruments in Article 34: common positions, framework decisions, decisions and conventions. Moreover, in the Mutual Assistance Convention which includes "joint teams" (Article 13) was agreed on 29 May and will be ratified by national parliaments within two years.

To pursue this objective the Europol Working Party had before it, in November 1999, a report which said that if Europol "asks" a member state: "to conduct or coordinate an investigation, special provisions need to be introduced in the Europol Convention.." Moreover, the same report says that Europol is authorised to receive operational data (ie: that gathered in a criminal investigation) but **only** if the data is:

needed for analysis work.. Any action above and beyond.. requires an amendment to the Europol Convention and other Europol rules (eg: rules on analysis files, protocols on privileges and immunities)

So for Europol to carry out the objective set out in the Amsterdam Treaty and the Tampere Conclusions the Europol Convention would need to be amended both to allow it to "ask" for a member state to start a criminal investigation and to allow it to receive such operational data.

However, EU governments are not keen, indeed are decidedly reluctant, to amend Conventions. As an EU report on the subject put it, officials:

agreed at the very beginning to avoid as far as possible amending the [Europol] Convention - always a lengthy procedure.

Amending a Convention requires getting it ratified by all 15 EU national parliaments. This is based on democratic consultation but is much, much too slow for the governments.

In February in a survey of member states on the issue the UK delegation, in common with others, responded simply:

"We do not believe that it will be necessary to re-open the Convention to achieve this.

In April the Council's Europol Working Party (comprised of police officers from all 15 EU states) had before it a report from Europol (comprised of police officers from all 15 EU states) in the Hague. The report said there was a:

a consensus.. that under the provisions of the Europol Convention Europol is already able to request the initiation, conduct or coordination of investigations

The Europol report then cites Article 2.4 and Article 4.2 of the Europol Convention. But neither of the Articles in any conceivable way authorises Europol to "ask" a member state to start a criminal investigation. Article 2.4 simply defines "competent authorities" for the purpose of the Convention, while

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Article 4.2 simply says the national unit (National Criminal Intelligence Service in the UK) shall be the only liaison body with Europol. The report goes on to say there was "no need" to change national laws or the Europol Convention".

On the basis of this erroneous and legal totally incorrect statement from Europol the EU Presidency of the Council, citing the Europol report, drew up the Recommendation that was adopted on 28 September. The Recommendation itself says: "The request from Europol will be made in accordance with Article 4 of the Europol Convention."

The draft Recommendation was submitted to the Select Committee on the European Union in the House of Lords which was told by Barbara Roche, Home Office Minister, repeating the incorrect Europol position that:

there is no impediment to Europol making such requests.. to initiate, conduct or coordinate investigations, which might, or might not, be joint investigations, and might or might not, involve the participation of Europol.

The Minister's argument, like that of Europol, was that the measure was not binding on member states and did "not impose any obligation on member states". The UK anyway would as a general rule respond to a "request" Europol.

The chair of the Committee, Lord Tordoff, then wrote back 1) asking if Europol requests for starting investigations would only apply where "two or more Member States" are involved, as set out in the Europol Convention and 2) how "Article 4 of the Europol Convention which "does not mention requests for investigations" could be used to authorise the measure. Barbara Roche replied that "requests" would not be limited to "two or more Member States", which begs a big question. And the Minister failed to respond at all on the issue of the scope of Article 4.

Europol to "support" joint teams

A similar confusion surrounds another "Recommendation" to allow Europol to "support" joint teams - this is expected to go through "on the nod" on 30 November. On this too the Europol Working Party "did not see a need to change the Europol Convention". But another contradiction emerged. Under Article 13 of the Mutual Assistance Convention joint teams would be allowed to carry out "all kinds of investigations", even offences of a "minor" nature. Europol, on the other hand, is limited by its Convention to dealing with specific serious organised crimes.

Reports on the issue to the Europol Working envisage a far-reaching role for Europol, for example, "there is no reason to assume that the joint teams[s] should not choose Europol [in the Hague] as the location of their work". Europol already carries out "operational support" roles "notably in the area of controlled deliveries [of drugs]" and its could advise on the best type of "tailing equipment" to use.

In August the Council's Legal Service added to the confusion when it said that "support" under Article 13 of the Mutual Assistance Convention "would imply that such officials

[Europol] would exchange information directly with other members of each team" without national units (like the National Criminal Intelligence Service in the UK) being involved and that the Europol Convention "does not provide" this power. The draft Recommendation therefore now says that Europol will "support" joint teams "through national units" which is in contradiction with Europol providing "centralised coordination of operations by joint teams."

By choosing to put through these two measures as "Recommendations" the EU governments have opted for an intergovernmental mechanism which was meant to have been consigned to history - it is mechanism outside EU treaties. The governments are under no obligation to consult national parliaments or the European Parliament (though some did) and deliberately avoided the detailed scrutiny which would have been made of any amendments to the Europol Convention. Worse still, the Recommendations, while effectively giving Europol an operational role, contains **no** provisions for:

- a) data protection rules;
- b) changing the rules covering Europol analysis files;
- c) the use of the result of the criminal investigation;
- d) control over an investigation carried out by two or more EU member states;
- e) accountability to national or European Parliaments;
- f) rights of suspects;
- g) or judicial review

The role of EU treaties, like the Amsterdam Treaty, and meetings of EU Prime Ministers, like the Tampere Summit, is to lay down broad policy objectives. It is then the job of officials, working under the direction of Home/Interior Ministries, to put measures into effect by drawing up legal and constitutional proposals. In this case governments and Ministers consciously colluded with their officials to circumvent the law to avoid public debate and proper parliamentary scrutiny. Officials, police officers advised by interior ministries, reach a "consensus" that Europol could initiate criminal investigations and "support" these same investigations without changing the law and EU Justice and Home Affairs Ministers simply "rubber-stamped" the officials' quick and convenient solution.

Possibility for Europol to ask Member States to initiate investigations, 7369/00, plus REV 1, REV 2, REV 3; Article 30 para 2 TEU, Tampere conclusions, report from Europol, 7316/00, 5.4.00; Comments by delegations to the "First reflections concerning the Tampere Conclusions as far as they relate to Europol, 5845/00, 8.2.00; Select Committee on European Scrutiny, House of Commons, 18th, 30.5.00, and 20th, 23.6.00, reports; Exchange of letters between Lord Tordoff (Select Committee on the European Union) and Barbara Roche (Home Office Minister), 2.6.00, 15.6.00 & 7.7.00; First reflections concerning the Tampere Conclusions as far as they relate to Europol, 1337/99, 25.11.99; Inventory of practical arrangements for Europol support for joint investigative teams, 8325/00, 8.5.00; French Presidency proposal on Europol support for joint investigative teams, 9639/00 plus REV 2, 26.6.00 & 7.9.00; Participation of Europol officials in joint investigative teams, 10957/00, 31.8.00; Recommendation on Europol assistance to joint investigative teams set up by Member States, 11849/00, 9.10.00; Europol Convention, 1996.

EUROPE

EU

Justice and Home Affairs Council, 28 September 2000

The main Justice and Home Affairs Council (JHA) was held in Brussels on 28 September. Around this meeting there had been an Informal Justice and Home Affairs Council in Marseille in July and another JHA Council (held jointly with the ECOFIN Council on financial crime) in Luxembourg on 17 October. The

French Presidency of the EU, member states and the Commission have a mass of new measures on the table. It is argued that the measures are part of the commitments flowing from the Tampere Summit in October 1999 (see *Statewatch*, vol 9 no 5). Another reason is that many of the long-term developments in justice and home affairs are finally online. For example, a whole series of measures would extend the role of Europol (which became operational in July 1999), others seek to extend the role of the Schengen Information System, while a raft of proposals deal with asylum-seekers ("harmonising" procedures for accepting, reception, granting and withdrawal of permission to stay) - and the French Presidency has introduced four highly controversial proposals on expulsion, carrier sanctions and criminalising those who help refugees (see

Statewatch, vol 10 no 3/4).

Graham Watson MEP, the chair of the European Parliament's Committee on Citizens Freedoms and Rights, said:

There are now something like 35 to 40 individual member state initiatives on the table. This is creating a real log-jam in the policies and is a mess.

The European Parliament is not alone, many of the initiatives came out at the beginning of the summer and over the summer period. Most national parliaments only started work again in September or even in October and the deadlines for them to carry out any scrutiny is unacceptably short (many measures are just "nodded" through). On top of this the media have left most of these initiatives unreported and voluntary groups and NGOs are finding it very hard to monitor the measures. It is expected that the JHA Council on 30 November - 1 December, which will mark the end of the French Presidency's term, will see a stream of new measures going through.

Issues agreed/discussed

Visa requirements and exemptions for third country nationals: the Council discussed the draft Regulation which would create two lists: a "positive list" for third countries whose nationals would not need a visa when entering the EU and a "negative list" of those countries whose nationals would need a visa (that already exists unofficially). Discussion centred on a) Romania, Bulgaria and Slovakia: the Commission wanted Romania and Slovakia on the "positive list" and Denmark wanted Slovakia; b) Hong Kong and Macao which the Commission wanted on the "positive list"; c) Colombia which Spain wanted taken off the "negative list". It was decided that Romania and Bulgaria should be on the "positive list" but only subject to their conforming with EU demands on passports, border controls and police cooperation. It was not agreed to move Slovakia off the "negative list". Nor was there any agreement on Hong Kong and Macao with France, Germany and the Netherlands opposed.

Europol authorised to deal with all forms of money-laundering: the meeting agreed on the text of a proposal to extend the role of Europol to deal with all forms of money-laundering "regardless of the type of offence from which the laundered proceeds originate". Currently Europol can only deal with money-laundering where it relates to the "forms of crime" listed in the Annex to the Convention. The Council is allowed to do this under Article 43.3 of the Convention. It will be adopted at the 30 November meeting.

Conditions for the reception of asylum-seekers: a "policy debate" was held on: financial assistance, conditions of movement and access to employment for asylum-seekers. This new measure is intended to "harmonise" conditions in all EU member states to stop so-called "asylum-shopping".

EUROJUST: The purpose of EUROJUST, which will be based in the Hague alongside Europol, is to provide a direct input by prosecutors into criminal investigations (along the lines of French, but not UK, investigation procedures). The Ministers resolved two outstanding issues between the member states. The Commission is to be "associated" with the decision and to provide "expertise within its fields of competence" (this is a reference to opposition by Denmark and the UK who argue that the Commission does not have operational powers in criminal work). Second, was the problem that the Tampere Summit wording only referred to "serious organised crime" whereas the same governments now want to cover all forms of serious crime, whether "organised" or not. They agreed it should cover "serious crime, particularly when it is organised", involving two or more member states (see *Statewatch*, vol 10 no 3/4).

European Refugee Fund: the Council adopted a Decision setting up a European Refugee Fund. It will have 216 million euros over five years, just over 43 million euros a year. It will cover funds in all 15 member states to cover the reception,

integration and voluntary repatriation of refugees as well as "sudden mass influxes".

Amending Schengen Agreement: The Council agreed as an "A" Point that the Schengen Agreement be amended so that the "officers", "authorities" and "competent Ministries" authorised to act can be changes "whenever" there are reorganisations or internal changes as regards police cooperation. New agencies can be added at will.

Agence Europe, 21 & 29.9.00; *Justice and Home Affairs Council*, press release, 28.9.00.

EU

Police cooperation to be enhanced and SIS developed?

Germany has called for the development of the EU's SIS (Schengen Information System) intelligence database. The proposal was made by Otto Schilly, German interior minister, in a statement to the informal Justice and Home Affairs Council in Marseille (28-29 July 2000). Schilly called for various areas of police cooperation to be enhanced, with the SIS singled out as a "particularly good candidate for improvement".

The minister praised existing police cooperation including Europol becoming operational (1 July 1999) and legislative proposals for a European Police Academy, the extension of the scope of cross-border surveillance and the exchange of DNA profiles. He also suggested that new areas could be explored, including mutual assistance in police matters, cross-border pursuit and "cross-border assistance afforded to prevent threats and the use of undercover agents".

The SIS is an intelligence database used by EU police forces and immigration authorities. It was created under the broad proviso of "maintain[ing] public order and security, including state security". The central SIS database holds intelligence data submitted by the 10 participating states relating to people wanted for arrest, extradition or in relation to criminal proceedings; persons under "discreet surveillance"; "aliens" to be refused entry at external borders; and stolen cars and other objects recorded in connection with criminal activity. The Amsterdam Treaty integrated the Schengen agreement and implementing provisions into the TEU/TEC legal framework, and enabled the UK and Ireland to "opt-in" to the SIS (It should be noted that because access to immigration-related intelligence is tied to the Schengen provisions on free movement - in which the UK and Ireland are not participating - they will not be able to access this data (see *Statewatch*, vol 9 no 5 & vol 10 no 3/4)). Denmark, Finland and Sweden are the other EU states not yet on-line.

The German delegation restated Schilly's proposals in a document for discussion in the EU's Article 36 Committee (the coordinators of EU policy on policing, internal security and customs cooperation). Organised crime and illegal immigration were the predictable justification for SIS development:

to protect citizens against crime and to guarantee effective criminal prosecution and real protection against illegal immigration, there should be discussion as to whether other authorities and institutions should also have access to the SIS given that they must also make their contribution to internal security

The authorities they suggested could have access to the SIS were: (i) "authorities which issue residence permits, such as aliens authorities or visa agencies in representations abroad"; (ii) "central credit approval authorities with CD-Roms containing SIS inventory of stolen bank documents"; (iii) vehicle registration authorities; (iv) Europol.

Figures on the operation and content of the SIS are hard to come by. In 1997 there were nearly 50,000 computer terminals with access to the SIS in just nine states. During 1997 some

15,000 people were matched to an SIS "alert", and on the 15 March 1998 the SIS held 8,826,856 records. Seven more states are set to participate in the SIS in the short to medium term. In addition to the five EU states not yet involved, Iceland and Norway can also join under the terms of the Amsterdam Treaty. Each state submits their relevant domestic intelligence data, so both the amount of information and the number of access points will greatly increase. The expansion of the EU will see another round of expansion for the SIS.

Calls for an increase in the functions of the system and the range of authorities which can access the data are well beyond the parameters governments said would be allowed when the SIS was conceived in the early 1980s.

Statement by Federal Minister Schilly at the informal Council in Marseilles on 28 and 29 July 2000 on the development of police cooperation and the Schengen Information System, 10959/00, Limite, CATS 54 Comix 618, 31.8.00.

SPAIN/ITALY

Protocol on extradition

On 20 July, the Spanish and Italian Justice Ministers Angel Acebes Paniagua and Piero Fassino signed a cooperation protocol on extradition in Madrid. The protocol states that both contracting parties will "adopt all necessary measures to make the processing of extradition requests between the two countries easier, irrespective of the judicial and sentencing situation of the person requested for extradition". It was adopted in response to an ongoing dispute between the two countries over Spain's refusal to extradite people sentenced *in absentia* in Italy. The Spanish Constitutional Court has repeatedly ruled against extradition in such cases. Failure to attend a trial, it argued in a ruling regarding convicted Mafia boss Giovanni Greco, should not be interpreted as a defendant voluntarily waiving his right to a proper defence, "because the appearance of the accused normally results in his/her imprisonment". The Spanish judicial system does not allow for trials conducted without the accused being present. The ruling suggested that extradition would only take place if Italian authorities were to "offer guarantees that the sentence passed *in absentia* could be appealed" by the defendant.

Cases involving members of the Mafia, *N'drangheta* and *Camorra* who Spanish authorities refused to extradite provoked criticism from judicial sources in Italy, amid observations that Spain was becoming a paradise for members of organised crime networks. It surfaced that the Spanish SIRENE bureau, following advice from the *Audiencia Nacional's* public prosecutions office, had annulled 1,089 arrest warrants entered by Italian authorities on the Schengen Information System. The SIRENE bureaux, which

allows police and judicial agencies to exchange personal files on suspects, have a procedure whereby they issue "flags" if their implementation contravenes national laws. After a "flag" is issued, police in the country do not have to enforce the arrest order.

In June at the Council of Europe summit in London, and a week later in Rome, on 28 June, Mr Fassino and the Spanish Justice Ministry Under-secretary Michavila Nunez discussed the matter, with a view to establishing the framework for an agreement. These negotiations led to the cooperation protocol, which stresses the "duties of cooperation between democratic countries adhering to a common space of freedom of transnational movement...to avoid the creation of zones of impunity or expedients allowing the use of freedom of movement to avoid the laws of each of the two countries."

The legal basis for the agreement lies in the recognition of the validity of *in absentia* trials in cases where guarantees for the defence are respected. The 1979 "Additional Protocol of the European Convention on Extradition" provides for the application of extradition procedures in cases where sentences

have been passed *in absentia*, provided that defence rights are respected. Italian authorities stress that defence rights are respected because the lawyers of choice represent the accused in cases where *in absentia* judgements are passed, and that they have introduced changes following an inquiry by the European Court of Human Rights into the Italian judicial process. Both Spain and Italy agreed to providing information regarding the legal situation of the person whose extradition is requested, as well as outlining the possibilities of appeal for persons sentenced *in absentia*. The Spanish Justice Ministry's Department of Legislative Policy and the Italian Justice Ministry's Department of Penal Affairs are responsible for checking the procedures for implementing the agreement, whereas the liaisons magistrates are in charge of improving cooperation.

The Italian Justice Ministry claims that 80% of the Spanish orders prohibiting the arrest of people who were sentenced *in absentia* were removed in the wake of the protocol. The Spanish government authorised Mafia boss Giovanni Greco's extradition, in spite of a previous judgement by the Spanish Constitutional Court which ruled his extradition unconstitutional. Fassino welcomed the news: "This decision is the most unequivocal sign of the importance and usefulness of the agreement [the Protocol] on a common area of justice signed by Spain and Italy". However, Greco had already fled when police attempted to arrest him.

Although the impetus for the agreement was provided by high-profile cases involving members of organised crime networks, there is no definition in the protocol of the kind of crimes to which it should apply. There are references to the "need to strengthen cooperation procedures and to gradually eliminate the obstacles which may arise due to the differences in internal legislation", and to avoid "spaces of impunity" within an "area of free movement". The concern expressed by the Spanish Constitutional Court over defence rights in *in absentia* cases is shared by Fair Trials Abroad, an organisation concerned with fair treatment of defendants in foreign jurisdictions. In a report produced in response to a Commission Communication on Mutual Recognition of Final Decisions in Criminal Judgements, FTA labels *in absentia* trials an anachronism, adding that "We cannot understand arguments for the continued existence of trials *in absentia* involving European Union citizens within the European Union", adding that "the procedure...in practice almost inevitably involves abuse of ECHR".

Protocollo di Cooperazione in Materia di Estradizione tra la repubblica Italiana e il Regno di Spagna, 20.7.00; "Mutual Recognition of Final Decisions in Criminal Matters, Response to the Communication from the Commission to the Council and the European Parliament", Fair Trials Abroad, September 2000; Italian Justice Ministry press statements 21.6.00, 19 & 25.7.00, 4.8.00; El Pais, 28.5.00, 4, 20 & 21.6.00.

DENMARK

Youths still detained after Prague IMF/WB demonstration

More than 800 people were arrested during protests at the summit of the International Monetary Fund and the World Bank in Prague at the end of September. Among those arrested were 12 Danes; two of them, youths aged 18 and 19, remain in prison along with five Hungarians, three Germans a Pole and an American in Prague's Pankrac Prison.

The summit was attended by 15,000 delegates but also attracted the attention of around 10,000 international protesters demanding the lifting of Third World debt. The demonstration, on Tuesday 26 September, drew thousands of demonstrators who marched peacefully through the streets of Prague. At one point a small group of autonomous activists threw stones at the

11,000-strong police forces mobilised to guard the summit participants. The marchers wanted to block the summit, as happened at the WTO Summit in Seattle last year. They did not succeed but later during the day the protest forced the summit organisers to cancel an event at the opera for official participants.

According to eyewitnesses, who *Statewatch* spoke to after the confrontation, these actions did not involve many of the demonstrators. With news of the cancellation the majority of the demonstrators dispersed and walked into the side streets to get away. During the clashes 65 police officers were injured. According to the Danish newspaper, *Berlingske Tidende*, three officers were set alight but were not seriously injured.

After the demonstrators had dispersed police officers sought their "revenge" during the evening, as the spokesperson of the secretariat of the Czech government's advisory body, the Human Rights Council, Jan Jarab, described it. In an interview with *Berlingske Tidende* he said:

During the demonstration the police for unknown reasons were completely passive and let them [demonstrators] stone them for three-four hours. And at one point it is obvious that the officers had got angry over this massive bombardment and let their anger out randomly on people in the streets and not over those who had taken part in the riots. The arrests took place in an insane revenge against all foreigners.

Jarab says that according to reports in the Czech media completely innocent people in the neighbourhood were detained; for example a 60-year old Korean scientist, an American businessman and others who happened to be in the area. A week after the arrests the Independent Media Centre in Prague released information that five Romanians, five Hungarians, three Germans, two Danes, one Pole and an American were still in custody. According to Jarab the police have only brought charges against 25 people.

According to the Human Rights Council some arrests also took place in the days following the confrontation. Twelve Danes were arrested, ten of whom have been released, but two are still imprisoned and facing charges that could lead to sentences of between one and five years imprisonment for attacking a state official and breaking shop windows. The two Danes have denied any part in the violence and were not arrested at the scene of the conflict. According to their parents, who have visited them in prison, they have been treated badly - forced to stand upright for hours on end, sprayed with cold water on their naked bodies and placed in cramped overcrowded prison cells.

In an interview with the Danish newspaper *JydskeVestkysten* one of the released Danes told of the treatment he received. He was arrested immediately after turning a corner and leaving the demonstration. Seven police officers confronted him and two other protesters, throwing them to the ground. He was hit over the head with a two-way radio while another Dane was beaten in the face. They were taken to the police station where they were ordered to stand with their legs spread for two hours before being placed in a small cell around with 80 other demonstrators. Overcrowding meant that the detainees had to stand in shifts (some having to stand on a table or benches). One of the Danes explained how he was later in solitary confinement and given a blanket and a mattress. Every time he tried to sleep police officers entered the cell and woke him. The following day he appeared in front of a judge and was told to leave the country within 24 hours.

According to the parents of the two Danes still imprisoned, their lawyer suggested that they should raise bail of 100,000 - 200,000 Dkr. which was not possible. When they saw their sons, two days after they were arrested, they were told that their would have to wait three weeks for their next visit. The boys had been badly beaten and showed signs of stress and psychological strain. They have been placed with Czech prisoners with whom they cannot communicate. The Danish Government has ordered its ambassador to protest to the Czech authorities and a campaign is

being organised in Denmark to have them released.

The reports of ill-treatment have been confirmed by protesters from other countries. Italian sources describe how some demonstrators were beaten with truncheons, kicked and pulled by the hair. At the Praga 4 police station those arrested were handcuffed and left standing in the cold; money was demanded of them for their release but those who paid were still held. An American woman, who photographed the police assaulting protesters, was also arrested; she says she was beaten, suffering a serious injury to her leg, and detained without access to a lawyer or food. Other demonstrators claim to have been held at the Karlovy immigration detention centre, where they had numbers stamped on their arms and were given AIDS tests. They participated in a two-day hunger-strike in protest at their treatment.

Berlingske Tidende, 15.10.00; JydskeVestkysten 15.10.00.

IMMIGRATION

IRELAND

Illegal Immigrants (Trafficking) Bill constitutional

After the Supreme Court ruled the Illegal Immigrants (Trafficking) Bill constitutional, Irish civil liberties and refugee support groups predict a large increase of appeals in an already overburdened asylum determination system (see *Statewatch* vol 10 no 1).

On 30 June, the Irish President, Mrs McAleese, for the first time exercised her powers under Article 26 of Ireland's 1937 Constitution and referred controversial sections of the Illegal Immigrants (Trafficking) Bill to the Supreme Court to examine its constitutionality. Section 5 of the Bill was tested for violation of the constitutional right of access to the courts and breach of the constitutional guarantee of equality before the law: whilst Irish citizen's are given six months to seek judicial review on a decision, parts of Section 5 curtail the time within which a rejected asylum seekers can legally challenge a deportation order in the High Court by way of judicial review to 14 days. Section 10 of the same Bill allows for immigration officers to detain asylum seekers for up to eight weeks if they reasonably suspect the person has forged or destroyed identity documents, intends to leave the country or are intending to avoid deportation. The concept of preventative detention was challenged for its arbitrary nature and as a potential abuse of power. Both sections were deemed constitutional by the Supreme Court on 28 August and the Bill was signed into law by the President the same day.

Although the Act started out as a Bill to criminalise trafficking in persons, its scope was extended in amendments to the legislation after the initial consultation procedure between NGO's and the relevant parliamentary committee: apart from extending *gardai* powers of detention and limiting the time limit for judicial review, the Act allows prison sentences of up to 10 years or an unlimited fine for aiding illegal entry, gives *gardai* new powers to seize and forfeit vehicles used by "traffickers" and following recent Anglo-Irish plans to exchange intelligence with regards to immigration, allows for the fingerprinting of all asylum-seekers.

After the announcement of the decision, human rights and civil liberties groups said it was "manifestly discriminatory". Peter O'Mahony, the Irish Refugee Council's chief executive, thought the ruling "amounts to an unacceptable, unjustified and discriminatory restriction" and the Irish Council for Civil Liberties (ICCL) said the court's reasoning was "minimalist and unduly non-interventionist as regards the rights of failed asylum

seekers." In relation to the legal challenge on grounds of discrimination, the ruling makes a clear distinction between the rights of asylum seekers and citizens. It states that:

The rights, including fundamental rights, to which non-nationals may be entitled under the Constitution do not always coincide with the rights protected as regards citizens of the State, the right not to be deported from the State being an obvious and relevant example.

A legal correspondent of the *Irish Times* points out that this reasoning "marks a difference in emphasis from the thrust of many recent judgements, when there has been a tendency to afford non-citizens the same rights as citizens once they are actually in the State and appealing to its courts" and points to the fact that this shift towards categorising aliens' rights as inferior might be driven by the pressure to harmonise EU migration policies.

Despite this criticism, human rights groups argue that the judgement actually paved the way for a number of avenues to challenge decisions taken under the new legislation. The decision states that

The discretion of the High Court to extend the 14-day period is sufficiently wide to enable persons, who having regard to all the circumstances of the case including language difficulties, communications difficulties, difficulties with regard to legal advice or otherwise, have shown reasonable diligence, to have sufficient access to the courts.

Further, the court ruled that difficulty in obtaining relevant documents could be sufficient reason for extending the time limit for judicial review.

In regard to Section 5 therefore, the ICCL has noted that the ruling "could yet prove to be a legislative own-goal": whereas up to now, the government has been keen to settle questions of judicial review without involving the courts so as to avoid the development of a generous interpretation of protection of refugees and migrants who fall outside restrictive asylum legislation, support groups predict a high number of potential deportees will lodge judicial reviews as a consequence of the ruling, precisely because of the short time frame. After all, "what else will they have to lose if the only alternatives are undocumented existence on the run or pre-deportation detention in Ireland of the Dubious Welcomes?"

Dispersal, detention, deportation

As in the UK, the Irish Department of Justice has established a system of direct provision and dispersal, "introduced streamlined and faster processing arrangements for asylum applications with particular focus being placed on those which are manifestly unfounded", established a new *Garda* National Immigration Bureau for the "monitoring and tracking of non-nationals who are the subject of deportation orders" and with the new Trafficking Law "plans to introduce the fingerprinting of all asylum seekers".

Despite the promises by the *Taoiseach* Bertie Ahern not to introduce detention centres for asylum seekers the government has now announced it will build a massive refugee compound near Dublin airport. Mr Ahern had been strongly criticised after declaring that Ireland had a lot to learn from the asylum system in Australia after visiting detention centres there. It will consist of prefabricated "pods", housing up to 400 asylum-seekers. The compound is said to incorporate leisure and catering facilities and residents are allowed to leave the site, but their movements will be "monitored" by a 24-hour security system. They will be issued identity cards and will have to sign in and out every day.

As in the UK, the contract for providing food and housing for asylum-seekers has been given to private companies, in this case to two businessmen Des and Ulick McEvaddy. The complex will cost several million pounds to construct and the government is set to sign a management deal with East Coast Catering, a Canadian company which already supplies temporary

accommodation and catering for industrial installations in Canada. The compound near Dublin airport marks the beginning of a wider trend. Plans are being made to house 4,000 asylum seekers in sites similar to the one in Dublin and around 1,000 asylum seekers will be housed in mobile homes near Athlone, Kildare and Tralee. Peter Finlay SC, who resigned as an asylum appeals adjudicator last January in protest to the absence of an independent appeals procedure (see *Statewatch* vol 10 no 1), described the planned Dublin compound as "yet another ad-hoc, knee-jerk reaction" by the government.

The fact that housing is to be provided near the airport and resident's movements are to be monitored points to the introduction of a deportation system similar to other European countries. Justice minister John O'Donoghue has announced that the numbers of deportations will be increased; he claimed that around 75% of the 12,000 to 15,000 asylum seekers expected to enter Ireland this year will have their applications turned down and thereby be deemed illegal immigrants. "That ultimately, obviously means that there will be deportations", he said.

Mr O'Donoghue said the Supreme Court ruling reflected "modern day reality" but this reality is underpinned by the EU's continuing attack on the right to asylum and free movement. The Illegal Immigrants (Trafficking) Bill has been criticised by Dr Jean Pierre Eyanga of the Congo Solidarity Group for sending out the message that "Ireland does not welcome foreigners".

ICCL News, September 2000; The Irish Times 26.4.00, 29 & 30.8.00, 6.9.00, 2 & 3.10.00; Irish Independent 2.10.00; Department of Justice, Equality and Law Reform: Publications (www.irlgov.ie/justice/Publications/Asylum/asympol2.htm); The Independent 12.6.00.

GERMANY

Refugee coordinator prosecuted

Cornelius Yufanyi, a Cameroonian asylum seeker, member of the German based human rights organisation *The Voice, Africa Forum* and co-organiser of the International Refugee Congress in Jena this year (see *Statewatch* vol 10 no 2), has been charged with violating the travel restriction law for asylum seekers (*Residenzpflicht*). Yufanyi, one of the main organisers of the ten day Congress (which also acted as the fourth European *sans papiers* meeting) was refused permission to leave his administrative district of Eichsfeld by the Aliens Office in Thuringia. Despite the order, Yufanyi visited the Congress and was fined over 600 DM (£200).

At the court hearing on 12 October, over 70 friends and supporters learned that the regional Aliens Office case worker had violated data protection regulations by passing on personal information on Yufanyi to the Federal Office for the Acceptance of Foreign Refugees. Due to insufficient evidence being presented and his defence, that the law under which Yufanyi is being prosecuted is in violation of the German constitution and international human rights provisions, the case was adjourned. The prosecution is now preparing for another court hearing. A campaign for free movement organised by refugees and activists aims to get the *Residenzpflicht* abolished, if necessary through the European Court of Human Rights.

Paragraph 56 of the German Asylum Procedure Law was implemented in 1982 and prohibits asylum seekers from leaving their designated district. This means that asylum seekers, especially those who are dispersed to eastern Germany, are confined to very small geographical areas, often unable to visit cities located several miles from their residences as they are different administrative regions (*Landkreis*) within Germany's regional authorities (*Länder*). Asylum seekers have to apply for permission to leave a district and some Aliens Offices charge 15 DM (£5) for the application from asylum seekers' meagre living allowances (80 DM a month). Usually, the regional Aliens

Offices where the permission to travel has to be lodged are located several miles away from asylum seekers homes so that asylum seekers have to pay further travel costs, making it impossible for most refugees to apply for the permission and reducing the numbers of applications made.

The Refugee Congress identified the *Residenzpflicht* as one of the worst forms of institutionalised racism in Germany today. Matthias Lange, member of the Lower Saxony Refugee Council which supports Yufanyi and the campaign for free movement, described the *Residenzpflicht* as an "apartheid law" and the Cologne based *Committee for Basic Rights and Democracy* commented that it was "a discriminatory law specifically directed against asylum seekers." Wolf-Dieter Narr, spokesman for the Committee, said the travel restriction legislation had created a body of punishable offences which only foreigners could commit. The provision was therefore "especially useful in supporting the political inciteful talk of the "criminal foreigner" with police crime statistics."

Taking the political out of asylum

The prosecution of Yufanyi was directly linked to his political activism and pivotal role in publicising the travel restriction law in Germany and Europe-wide. During the Congress, he gave an interview to the regional newspaper *Thüringer Allgemeine* in which he criticised German asylum legislation for institutional racism, typified by the *Residenzpflicht*. This article was noticed by Manfred Schäfer, the case worker at the regional Aliens Office which rejected Yufanyi's application. Schäfer sent the article to the regional police authorities and the administrative court issued a 600 DM fine. Yufanyi's application was rejected on the grounds that he had already exhausted the prescribed quota of one occasion a month to take part in political activities.

The cross-examination of Schäfer during the hearing revealed that he had already been reprimanded by the regional data protection officer of Thuringia for passing on personal information on Yufanyi to the Federal Office for the Acceptance of Foreign Refugees. He claimed the administrative district suspected "that Mr Yufanyi was predominantly using his stay (in Germany) to become politically active" and that on visits to the authorities "he is frequently accompanied by a female German student". Yufanyi's lawyers pointed out that in addition to breaking data protection laws, these comments were informed by racism as they implicitly accuse Yufanyi of having come to Germany solely to strike up relationships with German women and take part in political actions.

In Hanover and Leipzig, refugees and anti-racist groups held demonstrations against the travel restriction law and on 3 October, 10 days before the court hearing, the campaign for free movement called for a national day of action. A demonstration in Hanover was attended by over 1,000 people. Several hundred of them were refugees who travelled without a permit, thereby risking arrest and deportation. At the rally in front of the administrative court in Worbis where Yufanyi is being prosecuted, one of his lawyers commented: "Usually these kind of proceedings are dealt with in half an hour. Today, the judiciary has noticed that in future, this will not happen so easily any more".

Junge Welt 14.10.00; *Press release of the Caravan for the Rights of Refugees and Migrants*, 17.10.00.

SWITZERLAND

Political arrest warrants

On 14 September, negotiations about the extradition order issued by Turkey against Naci Öztürk took place in the Slovenian town of Koper. The former *Dev Sol* activist was granted asylum in Switzerland in 1985 and was naturalised in June 2000. A month later, as a Swiss citizen, he decided to go

on holiday to Croatia, but was arrested at the Slovenian border due to an arrest warrant issued by Turkey and put out by Interpol. Since 17 July, he has remained in detention awaiting extradition. Turkey is accusing him of double murder and an attack on a police station.

Marcel Bosonnet, Öztürk's Swiss lawyer, commented to the weekly newspaper *WoZ* that the negotiations had allayed some of his client's fears. The fact that the warrant itself is mainly based on the Turkish political criminal law, should tell the court that the arrest warrant as well as the extradition order were unlawful, with the sole purpose of political persecution. Bosonnet is expecting a decision in two weeks time.

The case of Naci Öztürk shows that refugees are only really safe in the country that granted them asylum. Outside the narrow borders of Switzerland, they risk getting caught up in the machinery of international police cooperation. Although Interpol statutes explicitly forbid cooperation on political questions, this does not hinder Turkey or other oppressive regimes using Interpol channels for the persecution of opposition forces abroad.

The case of Öztürk is merely one example of this practice. In 1990, the Kurdish refugee H.Y., who had an accepted asylum status in Germany, was arrested in Switzerland and only released after the intervention of lawyers. In 1995, the Kurd A.K., resident in Zurich, wanted to go on holiday to Tunisia. Despite the existence of a Turkish arrest warrant, the Tunisian authorities did not arrest him, but they sent him back to Switzerland on the next flight. A Kurdish woman, who had received her asylum status in the Netherlands, was arrested by German police in 1997 when she crossed the border. She was only released 40 days later because Turkey failed to deliver a well-founded extradition order.

All these cases would have been preventable, if those affected had been informed by the respective asylum granting countries about the actions taken against them by the Turkish police forces. In the case of Naci Öztürk, the Federal Police Office (*Bundesamt für Polizei - BAP*) did not act on the international arrest warrant dated July 1999, nor on two previous extradition orders. The BAP was obviously aware of the political character of the Turkish request, yet failed to inform Öztürk and thereby allowed him to walk into a trap. BAP spokesman Jürg Pulver at first claimed that such a warning would constitute "favouritism" and was therefore punishable. Giving out information on existing arrest warrants, they claimed, was generally inadmissible.

This statement, however, is questioned by Rainer Schweizer, professor for public law in St Gallen. Schweizer is also a member of the internal control commission of the Interpol General Secretariat in Lyon. Although confidentiality was essential to international police cooperation, he said, it would have to end when undemocratic regimes started to use cooperation for political persecution and where those concerned were at risk. The BAP, he claims, clearly could have warned Öztürk.

This assessment is supported by the Swiss Interpol-regulation, which allows individuals to be informed if it "takes place according to the interest of the concerned." Schweizer says that it should now be assessed whether this loose regulation should be turned into an official obligation. For Socialist Party (SP) whip Gaby Vermot, Alexander Tschäppät (SP) and Franziska Teuscher (Green Party), who took the issue to the BAP in August, the question is no more if, but how refugees should be informed about politically motivated arrest warrants.

Demanding information now

The Swiss data protection officer recommends that refugees who fear that their country of origin has issued an international arrest warrant, should apply for information with the BAP (address: Bundesrain 20, 3003 Bern, Switzerland a copy of the passport or

ID card needs to be included). Here is the proposed text format:

According to article 13 of the Interpol regulation, I request information on the data which is collected under my name. In particular, I am seeking information on a possible international search warrant issued against me."

The BAP needs to justify the refusal of information, which can be challenged. Because the BAP always lodges questions with the Federal Office for Refugees (*Bundesamt für Flüchtlinge - BFF*) if extradition orders concern refugees, information requests can also be lodged with the BFF (address: Quellenweg 6, 3003 Bern-Wabern). The text could be formulated along the lines of: "I hereby request a full consultation of my asylum dossier, including all relevant correspondence." Due to a Federal Court decision from 1999, any correspondence - in this case between the BAP and the BFF - also constitutes a file or dossier.

Anyone who is affected by an unlawful arrest warrant can challenge the order by contacting the internal control commission of the Interpol General Secretariat in Lyon. The Control Commission deals with around 100 such cases each year (*Commission de contrôle interne des fichiers de l'OIPC-Interpol, BP 6041, F-69411 Lyon Cedex 06*)

BELGIUM

Death in detention centre

A 25-year-old Albanian, Xhevet Ferri, died on 13 October in an isolation cell in the Steenokerzeel Detention Centre 127-bis near Zaventem airport (Brussels) after an attempted escape. He was arrested without documents in a lorry in Ostend on 5 October, and was due to be expelled on 20 October. Ministry of the Interior statements said that nine detainees staged an escape attempt on the night of 12-13 October, four of whom succeeded. Ferri injured himself seriously in a fall, apparently from a five-metre high perimeter wall. The Ministry claimed that there were no outward signs of injuries, that he was kept under regular observation by personnel at the centre, and that first aid was administered, and an ambulance called, as soon as it became apparent that he was ill.

Allegations of mistreatment arose after media inquiries and a visit to the centre by members of parliament on 13 October. Some escapees alerted guards when they realised that Ferri was seriously injured. In spite of his groaning and a warning from a guard that it was dangerous to move Ferri as this might aggravate his injuries, police who were called in to recapture the detainees handcuffed Ferri and drove him into the detention centre, without medical examination. He was allegedly dragged by his feet from the entrance to the centre into an isolation cell, which he shared with a fellow escapee who gave the alarm when Ferri's condition deteriorated.

The Interior Minister Antoine Duquesne spoke of a "tragic accident", and awaits the results of a judicial investigation into the case opened by the Brussels public prosecutor's office. Amnesty International (AI) urged the authorities "to pay special heed to the principles established in international human rights instruments regarding the use of force by law enforcement officials" (Article 3, UN Code of Conduct for Law Enforcement Officials, Articles 4 & 5, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials). AI also stressed the need to verify whether the requirement to provide medical care and treatment whenever necessary (Principle 24, UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Article 6, UN Code of Conduct for Law Enforcement Officials) had been adhered to.

The *Collective de Résistance aux Centres Fermés et aux Expulsions* (Collective of Resistance to Detention Centres and Expulsions), based in Brussels, organised a demonstration outside the detention centre on 14 October. It accused "officials of the Belgian state" of "having actively accelerated the death of

a man", and the Interior Ministry of protecting them. It also criticised the Belgian government for failing to act decisively on information concerning the presence of extreme right-wing activists in the Zaventem police force. In 1998, the *Bureau Central de Renseignement* (Central Intelligence Office) informed the internal affairs committee of the Senate of this situation. Zaventem police officers were also involved in Semira Adamu's death (see *Statewatch* vol 8 no 5) and the marking of numbers on the forearms of seventy-four Roma who were deported to Slovakia.

The judicial investigation into Semira Adamu's death, in September 1998, was closed by the investigating magistrate in February. The public prosecutor's office holds the dossier on the case and will decide on the drawing up of any requests for prosecution. Semira Adamu died of a cerebral embolism caused by asphyxiation when she was restrained with a cushion over her face during an attempt to forcibly deport her from Zaventem airport. AI has expressed concern "about the length of time which has elapsed without anyone being brought to justice".

Amnesty International "The death of Xhevet Ferri", October 2000; Amnesty International "The death of Semira Adamu. Justice still awaited", September 2000; Amnesty International "Concerns in Europe January-June 2000" 21.8.00; Collectif de Résistance aux Centres Fermés press statement 14.10.00; MRAX press statement 14.10.00; Zpajol "List sur les mouvements des sans-papiers"

Immigration - in brief

■ **Spain: Arrivals increase:** In the first nine months of this year 11,098 immigrants who tried to reach the Andalusian coast in dinghies were arrested. This figure is more than twice the number for 1999, when 5,492 cases were documented. The presence of women and children is ever-increasing; the youngest to arrive, on 16 October, was a 14-day old baby.

■ **Spain: Death in Arrecife police station:** On 20 May Antonio Augusto Fonseca, a Guinea-Bissau citizen, died in Arrecife police station after being arrested and taken there in the boot of a police car. Police stated that his death was caused by the ingestion of drugs and presented a forensic report which stated that it resulted from a pulmonary oedema. However in August Fonseca's sister told a judge that the death was provoked by physical abuse by the police; to back her claims, she presented the results of a second autopsy, commissioned by the family, which show that there were no traces of drug consumption and that the death resulted from a strong blow to Fonseca's neck. A witness to the arrest says that he saw the officers punching and kicking Fonseca until he lost consciousness.

■ **Spain: GRECO programme:** The government intends to select immigrants in their countries of origin according to the requirements of the Spanish labour market. This is one of the main objectives of the Global Programme for the Regulation and Coordination of Foreigners (GRECO), announced on 9 October. The same policy also involves selection on the basis of "cultural differences" in order to give priority to immigration from Latin America. This plan is especially concerned with the fight against "illegal immigration mafias".

■ **Spain: Expulsion of immigrants in the holds of ships:** Parliament heard allegations about the conditions of undocumented migrants who are deported from Spain locked in police van holding cells, and transferred into the holds of ferries linking Cadiz with Morocco. The allegation was confirmed by the captain of the *Ciudad de Algeciras* who refused act as captain on one journey, on 5 October, and reported that he was pressured by police to keep quiet. This kind of deportation represents a genuine threat for the life of the expelled migrants and contravenes maritime laws.

Immigration - new material

European Race Bulletin. Institute of Race Relations, no 33/34 (August) 2000, pp60. Due to the implementation of dispersal programmes in the UK and Ireland, this issue includes a special report on the link between the rise of xenophobia and racist attacks in areas of dispersal and the experience of the Netherlands and Germany. A fact sheet focuses on the FPÖ's entry into a coalition government in Austria last February. In France, police killings have risen to 18 since 1993, in Germany, African embassies are asked to collude in deportations and Italy is seeing increasing resistance towards detention centres. Available from: IRR, 2-6 Leeke Street, King's Cross Road, London WC1X 9HS, Tel: 0044(0)20-7837-0041, Fax: 0044(0)20-7278-0623.

Auf dem Weg nach Schengen-Europa (On the way to Schengen-Europe), *asylkoordination*, 2/2000, pp12-16. The Berlin based Research Centre for Flight and Migration (*Forschungsgesellschaft Flucht und Migration*) has conducted extensive research on immigration and Eastern Europe. In this article, they argue that the EU's imposition of border control requirements on its eastern European neighbours has not only led to harsher treatment of refugees and migrants attempting to cross the EU's external borders but also to the creation of unaccountable detention centres with no access to an independent asylum procedure. Under scrutiny here is the Czech detention centre of Balkova, which was set up in November 1998 after pressure from Germany. It holds up to 300 detainees, 60% of whom were picked up by the German border police and sent straight back to the Czech Republic under the 1994 readmission agreement. Investigation into the "reception" centre in Cerveny Ujezd revealed the eastward extension of Europe's asylum prison regime and large-scale *refoulement* (sending asylum seekers back to unsafe countries of origin) through chain deportations, all of which are contravening European and international asylum and human rights instruments. Available from: Asylkoordination, Schottengasse 3a, 1010 Vienna, Austria.

Domestic Bliss? Helène Mulholland. *The Big Issue* 9.10.00, pp16-17. This article deals with hidden slavery in the form of domestic labour in Britain today. It quotes extensively from the experiences and campaigning activities of the domestic labour rights group *Kalayaan*. Of 74 people (the majority of whom are immigrant women), which *Kalayaan* saw in August alone, "nearly half reported they had no bed to sleep in, over half lacked regular meals, and an equal number had been physically abused". *Kalayaan* can be contacted on Tel: 020 7243 2942.

Campsfield Monitor. Campaign to Close down Campsfield, Issue 15 (September) 2000, pp8. This issue gives news from inside Campsfield immigration detention centre regarding medical treatment, racism and visiting conditions. Also includes a list of new detention centres in the UK, protests against them, media racism towards refugees and asylum-seekers and useful contact addresses. Available from: *Campaign to Close Down Campsfield*, 111 Magdalen Rd., Oxford OX4 1RQ, UK, 0049-1865-558145, asylum@sable.ox.ac.uk.

Infodienst des Bayerischen Flüchtlingsrates, Bavarian Refugee Council. No 75 (September-October) 2000, pp39, DM5. Includes articles on the third anti-racist border camp held at the German-Polish border earlier this year and a damning critique of the conditions in the *Zentrale Aufnahmestelle für Asylbewerber* (Central Reception Centre for Asylum-seekers) and its adjacent deportation prison in *Eisenhüttenstadt*. The Bavarian Refugee Council strongly criticises the decision by the regional administrative authority in *Landshut* to deport a father of a newly born baby to India with the reasoning that "an infant does not need his father anyway". Also includes information on Germany's current asylum policies and assessments of countries of origin such as Afghanistan, Turkey and Iraq. Available from: *Bayerischer Flüchtlingsrat*, Valleysstr. 42, 81371 Munich, 0049-89-762234, bfr@ibu.de.

UK foreign and asylum policy: human rights audit, including the human rights challenge for the future. Amnesty International, September 2000, £9.99, ISBN 1-873328-45-1, pp76. This is AI's assessment of the UK government's human rights record since it came to power in May 1997. It covers international relations and diplomacy

(the Pinochet case and Britain's failure to ratify the treaty to create the International Criminal Court (ICC)), the arms trade, asylum policy, international justice and international human rights standards. The UK's arms trade record is criticised, in particular the lack of legislation regulating arms brokering. In large part this report concentrates on the 1999 Asylum and Immigration Act and AI calls for the abolition of Britain's pre-entry control provisions as it "fuel[s] the trade in "people smuggling" or "trafficking"". The report claims that "the Government inherited a shambles from the Tories three years ago and has now created one of its own". Also includes country case studies on China, the Democratic Republic of Congo, Russian Federation, Saudi Arabia and Sierra Leone. Available from: Amnesty International UK, 99-119 Rosebery Avenue, London EC1R 4RE.

The Expanding Nation: Towards a Multi-Ethnic Ireland, Ronit Lentin (ed). Department of Sociology/Trinity College Dublin, September 1998, £5, pp76. This is a compilation of articles from a conference on race, ethnicity and nationalism in the Irish and comparative contexts. Contributions cover migration and identity in the European context, the complex of sectarianism and racism in Ireland, immigrants in Germany, ethnicity in Britain, refugees and asylum seekers in Ireland and the migratory patterns of the Roma since 1989. Available from: Ethnic and Racial Studies, Department of Sociology, Trinity College, Dublin 2, rlentint@tcd.ie.

LAW

UK

Fixed penalties for "disorderly behaviour"

The Prime Minister, Tony Blair, and Home Secretary, Jack Straw, are on the record for wanting to clear the streets of people they find offensive or disagreeable. On 26 September the Home Office put out a consultation paper, "Reducing public disorder - the role of fixed penalty notices", with a deadline of 25 October for comments. The Home Office "regretted" the short period for "consultation" but this was because "it may seek to introduce legislation on the subject during the autumn".

The government is intending to extend the practice of giving fixed penalties to car drivers to people who commit "disorder" offences on the street. The range of "anti-social, disruptive" behaviour to be punished includes: spray-painting graffiti, being drunk, being drunk and disorderly, "drinking intoxicating liquor in a public place", "using threatening, abusive or insulting words or behaviour, or disorderly behaviour, or displaying any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress", underage purchase of drink, criminal damage, littering, dog fouling and vandalism. They would not include racially aggravated offences.

The person given a disorderly fixed penalty notice can decide to pay the fine or go to court. The penalty for the 7.2 million car driver tickets issued each year range from £20-40. It is proposed that disorderly fixed penalty notices would range from £50-100 to £100-200.

The essential difference between a car and a person is that a car has a number-plate front and back and it is therefore easy to identify a person does not. For this reason police powers will be extended to cover these fixed penalty offences to allow them to detain a person on the spot of the alleged offence and to arrest them if "the offender refuses to or is unable to substantiate his or her identity or address."

Such a law will no doubt be welcomed in the shire counties and the suburbs but be virtually unenforceable in many inner

city areas. It will lead to "detention on the streets", add to the harassment caused by "stop and search", will discriminate against and penalise the poorest, and could lead to arrests on a scale to fill all the police cells where people are unable to prove their identity or address.

Reducing public disorder: The role of fixed penalty notices - a consultation paper, Home Office, 26.9.00.

SPAIN

New law on justifying terrorism

The government has approved a number of legal reforms: making the definition and sentencing for *apologia* harsher; treating people who are under 18 years old as adults when they are involved in "terrorist" activity - with the conversion of any acts of *kale borroka* (street struggle), regardless of how small they may be, into terrorism; and for the *Audiencia Nacional* (High Court) to be competent in all such cases.

The Penal Code which is in force defines *apologia* as an incitement to commit offences. It is not enough to publicly applaud a crime or to praise its author, it is also required that a direct exhortation to commit a crime takes place. This definition of *apologia* results from the need for its punishment not to constitute a criminalisation of ideas or opinions which are publicly expressed, regardless of how unpleasant or annoying they may be for those in power, or any other sector or group.

The new regulation involves maximum penal intervention in a field which is so relevant to freedom of expression. Penal law should distinguish between guilty and innocent, not between "friends" and "enemies". For someone under 18 years of age to be treated as an adult only for the purpose of fighting terrorism is a simple matter of dispensing with the law.

On the other hand, converting public disorder or damage to property into a terrorist crime could lead to the burning of a tyre to block a road during a demonstration becoming a terrorist offence. The intention to cause "political destabilisation" will be decisive. Critics say this entails an unacceptable arbitrariness and is a shameful assault on judicial safeguards. The sentence for minors who perpetrate terrorist crimes is raised to ten years, with a further five years' probation.

The best way to understand what is being planned is to look at a concrete example: if a minor [under 18] commits a murder, a theft and murder, or a rape, the current maximum sentence is five years detention and, in extremely serious cases, a further five years' probation. But if the same minor throws a molotov cocktail at a cash machine, he can be detained for ten years and five years' probation. Public order and property are protected more than life.

The institution of proceedings for terrorist acts committed by minors will not be the responsibility of an ordinary Minors' Court. A National Court for Minors will be integrated into the *Audiencia Nacional*, whose exclusive competence in terrorist matters has been extended, as offences which were not previously considered terrorism considered as "terrorist". It will no longer be required that the actions of gangs or groups wishing to alter the constitutional order endanger life, it will suffice that their actions have a "political scope".

ITALY

War criminal released

Jorge Antonio Olivera, a former major in the Argentine army, was released on 18 September from preventative custody in *Regina Coeli* prison in Rome by the Court of Appeal (Fourth section) on the basis of a fake document submitted to magistrates by his lawyers. Olivera was arrested on 8 August in Rome's

Leonardo da Vinci airport, when Italian police acted on an international arrest warrant issued by a French judge, Roger Le Loire, in July. He was charged with the kidnapping of Maria Ana Erize Tisseau in October 1976, and her torture in San Juan prison camp where he served in the 1970's. Following Olivera's release, Italian justice minister Piero Fassino ordered an investigation and was told by the Italian consulate in Argentina that the document was "entirely falsified". "It is a very serious case, and it must be immediately ascertained how it could have been possible to release a man accused of horrible crimes on the basis of a document which is clearly and blatantly false", he commented.

Olivera left the army in 1993 and opened a legal practice. He defended former *junta* leader general Suarez Mason from accusations of kidnapping the new-born children of "disappeared" parents, and reportedly offered to defend Erich Priebke, when the German war criminal was arrested in Argentina. Olivera became the first person arrested abroad for crimes committed during the dictatorship. On 1 September, the Italian justice ministry passed on a French extradition request to the prosecutor's office in the Rome Court of Appeal to start extradition proceedings. Olivera's lawyers, Marco Antonio Bezichieri and Augusto Sinagra, submitted the false document, supposedly a death certificate proving the victim died in 1976, which resulted in the application of the statute of limitation (15 years is the limit for kidnapping charges), the denial of the French extradition request and Olivera's release.

After his custody order was lifted, Olivera flew from Milan to Buenos Aires, where amnesty legislation introduced under Raul Alfonsin in 1987 will ensure his impunity. The general prosecutor of Rome's Court of Appeal was too late when it challenged the decision before the *Corte di Cassazione* (highest appeal court) on 20 September. He claimed that Maria Luisa Carnevalle, Serenella Siriaco and Massimo Michelozzi, the magistrates who released Olivera, gave "decisive probatory value to documentation which was totally informal, submitted by the defence, affirming the kidnapped woman had died". The document turned out not to be a death certificate, as no such document exists because Maria Ana Erize Tisseau's body was never found. It was merely a request for a death certificate at Buenos Aires' records office, suitably doctored, with the inclusion of a date of death, stamps, and forged signatures of the Argentinian Foreign and Interior Affairs ministers to legitimate the document. *Il Manifesto* reports that three requests for the woman's death certificate were presented in September, none of which had been fulfilled.

Marianna Li Calzi, the State Under-Secretary for Justice, told Parliament on 6 October that disciplinary proceedings were being taken against the magistrates for failing to take the necessary precautions "in the acquisition and translation of a document which arrived from abroad, via fax,,"; accepting the defence's description of the document as a "death certificate" without further checks, although even the translation - which was unofficial - stated that it was a request for a certificate; and of basing their decision over whether to maintain preventative measures on a pretext (the woman's death) which was "non-existent".

Luigi Saraceni, a Green MP, wondered how "a measure of this importance, which has international repercussions with the governments of other countries (in this case France and Argentina) was adopted without carrying out any controls regarding the authenticity of a document which was subsequently seen to be *ictu oculi* (on examination) false." He expressed concern that if abductions "are subject to the statute of limitation because 15 years have passed, many proceedings which are presently underway would be hit by the statute of limitation", in reference to the *in absentia* trial in Rome of seven members of the Argentine armed forces for the abduction and murder of two Italian citizens between 1976 and 1978 (see *Statewatch* vol 10 no 2).

Parliamentary debate, 6.10.00; Senate debate, 26.9.00; Justice Ministry press releases 1, 20, 25 & 28.9.00; Il Manifesto 20-23.9.00, 7.10.00; La Repubblica 29.9.00; Le Monde 22.9.00.

Law - new material

Legal Briefing. Activists' Legal Project, number 1 & 2, pp6 & 8 respectively. This new series of legal briefings focuses on the arrest process and the rights of the detainee and a brief guide to the trial procedure in the Magistrates' Court. Briefing 1 gives helpful information and advice for activists about the process of detention, cautions, charges and what (not) to carry (ie. address books) when risking arrest. Briefing 2 focuses on the court procedure, differences between the courts, pre-trial hearings, the trial procedure, sentencing, court costs and questions of organising your own defence. Available from: *Activists' Legal Project*, 16b Cherwell Street, Oxford OX4 1BG, activistslegal@gn.apc.org, Tel: 0044(1)1865-243772.

Ministerial Statements - The Human Rights Act 1998 (A compilation of ministerial statements made on behalf of the government during the Bill's passage through parliament), Katie Ghose. Immigration Law Practitioners' Association, August 2000, pp70, ISBN 1 901833 05 4. This compilation aims at informing UK immigration practitioners about the implications of Britain's new Human Rights Act, at encouraging broad and flexible interpretations with regards to the Act's provisions and to "provide in one source a list of all relevant ministerial statements" which can, in UK law, be used to clarify the meaning and effects of new legal provisions. Available from: ILPA, Lindsey House, 40-42 Charter House Street, London EC1M 6JN, ilpa@ilpa.org.uk.

Parliamentary debates

Regulation of Investigatory Powers Bill Lords 12.7.00 cols. 255-297; 316-364

Football (Disorder) Bill Commons 13.7.00 cols. 1181-1265

Regulation of Investigatory Powers Bill Lords 13.7.00 cols. 380-387; 400-452

Football (Disorder) Bill (Allocation of Time) Commons 17.7.00 cols. 33-74

Football (Disorder) Bill Commons 17.7.00 cols. 75-154; 155-190

Regulation of Investigatory Powers Bill Lords 19.7.00 cols. 1017-1081

Football (Disorder) Bill Lords 20.7.00 cols. 1182-1262

Regulation of Investigatory Powers Bill Commons 26.7.00 cols. 1177-1210

Football (Disorder) Bill Lords 24.7.00 cols. 146-196

Football (Disorder) Bill - Committee Lords 24.7.00 cols. 197-272

Business of the House: Football (Disorder) Bill Lords 25.7.00 cols. 283-299

Football (Disorder) Bill Lords 25.7.00 cols. 299-352; 368-410

Criminal Justice (Mode of Trial) (No.2) Bill (Allocation of Time) Commons 25.7.00 cols. 938-992

Criminal Justice (Mode of Trial) (No.2) Bill Commons 25.7.00 cols. 993-1022

MILITARY

Military - In brief

■ **WEU: Armaments Cooperation Group to stay.** The Western European Union's armaments cooperation group (WEAG) will continue as an independent entity after the larger defence organisation is absorbed into the European Union. The

main reason is that WEAG cannot legally be transferred to the EU because of its mixed membership. Of the 13 members of the group ten belong to the EU but Iceland, Norway and Turkey do not. Norway and Iceland have no plans to join the EU, but Turkey does and for the purpose of military and armaments cooperation Turkish officials value a continued involvement in WEAG. The Turkish defence minister, Cakmakoglu argued at the May meeting of WEU defence and foreign ministers for Turkey's inclusion in EU armaments planning and that the WEAG could be a bridge. The WEAG discusses the harmonisation of defence export policies, the elimination of customs and technical barriers and other measures to consolidate Europe's defence industry. According to WEAG's chairman, Greek General Kirikas, the WEAG's short time goals are to increase its members aggregate national spending on defence research from 2.5% to 5% by the end of the year, a study on coordination of defence spending on equipment for October and a review of the prospects for an independent arms agency to set common military requirements and procurement goals. *Defense News* 29.5.00.

■ **EU: Plans for intervention forces.** Defence ministers met in September in France to detail the number of planes, ships and troops that a proposed European military force needs to tackle world crises. Since July four working groups have prepared the ground, one on military capacities, one on the exchange of confidential documents, one on the use by Europeans of NATO assets and one on liaison between EU and NATO. The 15 member states have to announce the forces each will commit to the rapid reaction force of between 50,000 and 60,000 troops, able to deploy within 60 days and sustain itself for a year without involvement from the US. The corps is due to be operational by 2003. A supply of 80,000 soldiers will be needed for humanitarian crises, rescue operations, peacekeeping and peacemaking. About 350 planes and 80 ships will be required. Some countries have already put numbers on the table - Germany pledged 18,000 troops and Belgium 3,500. The final offers have to be made at a force pledging conference in November before the Eurosummit in Nice. *Le Monde* 21.9.00 (*Laurent Zecchini*); *Associated Press* 22.9.00.

NORTHERN IRELAND

McAliskey investigation dropped

In July, the Crown Prosecution Service (CPS) dropped an investigation into Roisin McAliskey, admitting that there was no chance of a successful prosecution against her for participating in the IRA's bombing of a British Army base in Osnabruck, Germany, in June 1996. No one was injured in the attack. Roisin, the daughter of Bernadette McAliskey the former Republican MP for Mid-Ulster, was arrested five months after the incident when the German authorities claimed to have found her fingerprints at the scene; they also said that she had been identified by a witness. She was taken to Holloway prison in north London to await a decision on her extradition to Germany before being transferred to Belmarsh high-security prison and then back to Holloway. She gave birth to a daughter while in custody.

The case against her, described as "puny" by her solicitor, was fatally flawed when it was demonstrated that the fingerprint could have transported to Germany from the UK innocently. The case was further undermined when the eyewitness retracted his evidence, claiming that he had been pressured into making a statement. Roisin had witnesses who said that she had been at home and at work at the time of the bomb attack. The Home Secretary issued a statement in March 1998 saying that he would

not order her extradition to Germany because it would be "unjust and oppressive".

Notwithstanding the paucity of evidence against her she was detained in prison for over fifteen months and suffered from brittle bone disease as a consequence of the conditions in which she was held. During her imprisonment, and despite her pregnancy, she was strip-searched on 75 occasions. She underwent psychiatric treatment at the Maudsley hospital in London for post-natal depression and suffered severe post-traumatic stress. Describing her ordeal, solicitor Gareth Peirce said: "It is incomprehensible that the CPS apparently have devoted time and public resources at this late stage in ascertaining what was always obvious."

Northern Ireland - new material

Just News vol 15 no 7/8 (July-August) 2000, pp8. Latest number contains pieces on the Bloody Sunday inquiry; the case of David Adams (who was brutally assaulted by police after being arrested for IRA-related offences in 1994), emergency legislation, and a call by the Organisation for Security and Cooperation in Europe for "the protection of human rights lawyers in light of the murders of Pat Finucane and Rosemary Nelson."

Nor meekly serve my time, Lawrence McKeown. *Fortnight* 388 (September) 2000, pp30-32. This article explores the history of "one of the world's most infamous jails", Northern Ireland's Long Kesh (The Maze), which saw the unprecedented struggle for the retention of political status category by Republican prisoners during the 1970s and 1980s. McKeown argues that Northern Ireland's prisons should be regarded as a microcosm of society: "When there was an attempt to deny the political nature of the prisoners and coerce them into a forced and false system of integration the outcome was conflict, protest and deaths."

Parliamentary debates

Terrorism Bill *Commons* 10.7.00 cols. 627-665

Police (Northern Ireland) Bill (Allocation of Time) *Commons* 11.7.00 cols. 723-753

Police (Northern Ireland) Bill *Commons* 11.7.00 cols. 754-842

Police (Northern Ireland) Bill *Lords* 27.7.00 cols. 635-703

PRISONS

Prisons - in brief

■ **UK: Peoples' Tribunal into deaths in custody launched:** The United Families and Friends Campaign (UFFC), a coalition of black families and campaigners demanding an end to deaths in police custody, in prisons and in psychiatric wards, has launched a tribunal to investigate the causes of the fatalities. The People's Tribunal into Deaths in Custody will "examine the circumstances leading to deaths in custody and the actions taken by statutory bodies, including the police, the Prison Service, the Police Complaints Authority, the Crown Prosecution Service and National Health Service Mental Health Trusts." The tribunal will be chaired by Ian Macdonald QC. It will call for submissions from bereaved families and organisations which would like to make suggestions to prevent future deaths. The tribunal can be contacted at: People's Tribunal into Deaths in Custody, Tribunal Office, Suite 4, 63 The Broadway, Stratford, London E15 4BQ.

■ **UK: Jailed mothers at record high:** An investigation by

the Observer newspaper has revealed that "the number of mothers in the British prison system has reached an all-time high, more than doubling in the past 10 years." The inquiry found that of 3,524 women held in prison at the end of August, two-thirds were mothers and more than 1,000 were pregnant or had young children. The actual figure, according to Frances Crook of the Howard League, may well be higher as many women do not notify the authorities about their children fearing that they may be taken into care. Currently there are four prison "mother and baby" units in prisons across the country with 72 places; they are restricted to children under 18 months. Two new units are being built, although the placing of young children in prison units is controversial. Critics have argued that more mothers should receive suspended sentences to avoid splitting them from their babies and a Prison Service report last year described the number of mothers imprisoned as an "enormous concern". *Observer* 10.9.00; *Guardian* 5.9.00.

■ **UK: Asian Women Prisoners' Support Group launched.** The Asian Women's Prisoners's Support Group, along with the Asian Women Unite organisation, held their first public meeting in London at the end of July. The rally was addressed by Bibi Sarkaria who was released from Cookhamwood prison earlier in the day; she described her experiences in challenging the racism of the prison authorities in different prisons over a period of ten years. The meeting also heard accounts from Patricia Manning (sister of Alton, see *Statewatch* vol 10 no 3/4), Zoorah Shah's daughter Naseem (see *Statewatch* vol 10 no 2) and from a representative of the Free Saptal Ram campaign (see *Statewatch* vol 9 no 5). The Group has identified a number of issues around which they will work. These include publishing a Newsletter to build up contacts and network among prisoners; protest actions; investigating the high number of suicides among women prisoners and publicising black prisoners' issues. The Group also hopes to set up a hotline for prisoners to contact. Asian Women Prisoners' Support Group, c/o Londec, Instrument House, 205-17 Kings Cross Road, London WC1X 9DB.

Prisons - new material

Developing prison standards compared, Rod Morgan. *Punishment & Society* vol 2 no 3 (July) 2000, pp325-342. This article compares the "two most developed sets of international custodial standards", those of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in Europe and the American Correctional Association in north America.

Annual report 1999-2000. Criminal Cases Review Commission, pp50, ISBN 1-84082-480-8. This "independent" body (ie. members are appointed by the queen on the recommendation of the Prime Minister) was established in 1997, under the Criminal Appeal Act 1995, to staunch the flood of prisoners released in the early 1990s after their convictions were found to be unsafe. It contains sections on "case-referrals and non-referrals", the "case review process", casework and "prospects for 2000-01".

CAGE Newsletter, no 1, July 2000, pp2. The anti-prison network CAGE grew out of the UK environmental movement and is now involved in direct action against the prison industry and more recently has dealt with immigration detention. This newsletter covers actions on Bastille Day (14 July) during which 50 protesters occupied a piece of land in Ashford, Surrey, a future women's prison site. Includes information on prison labour, prison construction and anti-immigration and deportation protests. Available from: CAGE, c/o PO Box 68, Oxford OX3 1HS, Answer phone: 0049-7931-401-962, prison@narchy.fsnet.co.uk, www.veggies.org.uk/cage

Parliamentary debate

HM Chief Inspector of Prisons: Annual Report *Lords* 10.7.00 cols. 1-4

UK

Demand for independent inquiry

The family and friends of Roger Sylvester, who collapsed and died after being restrained by eight north London police officers outside his home in January 1999, have called for an independent public inquiry into the circumstances of his death at a vigil at the Home Office in August (see *Statewatch* vol 9, no 1). As Roger lay in a coma the police issued a statement claiming that he had been found naked and causing a disturbance outside a neighbour's house. They later retracted their statement and issued an apology, admitting that Roger had been knocking on his own front door and that there was no disturbance. The results of an Essex constabulary investigation, headed by Assistant Chief Constable John Broughton, into the Metropolitan police's handling of Roger's arrest was handed to the Crown Prosecution Service last October. A year later the family are no closer to receiving a decision on whether any police officers will be prosecuted. A full inquest cannot be held until a decision is reached.

The vigil, which took place on what would have been Roger's thirty-second birthday, was told by his mother, Sheila: "We fear that the decision the CPS will reach in the coming weeks will not be based on truth and therefore justice will not prevail...We have [therefore] decided to present a letter of dissatisfaction to the Home Secretary." Her fears were echoed by Helen Shaw, co-director of INQUEST who criticised the flawed investigation system where police investigate themselves: "We can have no confidence in a system that allows the police to investigate the police" she said. "An independent inquiry would go some way to ensure proper scrutiny of this tragic death and the wider issues it raises, in particular the disproportionate number of young black men who die in police custody following the use of force." The Roger Sylvester Justice Campaign can be contacted at PO Box 25908, London N18 1WU, Tel. 07931 970442.

INQUEST, press release 15.8.00; "Briefing: Roger Sylvester" INQUEST 1999 (www.gn.apc.org/inquest/briefings/sylvester.html)

Charges to follow inquest?

Five police officers who faced minor charges in relation to the agonising death of Christopher Alder in Queen's Gardens police station in Hull during April 1988 may face more serious charges following a jury's unanimous unlawful killing verdict at one of the longest and most far reaching inquests in British legal history. The policemen - PCs Nigel Dawson, Neil Blakey, Mark Ellerington and Matthew Barr and Sargeant John Dunn - have been charged with misconduct in public office and suspended from duty. However, a spokeswoman for the Crown Prosecution Service (CPS) confirmed that in light of the inquest verdict they will be reviewing the charges against them, although this process is expected to take some months. The Alder family solicitor, Ruth Bundy, has urged the CPS to consider serious charges against the police officers, who have said that they intend to challenge the inquest verdict.

All five policemen refused to answer questions at the inquest, which heard how investigating officers had allowed Christopher's clothing to be destroyed before any forensic examination had taken place. All of the police officers' uniforms had been cleaned preventing scientific analysis. Police representatives told the inquiry that the black former soldier was found motionless in the back of the police van after he was

arrested at Hull Royal Infirmary following a minor altercation outside a nightclub. However, the inquest jury saw video evidence which revealed that Christopher died after being dragged from the van and dumped unconscious on the floor of the police station. As he lay face-down for over ten minutes, with his trousers around his knees, doubly incontinent and blood and vomit pooled around his mouth, the policemen cracked jokes and speculated on whether he was play acting. When the officers eventually checked they were unable to resuscitate him (see *Statewatch* vol 8 no 6, vol 9 no 5).

The jury's finding on Christopher Alder is the sixth unlawful killing verdict relating to a death in police custody that an inquest has handed down in the last decade. Five of these deaths, including that of Alder, involved the death of black men; the other fatalities were Oliver Price in 1990, Leon Patterson 1992, Shiji Lapite 1994 and Ibrahima Sey in 1996 (see *Statewatch* vol 6, nos 1 & 6, vol 7 no 6); the sixth unlawful death was of an Irish man, Richard O'Brien. The deaths of O'Brien and Lapite led to a CPS investigation by Judge Gerald Butler which was critical of the "procedure under which it is the police who investigate and report to the CPS on a death in [police] custody."

At the conclusion to the inquest Christopher's sister, Janet, said that she was delighted by the verdict but "this is not the end. We still have a long way to go." She added "we now want to see the officers brought to book". The Alder's solicitor, Ruth Bundy, said that as "as soon as the inquest concluded we wrote to the CPS, on behalf of Janet, to review the level of current charges and offered to provide any and all of the information that they might require." However, four of the police officers have sought a judicial review of the proceedings. Helen Shaw, the co-director of INQUEST, which monitors deaths in custody throughout Britain, expressed her gratitude to the jury for "their brave and courageous decision". She also called for the CPS to review the charges against the police officers to reflect the verdict.

INQUEST press releases 30.6.00, 18 & 24.8.00; National Civil Rights Movement press release 28.7.00.

GERMANY

Towards a "police state"

During the 1990s there was a shift in Germany's policy-making that saw an extension of control mechanisms and police powers for "internal security" which was based on so-called "preventative" policing. Extending police powers, because of legal restrictions laid down in the German constitution (*Grundgesetz*), was more difficult than in the UK, for example. However, over the past six years, local authorities and regional police forces have gained far-reaching new powers. These include the electronic surveillance of public spaces, arbitrary stop and search operations, the detention of people for up to six days as a "preventative" measure, the issuing of curfews extending to entire local authorities as well as a shoot-to-kill provision in the event of hostage situations, the so-called *finale Rettungsschuß* ("final saving shot"). Data protection officers and civil rights groups have criticised the measures as creating a "police and security state" but to little avail.

There have always been provisions in German law which allow for "non-suspect related" stop and search operations, as in the case of traffic controls or airport security laws. The more recent call to extend the practice of *Schleierfahndung* however, has been framed in terms which links crime with foreigners, its main aim being the "prevention and ending of illegal crossings of national boundaries", "illegal residence" and "the preventative fight against cross-border crime" (see Kant in *CILIP 65*, and *Statewatch news online* for an English-language translation detailing analysis of this recent provision as an instrument in criminalising migrants). The stop and search

provision was introduced into the "model draft law for a uniform police regulation (MEPoLG)" which was drawn up by the Interior Ministry in the 1970s and has served as a guideline for the regional *Länder* in extending their police regulations in the 1980s and 1990s. During this process, there have been several complaints over the constitutionality of the provision.

After five citizens' lodged an appeal with the regional constitutional court of *Mecklenburg-Vorpommern*, the latter ruled the law "partially unconstitutional" in October 1999 on grounds of Article 2 of the *Grundgesetz* (the right to a personal life) which includes data protection considerations (*informationelle Selbstbestimmung*). However, the court allowed for the *Schleierfahndung* to take place within 30 kilometres of Germany's external eastern borders (to combat cross-border crime) and also internally for the prevention of organised crime. The relevant regional parliament now have to draw up a register of crimes that fall under the definition of "organised crime" in order to conduct arbitrary stop and search operation outside the 30 kilometre remit.

Although some have welcomed this decision, the expectation of Werner Kessel, data protection officer of *Mecklenburg-Vorpommern*, that it will send a clear signal to other regional administrations to respect the constitutional rights of the individual, has not been met. The law has not been repealed in the eight regions (*Länder*) in which it had been introduced during the last few years, and the *Länder* Hesse and Saxony-Anhalt introduced the *Schleierfahndung* and additional police powers, on 16 May and 22 June this year. Due to the federal organisation of regional police laws, the recent legislative changes have not been introduced uniformly. There is, however, a tendency towards a blanket introduction of the *Schleierfahndung* as well as the installation of CCTV cameras in public spaces and crime focal points (*Kriminalitätsschwerpunkte*).

A new development is the introduction or the extension of existing powers to detain people who are thought likely to commit a crime in the future. This "preventative detention" (*Unterbindungshaft*) was extended to four days in Brandenburg last year and to six days in Hesse this year. Another controversial provision, similar to the Travel Restriction (Passport) law first used against alleged football hooligans last year, is the introduction of curfews. According to the new regulation in Saxony-Anhalt, "potential politically motivated criminals" or "potential drug dealers" can, without having committed a crime, be expelled from certain places, even whole districts, for up to four days and two weeks respectively.

Finally, the introduction of CCTV cameras in public spaces is proposed in a report from the conservative CDU, (*Christlich Demokratische Union*) drawn up under the auspices of Jürgen Rüttgers, the shadow parliamentary spokesman for Justice and Home Affairs. The 18-page document says all of Germany's streets and public spaces should be monitored by CCTV cameras in order to "defuse crime hot spots".

The document calls for "prevention" through "the strengthening of the educational abilities of the family" and of schools and calls for the extension of school hours (German schoolchildren finish their lessons at 1pm) in what would be, effectively, a curfew. These changes would go hand-in-hand with the extension of criminal sanctions under juvenile law. Here the CDU calls for an increase in the maximum juvenile sentence from ten to 15 years, the use of closed institutions for children who have committed offences but cannot be tried under juvenile law and the withdrawal of driving licenses for over 18 year-old's convicted of petty crime unrelated to traffic offences - as a form of "warning punishment".

These developments have been criticised by members of the Green party and civil liberties groups who says there is no evidence demonstrating a link between the "preventative measures" and the decline of crime. As Kant (*ibid*) has pointed

out, alleged "success stories" put forward by the police after the introduction of non-suspect related stop and search operations are hard to comprehend, as "there is no [official] statistical investigation as to location, scope and outcome of the controls". Similarly, the left opposition in the conservative ruled Hesse opposed the extension of preventative detention to six days as "there simply has been no practical necessity" for the provision in the past.

Frankfurter Rundschau 22.10.99, 17.5.00; *Tagesspiegel* 23.6.00; *Berliner Zeitung* 23.6.00; *Jungle World* 7.7.99; *Süddeutsche Zeitung* 11.3.00; *Martin Herrnkind* "Verdacht des Verdächtigten - institutionalisierter Rassismus und weitere Implikationen der Schleierfahndung" June 2000; *MigrantInnen im Netz der Schleierfahndung*, CILIP no 65 (1/2000).

WALES

Butetown 2 officers disciplined

Five South Wales police officers have been disciplined after arresting two black students, Marcus Walters and Francisco Borg, when they were subjected to a vicious racist attack by members of the National Front (NF). The assault, which saw a pit bull terrier set on the youths, forced Marcus to abandon his five-year old sister into the hands of a passing stranger for her protection. The events took place in the City Road area of Cardiff in August 1997 and were witnessed by the police officers who failed to intervene. The victims were sprayed with CS gas before being arrested and charged with violent disorder. Marcus also faced charges of assaulting a police officer, (see *Statewatch* vol 8 no 3 & 4).

The charges against Marcus and Francisco were not dropped by the Crown Prosecution Service until they were due to appear in court two years later, despite evidence from CCTV cameras showing the racists carrying out the attack and the policemen looking on. In August 1998, two of the NF gang who took part in the attack, Sean Canavan and John Shepherd, were found guilty of a racially motivated assault. Canavan was jailed for one year and Shepherd for six months, while a third man received community service and a fine (see *Statewatch* vol 8 no 5). In September 1999 the Police Complaints Authority finished their investigation into the case and informed South Wales police that five officers should be disciplined. They recommended that one officer should be charged with neglect of duty and discreditable conduct, that another should be admonished while three others should receive advice. In May this year South Wales police announced that two inspectors, a sergeant and two constables had been disciplined. All of the unnamed policemen stayed on duty throughout the inquiry and disciplinary process. The South Wales chief constable, Tony Burdon, made what has been described as a "public apology" for the handling of the investigation which asserts that all of the arrests were justifiable:

There is absolutely nothing that suggests to me that those officers singled out the two black youngsters to arrest them because they were black...A very confused situation was aggravated by the actions of Mr Walters and Mr Borg...In my view [there] is neither direct racism nor indirect racism nor institutional racism, (Guardian 17.5.00).

However, his views are not shared by Marcus Walters who said:

There should be five dismissals from the police force. I feared for my life - I thought we were going to be killed that day.

Lawyers have begun proceedings against South Wales police.

Policing - new material

Police complaints and discipline: England and Wales, April 1999 to March 2000, Judith Cotton and David Povey. *Statistical Bulletin* 14/00, 21.9.00, pp19. Despite a 3% increase in the number of complaints, to 21,000, since 1998/1999 the number of complaints that

"required investigation" was 13% less than the previous year. The number of substantiated complaints dropped by 4% to 714 (9% of those investigated). Disciplinary charges were proved against 353 officers and misconduct "sanctions" imposed on another 476. As a result 115 police officers were dismissed or required to resign.

Press Digest 4. National Campaign Against CS Spray (September 2000), £3.50. This is the latest digest compiled by the campaign and covers the period from August 1999-2000. The campaign expresses concern that CS spray has increasingly "become a weapon of first use and that the Home Office has misled the public about the safety of CS." Available from Kevin Blowe, National Campaign Against CS Spray, c/o NMP, Suite 3, 63 Broadway, London E15 4BQ.

The Fabrication of Social Order: A Critical Theory of Police Power, Mark Neocleous. Pluto Press, 2000, £14.99 (paperback), 320pp, ISBN 0 7453 1484 8. Neocleous attempts to provide "a fuller understanding of the ways in which the state polices and secures civil society, and how order is fabricated through law and administration". However, with all the emphasis on the theory, and precious little on the practice, this text is strictly for the academics.

RACISM & FASCISM

UK

BNP split threatens litigation

The blood-letting predicted after Nick Griffin became leader of the UK's largest fascist organisation, the British National Party (BNP), last September has begun with the expulsion of three key executive members for "disloyal behaviour". Deputy leader Sharron Edwards, her husband and West Midlands regional organiser Stephen, and London-based national treasurer Michael Newland were expelled from the party after Newland questioned Griffin over undocumented expenses. The Edwards backed Newland's inquiries, but were opposed by Griffin and Tony Lecomber who accused them of attempting to overthrow the leadership. The expulsions, which are alleged to have been imposed outside of constitutional procedures, seem likely to follow a long standing fascist tradition of expulsion followed by reinstatement through the intervention of the courts.

Griffin's actions have exacerbated the deep divisions that have riven the party following the defeat and even more humiliating marginalisation of former leader, John Tyndall. Tyndall is now attempting to exploit these divisions, publishing an open letter to Griffin in his magazine *Spearhead*, calling on him to drop the expulsions which have "created a crisis of confidence and morale in the BNP..." He draws attention to the forthcoming West Bromwich by-election, where Sharron Edwards was expected to get a respectable vote for the BNP, and - without a trace of irony - demands that the former members have "the right of a fair hearing." However, the thought of a court case, at which the BNP's financial dirty washing is aired in public, will appeal to neither Tyndall nor Griffin. The Edwards', who only joined the BNP in 1998 after defecting from the National Democrats, remain relatively unscathed by the BNP's murky financial transactions, and may have different ideas.

AUSTRIA

Haider celebrates EU's "humiliation"

The European Union lifted its diplomatic sanctions on Austria in September, seven months after they were introduced. The U-turn was widely expected once a special committee of "three wise

men", set up to examine Austria's human rights record and the role of the far-right *Freiheitliche Partei Österreichs* (FPÖ, Freedom Party) in July, called for the sanctions to be lifted. The measures had been introduced after the conservative *Österreichische Volkspartei* (OVP, Austrian People's Party) entered into a coalition government with the FPÖ last February. The Austrian chancellor, Wolfgang Schüssel, welcomed the about turn, claiming that it was "...a great success for Austria resulting from our patience and firmness".

Since 1986, when Jorg Haider took over the leadership of the FPÖ, he has steered it in an increasingly fascist direction, both in ideology and personnel. The introduction of right-wing and nazi elements ensured that the party espoused racist policies, blaming unemployment, health problems and falling educational standards on immigration while advocating the targeting of illegal immigrants and discriminating against those who do not speak German. Haider's calculated references to national socialism appeal to both hardcore nazis and those disaffected by the mainstream parties. While Haider has not taken a position in the government he remains governor of Carinthia, and exerts a powerful influence over the FPÖ having reorganised it to ensure unswerving loyalty. He described the EU's climbdown as "humiliating".

The appointment of a committee, comprising the former Finish president Martti Ahtisaari, the former Spanish foreign minister Marcelino Oreja and German legal expert Jochen Frowein, by the European Union to report on "the Austrian Government's commitment to the common European values, in particular concerning the rights of minorities, refugees and immigrants" and "the evolution of the political nature of the FPÖ". Their report, published on 8 September, recommended the lifting of sanctions because they were "counterproductive" (p33) and praised Austria's treatment of "minorities", including migrants.

However, their conclusions flew in the face of reports published by Amnesty International which found that: "The Austrian authorities continue to ignore serious incidents of police brutality and have failed to end the ill-treatment of detainees..." Amnesty cites several cases of brutality against asylum-seekers and other forms of racism, including that of Nigerian asylum-seeker, Marcus Omofuma (see *Statewatch* vol 9 nos 3/4), who died after being "bound like a mummy" with adhesive tape during his deportation from Vienna airport. In another report Amnesty cited cases of "police ill-treatment" against youths from Turkey (Goekhan Canpolat and his cousin Erdem) as well as violence against anti-racist protesters. As an example of arbitrary detention they refer to a police drugs raid on a residence for asylum-seekers in Traiskirchen in January. While only small quantities of drugs were recovered 80 residents were confined to certain areas of the building while others were subjected to internal body searches in front of other residents.

On the process of redress, Amnesty concludes that:

...investigations into police ill-treatment have been slow, lacking in thoroughness and often inconclusive. In the 1998-1999 period not only have there been very few perpetrators of human rights violations brought to justice, but counter-charges such as resisting arrest, physical assault or defamation have often been brought against detainees who lodged complaints of ill-treatment against police officers.

The committee obviously felt on safer ground when dealing with Haider's FPÖ which, because it remains in government, caused them "concern". Accepting descriptions of the organisation as a "right wing populist party with extremist expressions" they also expressed concerns over the "typical phenomenon" of "ambiguous [ie. racist] language by leading members", over "attempts to silence or even to criminalise political opponents" and attempts to "suppress criticism wherever that criticism is expressed in strong terms". They ambiguously conclude that: "In contradiction with past FPÖ behaviour and statements made by

other FPÖ officials, the Ministers of the FPÖ have by and large worked according to the Government's commitments in carrying out their governmental duties so far. It is not excluded that with the passing of time new directions within the party may emerge..." (p30-33).

Apart from "wise" words, the report does little to dispel the historically grounded fears of the presence of far-right political parties' in European governments. Neo-nazi and affiliated groups continue to make encroachments at local government level across Europe, as can be seen by the advances by the overtly racist *Vlaams Blok* which gained 20 of Antwerp's 50 council seats in October's elections in Belgium. Under the leadership of Felip de Winter the Belgian far right party has advocated a policy of "zero tolerance" towards "foreigners" and migrants. His policies are not dissimilar to those of Jorg Haider.

Amnesty International "Austria before the UN Committee against Torture: allegations of police ill-treatment" 24.3.00; Amnesty International "Concerns in Europe January-June 2000; Martti Ahtisaari, Jochen Frowein & Marcelino Oreja "Report" 8.9.00.

Racism & fascism - in brief

■ **Italy: March against mosque:** On Saturday 14 October, the *Lega Nord* (LN) held a demonstration in Lodi in response to the mayor's decision to grant permission for the building of a mosque, with the participation of *Forza Italia* (FI) and *Fiamma Tricolore* (FT). Around 300 people took part and minor clashes between demonstrators and locals were reported. Roberto Calderoli, national secretary of the LN-Lega Lombarda said: "They will never build a mosque here. If they try to we won't let them build it. We will break it apart even if we have to remove the bricks one by one at night." Anger against Muslims had been exacerbated when Cardinal Biffi declared that christian immigrants should be given preference over Muslims. However, the bishop of Lodi, Monsignor Giacomo Capuzzi, criticised the march and refused to authorise local priests to hold a mass near the site of the mosque. "There is religious freedom and, according to the clergy, there are no problems with the Muslims having their own mosque" he said, adding that Muslims have a right to come to Italy and attempt to spread Islam, "like we have a right as Christians to announce Christ throughout the world". The mass was celebrated by a priest the LN brought in from Mantua, Veneto. An initiative by the *LN-Liga Veneta* in Venice collected 300-400 signatures against the proposed construction of another mosque in San Giuliano (Venice). The *Lega Nord* has often been involved in racist activity, and *Forza Italia's* involvement signals the continuation of a shift which started with Bossi and Berlusconi's draconian joint proposal on immigration before the summer recess. "It's a question of asserting the natural predominance of Catholic and Christian culture ...", commented Alessandra Mussolini of *Alleanza Nazionale*. The Spanish leader of the Socialist (PSE) group at the European Parliament criticised the initiative commenting "What the Italian right is doing is very serious." He expressed "alarm for the phenomena of racism and xenophobia of which the LN has been a protagonist in Italy, with the participation of some members of FI." *Repubblica*, 14-16 & 18.10.00.

■ **UK: Ex-Economic League director in sterling campaign.** Stan Hardy, the former director general of the far-right employment vetting agency the Economic League, which compiled 30,000 files on "subversives" during the 1980s, has been named as a regional chairman of the anti-euro "Business for Sterling" (Yorkshire and Humberside branch) organisation. The League, which was founded in 1919 and which had close links to the UK's internal security service, MI5, had over 2,000 companies subscribing to it before it was disbanded in 1993 following complaints about the accuracy of its information. In 1994 the League was briefly relaunched through Hardy's family

firm Caprim Ltd which promised to vet left-wing campaigners, trade unionists, environmental and animal rights activists (see *Statewatch* vol 3 no 3, vol 4 no 3). He detached himself from the company when he became the Yorkshire director of the Institute of Directors last year. He was involved in the launch of the "euro no" campaign at the beginning of September; the campaign is jointly run by Business for Sterling and former Labour and SDLP MP, David Owen's "New Europe". *Guardian* 9.9.00.

Racism & fascism - new material

Infiltration: fascist tactics in Britain, 1945-2000, Nicholas Hillman. *Searchlight* June 2000, pp20-21.

How the German press stoked the Lübeck fires, Liz Fekete. *Race & Class*, vol 41 no 4, (April-June) 2000, pp19-41. This article deals with case of Safwan Eid, the Lebanese refugee who was a victim in an arson attack on his asylum hostel near Hamburg (in which ten refugees died and 38 were injured), and was then accused of being the perpetrator. It was over three years before he was acquitted. Fekete portrays how a plethora of institutions, from the German judiciary, police forces and press worked to frame Eid by constructing evidence and lying in court. In particular, Germany's unwillingness to admit serious right-wing elements in its midst and its obsession with "collective guilt", is seen to have allowed for this miscarriage of justice in the face of constructed and contradictory evidence.

Roma Rights Newsletter, (European Roma Rights Centre) No. 2 (2000), pp94. This issue concentrates on housing, including an exposition of legal rights and the state's obligations to provide adequate housing, and articles on the housing policy for Roma in Greece, Bulgaria, the Czech Republic, Bosnia Herzegovina and Macedonia. The legal defence section deals with "environmental racism" in Chester, Pennsylvania, USA, where "members of racial and ethnic minorities suffer from disproportionate exposure to environmental hazards." It includes information on legal strategies to combat environmental racism. The regular update on "Snapshots from around Europe" reveals racist attacks and institutionalised racism towards the Roma communities in Serbia, Ukraine, Bulgaria, Greece, Bosnia, Spain, Kosovo, Germany, Hungary, the Czech Republic, Poland, Romania, Slovakia, Croatia, Macedonia, Latvia and France. Available from: *ERRC*, 1386 Budapest 62, P.O. Box 906/93, Hungary, Tel: 0036-1-428-2351, errc@errc.org.

Travellers' Times, Traveller Law Research Unit, Issue No. 9 (August 2000), pp.12. Includes information on the new Representation of the Peoples Act which allows voting without a permanent residency, a list of resources and funding sources for Travellers, articles on the recent change in regulation of boat licensing which is threatening "the existence of continuous cruisers" and personal accounts of Travellers and the racism towards them. Also includes a policy and law section with useful links. Available from: *Traveller Law Research Unit*, Cardiff Law School, PO Box 427, Cardiff University, Cardiff CF10 3XJ, 0044-29-2087-4580, tlu-1@cf.ac.uk.

Migration & Bevölkerung (Migration and Population). Humboldt-Universität zu Berlin, no 7, September 2000, pp6. This issue covers the recent debate in Germany on banning far-right organisations and parties, giving a statistical overview of racist attacks in Germany between 1991-1998. Also includes article on the recent *Proposal for an EU Council directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof* (24.5.00, COM (2000) 303 final). Available from: *Bevölkerungswissenschaft*, Humboldt-Universität Berlin, Unter den Linden 6, Berlin 10099, Germany, 0049-30-2093-1918, MuB@sowi.hu-berlin.de.

ZAG - Antirassistische Zeitschrift. Antirassistische Initiative e.V., no 35, 2000, pp42. This issue focuses on the EU Schengen regime, picturing the "Shut down Schönefeld" demonstration at Berlin's biggest deportation airport on in July. Includes articles on the situation of refugees in Poland (including asylum acceptance rates between 1990 and 1999), the Czech Republic, Kosovo, Spain and the Netherlands.

Also includes a shortened version of an article by Martin Herrnkind, spokesman for the "Federal Working Group of Critical Policemen and women" in Germany (*Bundesarbeitsgemeinschaft kritischer PolizistInnen*), on the recently introduced arbitrary stop and search powers and the question of institutionalised racism in Germany. Available from: *ZAG/Antirassistische Initiative e.V.*, Yorckstr. 59, 10965 Berlin, 0049-30-785-7281, zag@mail.nadir.org.

CARF. Campaign Against Racism and Fascism, no 57 (August-September 2000), pp16. This issue focuses on the violent nature of mass deportations in Europe and the new asylum system in the UK. *CARF* has identified the new asylum provisions under the 1999 UK Act (dispersal, vouchers, isolation, impoverishment) as "state-sponsored xenophobia" and uncovers the Rachmanite system that is developing after the government's privatisation of housing provisions for asylum seekers. Also includes an update on racist attacks in the UK and Ireland, campaigns and an article on how direct action at airports can be an effective tool to stop deportations. Available from: *CARF* BM Box 8784, London WC1N 3XX, info@carf.demon.co.uk.

Home Secretary). Also, as usual, none of the complaints to the Tribunal were upheld.

The Commissioner reports on 23 "errors". One concerning the National Criminal Intelligence Service (NCIS) involved "an accredited police reader of intercept material" leaving the log sheet on a train. It was recovered by British Transport Police and the Commissioner reports, with a straight face:

The envelope containing the log had been opened but the content was intact and there was no evidence it had been read.

Interception of Communications Act 1985, Report of the Commissioner for 1999, July 2000. Cm 4778, £4.45; a full list of yearly warrants issued since 1937 is maintained on: <http://www.statewatch.org/news/jun00/Teltap1.htm>

SWEDEN

How an inquiry into the security services was undermined

In December 1997 the Swedish government gave the Swedish Council for Research in the Humanities and Social Sciences (HSFR) the task of carrying out an in-depth research project on the Swedish military security and intelligence (MUST) from 1920 up to the beginning of the 1980s - a five year programme at a cost of 20 million Swedish kroner. A report "Truth and Consequence", published in Swedish in August, tells the story of the major differences in seriousness "with which Swedish power handles these questions and, for example, the MacDonald Commission in Canada and the Lund Commission in Norway."

The decision by the government to commission a special research programme was taken at the time of a "lively and politically inflamed discussion" fuelled by a series of major revelations - the IB (Swedish Military Intelligence Service) affair, the hospital spy affairs and the Leander affair (see *Statewatch*, vol 7 no 6 and vol 8 nos 1 & 5). The parallels with the Norwegian situation led to major calls for a similar "truth commission" in Sweden. The Lund report showed that surveillance and bugging of the left (many of whom were interviewed) had been run for years by the security police, the military intelligence service and the Social Democratic Party. The government financed project thus posed many basic questions for the researchers, the major one being how much access to the files and data would they be given and could it achieve the same results?

The research programme did not quell demands for a commission, it simply highlighted the real issues. The government tried to claim that the Official Secrets Act would not stand in the way of access to archives, "it goes without saying that researchers should have access to the archives... the responsible authorities [would be instructed] to assist the researchers [and] to adopt an extremely open attitude." Critics said that the project was "a fairly shameless attempt to use research for tactical political purposes, as a weapon against the call for a truth commission". Early in 1998 the government decided that the Intelligence Committee of the Armed Forces (FUN) should carry out a parallel investigation - a move seen by the Prime Minister Göran Persson and two senior ministers, Carl Bildt and Olof Johansson, as an alternative to a "truth commission" and as a "complement" to the research programme. It transpired that the research project would be given no access to the interviews carried out by the Committee nor to classified inventories of material.

As to access to material the researchers were to be frustrated at every turn. Most documents were refused, "ask the government for permission", some supplied with whole sections and pages blanked out and without full inventories of all the material in the files whole categories of documents were withheld. They found that 90% of the material on the 1970s and

SECURITY & INTELLIGENCE

UK

Tapping figures stay at record levels

The number of warrants issued in England and Wales for phone-tapping and mail-opening in 1999 was 1,734 - the second highest figure since records began. The highest ever figure was 1,763 in 1998. Both figures are way above the previous top figure of 1,682 in 1940.

The number of warrants for tapping issued in Scotland was 288, the highest ever figure since records were first published in 1967 (there were no warrants in Scotland for mail-opening).

Thus the overall figure for surveillance warrants in England, Wales and Scotland in 1999 was 2,022 (and 2,031 in 1998).

Total figures for warrants issued, 1990-1999:

	England & Wales	Scotland
1990	515	66
1991	732	82
1992	874	92
1993	998	122
1994	947	100
1995	997	138
1996	1,142	228
1997	1,456	256
1998	1,763	268
1999	1,734	288

For the first time the annual report of the Commissioner gives the figures for modifications to warrants issued (usually change of phone numbers) which were 565 in 1999. In addition 77 "authorisations" were given by police forces to intercept "radio pagers". The Commissioner, Lord Nolan, in what is to be his last report, says that the recent increase in warrants is not just because of the perceived increase in serious crime but also "an increased facility to counter it". This is a reference to e-mail interception.

As usual the figures do not include warrants issued by the Secretary of State for Northern Ireland (RUC and MI5) nor those issued by the Foreign Secretary (MI6 and GCHQ). One change is that now, following devolution, the Scottish First Minister issues warrants regarding serious crime but not those for national security (these pass from the Scottish Secretary to the

1980s was classified and that anyway SÄPO (the security police) had too few staff to check the material before it could be released. The agencies put up every excuse to delay or deny access and protests to the various ministries brought no change.

In November 1998 the FUN committee report was published but did little to satisfy public demand for a proper investigation, so in January 1999 the government proposed setting up an "examining commission" on the same issue (but with a brief covering from the Second World War to August 2001). Importantly the Minister of Justice, Laila Freivalds, emerged as the key obstacle to any meaningful cooperation.

At about the same time Janne Flyghed, one of the key researchers, resigned from the project saying: "If we are not given the chance freely to study the material, there is a risk that our research will be part of a cover-up project." In June 1999 Dennis Töllborg, one of the key researchers and long-standing critic of the security services, said he could no longer take a salary from the project: "You cannot really take a salary when the subject of your research is blocked with such force and by such forces."

The research project and the commission's work is continuing their different remits and cooperation unresolved. On 21 September Laila Freivalds, the Minister of Justice, resigned over a strange affair concerning the purchase of an apartment.

"Truth and consequence" presents a fascinating account of the dilemma of academic researchers, their tenacity in getting information against the odds, and the fact that state-funded work can rarely be separated from the politics of the "real world". Academics and students, activists and researchers, should read the full report.

The full text of the report "Truth and consequence" by Professor Christer Jönsson, translated and comments by Professor Dennis Töllborg, September 2000, is available in pdf format on Statewatch's website: <http://www.statewatch.org/news/nov00/sweden.htm>

Security - new material

Don't shoot the messenger, David Shayler. *Observer* 27.8.00. Article by the former MI5 officer who has returned to the UK to face charges under the Official Secrets Act, after spending three years in exile. Shayler defends his decision to go public with evidence that MI6 were involved in plotting to murder Libyan leader Colonel Gaddafi, pointing out that "the real criminals in this affair are the British government and the intelligence services." He concludes by asking Tony Blair: "To expose the truth."

New Labour and spooks set to repeat Spycatcher mistakes, Stephen Dorril. *Free Press* (March-April) 2000, p4. This article examines the Labour government's "highly visible crackdown on journalists and writers who cover the security and intelligence field". It also tackles the government's campaign to prevent the names of two MI6 officers, David Wilson and Richard Bartlitt, who are alleged to have played a role in the assassination plot on Libya's Colonel Gaddafi, from being named, despite the fact that they can be found on the internet and in numerous international newspapers.

Archiv Schnüffelstaat Schweiz - Themenüberblick. Kommittee Schluss mit dem Schnüffelstaat, June 2000. This newsletter gives a brief summary of current developments in Switzerland as well as a selection of news cuttings. Issues include interception of telecommunications, the reorganisation of the Swiss police forces and the merging of three police data collection systems, thereby abolishing the former distinction between "suspicion of drugs dealing" and the more severe accusation of organised crime. The newsletter also deals with the recent case before the European Court of Justice (A. vs Switzerland, 16.2.00.) which decided that the telephone interception as well as the keeping of personal data of a former employee at the Soviet embassy in Bern was illegal. This decision (on grounds of Article 8 of the European Human Rights Convention: the right to a private life) is seen as a landmark decision in Switzerland where hundreds of personal files are kept illegally or on questionable legal grounds as a result of

widespread interceptions of telecommunications. Available from KSS, Neuengasse 8, Bern, Switzerland.

CIVIL LIBERTIES

EUROPE

CoE Convention under attack

The Global Internet Liberty Campaign (GILC) has sent a letter to the Council of Europe, signed by dozens of organisations, calling on it to reconsider its draft Convention on Cyber Crime. The GILD statement says:

The international coalition of civil liberties and human rights organizations said the proposal posed a threat to free speech and privacy on the Internet... contrary to well established norms for the protection of the individual, that it improperly extends the police authority of national governments, that it will undermine the development of network security techniques, and that it will reduce government accountability in future law enforcement conduct.

According to the organizations, the Convention on Cyber Crime would require Internet companies to retain records of customer activity and force Internet Service Providers to review private messages distributed through computer networks. The draft treaty would also criminalize copyright violations and discourage the development of new network security tools. Other sections would encourage law enforcement access to stored records and encryption keys without sufficient legal safeguards and expand surveillance powers.

The Council of the European Union has indicated that it intends to adopt the model set by the Council of Europe's draft Convention on Cyber Crime. The Global Internet Liberty Campaign is an international coalition of organizations working to protect and enhance online civil liberties and human rights. Links to member organizations, as well as information about GILC issues and activities are available at <http://www.gilc.org>

Civil Liberties - new material

ICCL Newsletter. Irish Council for Civil Liberties, vol 12 issue 2 (September) 2000, ISSN 0791-3761, pp19. Covers the shooting of John Carthy in Abbeylara by the Garda Emergency Response Unit and the failure by the *Gardai* and the Irish Department of Justice to conduct an independent inquiry into his death. Articles include an assessment of the extensive criticism put forward against Ireland by the UN Human Rights Committee after an examination in mid-July under the International Covenant on Civil and Political Rights (ICCPR). Available from: ICCL, Dominick Court, 40-41 Lower Dominick Street, Dublin 1, iccl@iol.ie.

Values for a Godless Age - the story of the UK's new Bill of Rights, Francesca Klug. Penguin, 2000, 304 pages, £7.99. Francesca Klug has been one of the foremost campaigners for the introduction of the Human Rights Act (HRA) and this book reflects her longstanding commitment to this project. As well as describing the content and effect of the new Act the historical origins of the struggle for freedom and rights are set out as are the potential contradictions for New Labour. The best text to put the HRA into context.

Statewatch subscribers online service:

<http://www.statewatch.org/subscriber>

see back page

Council want more secrecy less openness & are taken to court over the "Solana Decision"

When the European Parliament (EP) came back to work after the summer break on 28 August it faced the Council (the 15 EU governments) having adopted the "Solana Decision" (to exclude permanently from public access documents on foreign policy, military and "non-military crisis management") (see *Statewatch*, vol 10 no 3/4). In October the parliament decided to take the Council to the European Court of Justice over this decision, as did the Netherlands and Swedish governments.

The committees in the EP have been considering its response to the Commission's proposed new code of access started and the parliament will adopt its "first reading" opinion on 15 November (see below). The Council's draft "common position" is looked at below. The new code has to be agreed by the Council, Commission and the European Parliament under the "co-decision procedure" by May 2001.

France and Germany lead call for more secrecy

In mid-October *Statewatch* obtained a copy of the Council's detailed draft common position on the new code. The Commission's proposed code of access would undermine existing rights of applicants to documents. The Council's position is even worse. The report contains full details of the positions taken by all EU governments on the Council basic draft position. Only Sweden, Finland, Netherlands and Denmark are seeking to ensure that the new code is an improvement on the present one. Germany and France are leading the fight to bring in more secrecy and less openness. A number of governments, including the UK and Ireland, are "sitting on their hands".

Where, in Article 1, the Commission proposed that citizens should have "the right of the widest possible access" the Council wants to delete the words "widest possible".

Only Denmark, Netherlands, Finland, Sweden and Italy back giving non-EU people (the people affected such as third world countries, refugees and asylum-seekers) access to documents. A Footnote on Article 2, which deals with the "Scope" of the code, says that defence and military matters "would be addressed in a separate paper" - this refers to the introduction of the "Solana Decision".

Article 3 deals with the "Definition" of a "document" and the Council agrees with the Commission that officials must be allowed the "space to think" (this will permanently deny access to innumerable documents). Only Netherlands and Finland want to delete this idea.

Also under Article 3 the discussions in the Council are very revealing on the way the Council's Legal Service interpret the current 1993 code of access. The report says that the Legal Service's "current interpretation and practice" is that "documents" only includes those sent to the Council's working parties and committees and nothing else - this is quite clearly in contravention of the current code.

On "repeat applications", where *Statewatch* took and won complaints against the Council through the European Ombudsman, the Council's position goes really over the top. The Commission proposed that "repeat applications" should be replaced by "repetitive applications" (regular applications on the same subject field, like those made by *Statewatch* and others) and the Council agrees. Only Denmark, Finland and Sweden are opposed to this change. France wants to make it even worse by putting in "repetitive or blatantly abusive applications".

In Article 4 on "Exceptions", the grounds on which access

to documents can be refused, the Council want to have a lower test than the Commission. They want to delete the word "significantly" from: "where disclosure could significantly undermine the protection of.."

The Council want to give non-EU states and international organisations an absolute right of "veto" over the release of documents to EU citizens. Their draft position says that "institutions shall not release" such documents without their "prior agreement".

In Article 7 the Council want to delete the Commission's proposal that documents should be supplied in the language preferred by the applicant. Only Spain, France and Luxembourg want to keep the Commission's provision in.

Article 8 deals with the "reproduction" of documents obtained. The current code says that documents may not be reproduced for commercial purposes without permission. The Commission wants to extend this to cover "any other economic purpose". Only Denmark, Netherlands and Sweden disagree.

Both the Commission and Council seem determined to use the commitment in the Amsterdam Treaty (Article 255) to "enshrine" the citizens' right of access to put the clock back and give even less access than at present under the 1993 Decision (as improved in practice by complaints to the European Ombudsman and cases taken to the Court of Justice).

Council to be taken to court over "Solana Decision"

On the initiative of Heidi Hautala MEP (Green group) the Legal Affairs Committee of the European Parliament voted to take the Council to the European Court of Justice to contest the way the "Solana Decision" was made (without consulting them). The vote was 13 to 10 with the PSE (Socialist group) voting against. A deadline of 23 October was set to see if the Council could satisfy the parliament's demands. On 19 October the Council sent the parliament what it called a "compromise". A literally "select" committee of MEPs would be given access to secret document on foreign policy and military matters - the President of the parliament, the chair of the Foreign Affairs Committee and a third to be agreed by the Council and the EP. All were to be vetted. On Friday 20 October the Conference of Presidents in the EP (the party leaders) decided to proceed with the court case against the Council - with the Greens, Liberals (ELDR), the PPE (Conservatives), the European Left (GUE) and the EDD (Europe of democracies and diversities) in favour, with the PSE (Socialist group) and two group on the right the UEN (Europe of Nations) and the TDI (Technical group) abstaining.

The stand taken by the European Parliament received powerful backing when the Netherlands government announced on 22 September that it too was to take court action and they were joined by Sweden on 29 September.

Hearing in the European Parliament

On 18 September the EP's Committee on Citizens' Freedoms and Rights held a "hearing" in Brussels on the new code. All the key players spoke, the Council, the Commission, the European Ombudsman, Europol, Michael Cashman (PSE), Hanja Maij-Weggen (PPE) and Heidi Hautala (Green). The applicant for EU documents from civil society to be invited to speak was Tony Dunyan, *Statewatch* editor.

In the light of the "Solana Decision" an invitation had also been sent to NATO. In a letter to the chair of the Committee,

Graham Watson (Liberal), the NATO "Office of Security" said it declined as it would be "premature" and then gave the parliament a lecture on the steps that had to be taken before it could attend such meetings. These include "satisfying NATO's security standards" and passing the "formal NATO certification process".

For the Commission the Secretary-General, David O'Sullivan, made an unconvincing plea to give officials the "space to think" (that is to exclude innumerable documents from public access). But it was Mr Hans Brunmayr, Deputy Director-General in the Council, standing in for Mr Solana who had the most thankless job. Mr Brunmayr said that the "Solana Decision" had been "urgent" (though it was unclear why) and that it was only "temporary" until the new code came in.

The "spin" of a "temporary" measure was intended to deflect parliamentary anger while its first report was going through committee and to a degree it worked, the media (always ready to report "spin" as fact) and MEPs readily repeated the "temporary" argument. The "Solana Decision" of 26 July may indeed be "temporary" but only until the Council has to adopt a draft common position on 20 November when the "Solana Decision" will be re-introduced.

EP report

On 23 October the Committee on Citizens' Freedoms and Rights adopted a report on the Commission's proposed new code of access which now goes forward for adoption, after possible amendments, at the plenary session of the parliament on 15 November. This report will be the "opinion" of the European Parliament at its "first reading". The report in the Committee was agreed by 28 votes to 4 with 2 abstentions. However, this apparent unanimity is misleading.

The first draft reports in early August came from Michael Cashman (PSE, Socialist group) the rapporteur in the Citizens' Freedoms and Rights Committee and Hanja Maij-Weggen (PPE, Conservative and Christian Democrat group) the rapporteur for the Constitutional Affairs Committee. The Cashman report, dated 3 August, incorporated the "Solana Decision" even before it was formally adopted on 14 August. The Maij-Weggen report, while not so explicit, recognised the "Solana Decision". Embarrassed by the publicity surrounding the "Solana Decision" in the media, especially the lack of consultation with parliaments and civil society, revised reports appeared after the vacation on 14 September. The "Solana Decision" was dropped but now a "Common Position" (joint report) was adopted by Cashman (PSE) and Maij-Weggen (PPE).

No less than five other Committees drew up "opinions" to put into the main committee (Freedoms and Rights) - Foreign Affairs, Budgetary Control, Culture, Petitions and Legal Affairs. The "opinion" from the Legal Affairs Committee was drawn up

by Heidi Hautala (Green group) and represented by far the closest to reflect "enshrining" the public's right of access.

The meeting on 23 October of the Committee on Citizens' Freedoms and Rights had no less than 114 amendments to the Cashman-Weggen report before it - most reflecting the "opinions" adopted by the other Committees. All but a few were rejected. The final vote in the Committee reflected the strengths of the political parties with the PSE/PPE alliance having an overwhelming majority with 23 out of the 34 voting MEPs (the ELDR, Liberal group, had 3, the Greens 3 and others 5).

The Cashman-Weggen report is a bit of a mess, there are some good points (like allowing non-EU citizens to get access to documents), several bad points (like accepting the Commission's demand for the "space to think" for officials and thus automatically excluding whole categories of documents) and some daft points like abolishing the 1983 Regulation on Community archives. Moreover, it contains more new "rights" for the European Parliament than for citizens (based on a quite incorrect understanding of what is possible under the Amsterdam Treaty). The difficulty for the EP is that it cannot raise later in the proceedings issues/positions which are not in its first reading "opinion".

What happens now?

The new code of access has to be agreed by the Council (the 15 EU governments), the Commission and the European Parliament under what is known as co-decision (Article 251 of the Amsterdam Treaty). The code has to be agreed by May 2001.

The European Parliament will adopt its first reading "opinion" on 15 November. The Council (the 15 EU governments) will adopt their "common position" at the General Affairs Council on 20 November. The Commission will then probably revise its original proposal. But from this point onwards in the procedure it is the Council's common position which is the basis of all discussions. The European Parliament then has a "second reading" to reach an "opinion" on the Council's common position. If the three institutions cannot agree then a "Conciliation Committee" is formed from the three institutions to get agreement.

An important *correction* to our coverage in the last bulletin is necessary: the final vote on the "Solana Decision" in COREPER on 26 July was 12 for and 3 against. Denmark managed to vote in favour of the Decision and then join Finland, Netherlands and Sweden in "Declaration" saying that it should not influence the discussion on the new code.

For developing news on openness see Statewatch News online at: <http://www.statewatch.org/news> and for copies of all the reports on the new code of access to EU documents see Statewatch's Secret Europe "Observatory" on: <http://www.statewatch.org/secret/observatory.htm>

EU

EU Charter of Fundamental Rights: Comic strip mag or tragic mistake?

After ten months of work, the "Convention" discussing a proposed Fundamental Rights Charter for the European Union completed its work at the beginning of October, and the informal European Council (summit meeting) in Biarritz then agreed the text of the Charter in October. The Charter is due to be formally adopted in December at the next EU summit in Nice, when the Member States are also due to agree an EU defence policy (including the use of paramilitary police forces) and potentially changes to the voting rules in the EC Treaty governing adoption

of immigration and asylum law. It contains 50 Articles listing rights based on the European Convention of Human Rights (ECHR), other international instruments, national constitutions and the EC and EU Treaties.

However, it was agreed at Biarritz that the Charter will not be binding. The exercise of drawing up the Charter has been less elitist and more open than the process of agreeing other EU measures, since the drafting body (the 'Convention) has been made up largely of representatives from national parliaments

and the European Parliament and has held hearings and received documents from civil society. The process was nonetheless ultimately a 'top-down' process since it seemed clear that the 15 representatives of national governments in the Convention held far greater sway than the other 46 delegates. But now that the Charter has been agreed, has it answered the criticisms of civil society about the relevance and usefulness of such a measure?

The problems of human rights protection in the EU

Among the Member States, the supporters of drafting the Charter appear to have different motivations, ranging from a desire to list in a single document all of the human rights obligations which the EU is committed to, to a hope that the Charter could form the foundation of a future 'constitution' for the European Union. Since the final Charter will not be binding, the former Member States have won the argument for now, with the latter Member States now binding their time until the next opportunity to press for adoption of a 'constitution'. However, from a citizen's perspective the most important issue is not the status of this new Charter taken in isolation, but the broader issue of whether or not the EU legal and political system takes sufficient account of human rights. The central question is therefore whether the Charter will do anything to solve the existing problems regarding the protection of human rights within the European Union.

At the moment the EC (dealing with economic and social matters, including immigration and asylum law) and the EU (dealing with foreign policy, police and criminal law) are not bound by any human rights treaties. Indeed, the EU's European Court of Justice (ECJ) ruled in 1996 that the EC could not sign up to the most important human rights treaty, the ECHR, without a Treaty change. They instead have to respect human rights as "general principles of Community law", an obligation initially set out by the ECJ, and since set out expressly in Article 6 of the EU Treaty. But there are several problems with this situation.

First, because the EC and EU have not signed up to human rights treaties, there is no external control of the EC's and EU's acts. While the Member States' authorities and court rulings can be challenged in Strasbourg for breaching the ECHR, acts of the Commission and Council cannot be challenged directly. To at least a limited extent the Commission's and Council's acts can be challenged indirectly, when they are implemented by Member States, but the extent of this possibility is unclear. In any event such an indirect challenge is long-winded and convoluted and might not be possible where the EC or EU takes a decision which cannot be challenged under national law. It is also impossible to complain about EC and EU actions before other international human rights bodies (for instance the UN Human Rights Committee, which examines complaints about breach of the two UN Human Rights Covenants).

Second, this lack of connection between international bodies and the EC and EU legal system means that it is difficult to avoid divergences between the ECJ's interpretation of the EC's and EU's human rights obligations and the interpretation of the ECHR by the European Court of Human Rights, which has the final role in interpreting that Convention. So, for instance, the ECJ has given rulings on the EC Commission's 'dawn raids' on private business premises and on whether its own procedures guarantee a right to fair trial; both times it ruled that there was no breach of human rights obligations but in both cases there are wide doubts that the ECJ interpreted the ECHR correctly.

Third, the sources of EU human rights law are limited. The EU Treaty refers only to the original ECHR and to national constitutions. However, the ECJ has referred more broadly to any international human rights treaty upon which Member States have participated. Also the original ECHR is now fifty

years old and it has been widely recognised since that time that there are other human rights besides those listed in the ECHR which should be protected (for example, freedom of information).

Fourth, in any event even the powers of the ECJ to ensure the EU's and EC's compliance with human rights are limited. The ECJ has no powers at all as regards the second pillar (foreign policy). As regards the first and third pillars, it has broader powers, but it is impossible for individuals to challenge EC acts directly in the third pillar, and difficult for them to do in the first, because of restrictive rules about access to the EC courts. It is technically possible instead to challenge EC rules indirectly in national courts, but this procedure is long-winded because to rule an EC act invalid an individual must first obtain access to a national court which must then be convinced to ask the ECJ whether the act is invalid. But in the areas of justice and home affairs, where there are important arguments about potential breaches of human rights, even access to this long-winded procedure is curtailed. For individuals can only ask courts of final appeal (usually supreme courts) to send immigration and asylum questions to the ECJ; and Member States are allowed to opt out of ECJ jurisdiction as regards criminal law and policing measures (four have indeed opted out). In any event, the ECJ cannot rule that third pillar Conventions are invalid, so any human rights breaches resulting from the Europol Convention or the Mutual Assistance Convention cannot easily be rectified.

Avoiding the problems: the new Charter

The new Charter does not solve any of these problems. Agreement on the Charter does nothing at all to improve external scrutiny of the EC and EU as regards human rights breaches, so it will not reduce divergences between the ECJ and the European Court of Human Rights. Nor will it improve in any way the role of the ECJ on these matters. The new Charter does include a number of additional rights besides those set out in the original ECHR, including the 'right to asylum' (Article 18), but this need only be guaranteed 'with due respect' for the Geneva Convention on refugees. There is no mention of rights for immigrants in expulsion proceedings, and a number of rights are restricted to EU citizens only. Access to EU documents is still restricted to EU citizens and residents only, leaving out foreign nationals residing abroad who are often affected by EU trade, aid, foreign and military policies. So while the Charter has explicitly widened the sources of human rights law which inspire Community and Union human rights law, it has done so with some equivocation.

In any event, even a limited widening of the sources of human rights law is of limited use because, as noted at the outset, the will *not* be binding, at the insistence of the UK and several other Member States. Of course it is possible that the ECJ will still take account of it as a source of human rights principles in future cases, but the UK Minister of Europe, Keith Vaz, has sought to belittle even this prospect, stating that:

people will be able to bring [the Charter] up in the European Court of Justice just as if it was the Beano [a British children's comic].

The derisory approach suggests that the UK government's apparent support for the Charter may not in fact have been genuine. It seems that the UK was obsessed by the fear that a binding Charter would result in a transfer of power to the EC and EU, even though the Charter expressly provides that it covers the Member States "only when they are implementing Union law" and that it "does not establish any new power or task for the Community or Union, or modify powers and tasks defined by those Treaties."

It is still possible that the amendments to the EC and EU treaties to be agreed in December will address some of the outstanding issues, like the role of the ECJ as regards

immigration and asylum and the ability of the EC to sign up to the ECHR. But at present this is still uncertain and the remaining important issues are still not even on the agenda.

Conclusion: A Missed Opportunity?

The Charter might well transcend the hopes of UK Ministers and have at least slightly more influence on the deliberations of the ECJ than the "Beano". But as long as it is not fully binding, it is a red herring for critics of the EU's human rights record. Simple assertions of support for human rights, no matter how lengthy and legalistic, cannot substitute for a genuine human rights culture as evidenced by external scrutiny of EU and EU acts, full

judicial protection within the EU legal system and a more inclusive list of rights with binding force upon the Union institutions. If the agreement on the Charter serves as a pretext for avoiding changes to the EU treaties that would lead to more effective human rights protection, then the Charter would not merely be a disappointing public relations exercise, but an objectionable excuse for shutting the window of opportunity to more necessary changes to the way the EU functions.

Charte 4487/00 Convent 50, 28 September 2000, Draft Charter of Fundamental Rights of the EU; House of Lords Select Committee on the EU, "EU Charter of Fundamental Rights", 8th Report, 1999/2000; The Guardian, 14 October 2000.

UK/EU

Law enforcement and DNA technology: the irresistible march?

UK database to be expanded, EU member states to begin exchanging DNA "profiles"

It is likely that within a generation, the DNA of most of the UK population will have been archived in a national database.

The current mania for DNA testing goes right to the heart of the privacy issue. Traditionally, invasion of privacy has been regarded as effective social management. Police have always argued that privacy and anonymity are bad news for law enforcement. Authority has always sought to create perfect identification of citizens. And DNA is the perfect identifier. (Simon Davies, Director, Privacy International)

This year has seen a number of significant developments in the use of DNA (deoxyribonucleic acid) profiling techniques in law enforcement. The government has announced an increase in funding to enable the UK DNA database to be more rapidly expanded - even though it already holds profiles taken from just under a million "criminals" and is rising at the rate of 6,000 per week. The Home Office has confirmed that at least 50,000 people's DNA profiles are held illegally, but are yet to state what is being done about it. An Appeal Court has recently affirmed that prosecutions arising from illegally retained profiles are unlawful and the Police Federation is backing three detectives effectively demoted to desk-jobs for failing to provide a voluntary sample. Under a draft EU proposal, member states are to begin exchanging DNA profiles as a prelude to creating European database.

UK database to be expanded: a sense of disproportion?

With the DNA of 940,000 people on file the UK has the most "profiled" population in the world. At the end of September, Jack Straw announced an extra £109 million to expand the database (this comes after the extra £34 million announced in September 1999).

Some people who have had their DNA forcibly taken in connection with minor offences are angry at the level of intrusion that the law allows (*Statewatch* has been contacted by a number of such people). As the law stands, any person suspected, charged or convicted of any criminal act, however minor - traffic offences, shoplifting, or public order transgressions such as breach of the peace for example can be "profiled". The "profile" must be removed if the arrested person is not charged with an offence or if the person is acquitted. John Wadham, Director of *Liberty*, commented:

We have always accepted that DNA testing is a powerful tool against offences where a suspect might have left a sample such as sexual offences, burglary or violent offences. But the Police and Criminal

Evidence Act 1994 allows police officers forcibly to hold a suspect down, forcibly to open their mouth and to take a swab - even where the sample would be of no use to the investigation...

A Dutch arms trade protester arrested for criminal damage to a London pavement and forcibly "profiled" is a case in point (see *Statewatch* vol 10 no 1).

In September, government advisers from the Commission on Human Genetics also expressed concern over the "level of offence" and said it intended to consult the public over what controls might be necessary.

It is also worth noting that levels of DNA profiling vary greatly among UK police forces. For the last four years, Edinburgh police (Lothian and Borders force, Scotland) have systematically taken DNA from everyone they have arrested or detained. Other forces currently use their "discretion" but the extra funding may see the Edinburgh policy become normal practice.

Profiles held illegally, use unlawful but possible

In the UK, police are only allowed to keep DNA profiles on the national database from people who are convicted of the offence for which the sample was taken. All other samples/profiles must be destroyed. However, in July, a Home Office Inspectorate of Constabulary report, "Under the Microscope", estimated that from 752,718 DNA profiles held at the time of their study those of 50,000 individuals which should of been destroyed have been retained. This figure was based on a non-conviction rate of 20%, but in fact the report refers to non-conviction rates of 33 and 45% - suggesting that 82,500-112,500 DNA profiles should actually have been destroyed.

On May 26, Michael Weir's conviction for murder was quashed at the Court of Appeal. Weir had been convicted on the strength of DNA evidence based on blood found on a glove near the scene of the crime. The police matched the blood to a DNA sample taken from Weir a year previously when he was suspected of drugs offences. He was not charged but his profile was placed in the national register. The court affirmed the clear rules in Section 64 (3B) of Police and Criminal Evidence Act 1984 (PACE; as amended by CJPO Act, 1994) which state that:

information derived from the sample of any person entitled to its destruction... shall not be used - (a) in evidence against the person entitled; or (b) for the purposes of any investigation of an offence. If the sample was used for purposes of an investigation then all evidence resulting from that information must be excluded.

What was most alarming in the Weir case was that the police,

after having realised that the match in the national database was held unlawfully, chose to take another sample from the suspect and proceed with the prosecution on the basis of a new sample taken lawfully in connection with their investigation.

However, this may change. Last year a Home Office consultation paper proposed that Section 64 of PACE should be amended again to allow all samples that should be destroyed under current rules to be kept (see *Statewatch*, vol 10 no 1). It is also possible that retrospective legislation will be sought - allowing all profiles that should have been destroyed to be retained. *Liberty* have announced that they would seek a judicial review of any such move.

Questions over reliability and accuracy

In an article in *Police Review* in July this year consultant Paul Millen, a former vice-president of the *Forensic Science Society* and scientific support manager for Surrey police, raised a number of concerns over the advances of DNA technology and the future use of DNA profiles. The introduction of LCN (Low Copy Number) DNA analysis has enabled forensic scientists to identify DNA from cells far smaller than those in which it could previously have been identified. Millen suggests that this technique is so sensitive that it carries an increasing uncertainty as to whether the identification of a person's DNA actually places them at the scene of a crime:

The dangers of secondary and tertiary transfer remain unpublished and therefore unknown. Secondary transfer is where is where person A touches person B [who] then deposits person A's DNA at a crime scene. Tertiary transfer is where [A] touches a surface, [B] then touches that surface and transfers [A's] DNA... This may seem improbable but with techniques this sensitive the real risk of contamination is currently unexplored.

He called for the possibility of "contamination" to be properly examined by scientists before LCN DNA is brought before the courts

The accuracy of DNA profiling techniques also came under the spotlight when the DNA database gave a burglary squad in Bolton the name Brian Easton. He was charged four months later, with the police refusing to accept that the database could have made a mistake (see *Statewatch* vol 10 no 1). In a retest demanded by his solicitor a more sophisticated analysis technique ruled him out. The FSS said that the case demonstrated that the database is as useful for eliminating suspects as for tracking them down.

Civil liberties concerns "misplaced" says PM

Tony Blair has stated that civil liberties concerns over DNA are "misplaced" (and happily volunteered a sample for the watching media). The argument was nothing to fear, nothing to hide, the standard justification for invasions of privacy.

A Home Office scheme which introduced voluntary DNA testing for police officers provides more enlightened comment. Launched in February at a cost of £3 million the programme invited all police officers to give a sample in order to rule out contamination of crime scenes from clothing, skin particles and hair. So far, 40,000 have provided a sample. The Home Office says it is confident of meeting the 75,000 target by next April.

In the Gloucestershire police force 700 officers have been tested and 30 have refused. Three of those who refused, all detective sergeants, have been forced to take desk jobs. They refused for "personal reasons" and are now seeking legal advice with the backing of the Gloucestershire Police Federation. Its Chairman said that taking sanctions against officers for not participating in a voluntary scheme was a likely breach of their human rights. Gloucestershire police argue that they are protecting the public by protecting investigations from contamination.

The bigger picture

Beyond law enforcement, DNA technology is synonymous with biotechnology and medicine - the achievements of the human genome project and concerns over cloning and genetic engineering for example. This has seen DNA broadly embraced, at least in the UK, as another 'silver bullet' of technology. In civil matters, recent Child Support Agency legislation requires all alleged runaway fathers to submit to a DNA test. Failure to do so is tantamount in law to an admission of guilt. Asylum-seekers are being tested in relation to family reunification based applications. Health and life insurance companies are to begin DNA testing clients in order to assess the cost of their premiums. And organisations such as the *Medical Research Council* in the UK and *The Gene Trust* (run by *DNA Solutions, Inc.*) in the USA are setting up databases for medical purposes.

The European dimension

A 1997 EU Resolution on the exchange of DNA analysis results was the first formal call for a European database. However progress has slowed somewhat due to some EU member states reluctance to accept binding commitments to participate. This is perhaps not surprising, some member states only allow DNA testing in connection with very serious criminal offences and do not yet even have a national database. Nonetheless, the EU has pushed DNA cooperation, both politically and practically.

European forensic scientists first began cooperating on DNA profiling informally in 1988 - with the creation of the European DNA Profiling Group. EDNAP's role was semi-formalised when it was subsumed into the *European Network of Forensic Science Institutes* (ENFSI). It also meets under the aegis of the EU's *Police Cooperation Working Party*. In 1998 the European Commission funded ENFSI to work on harmonising profiling techniques in the member states under the EU's STOP budget (created in 1996 by a Joint Action to fund law enforcement cooperation to combat trafficking in human beings and the sexual exploitation of children). Seven DNA "markers" have been identified and agreement on their use in national criminal justice frameworks will now be formalised. The proposals on exchanging results have not been so easy to agree.

The draft EU Resolution on the standardisation of DNA technology and exchange of results is the third to be proposed. It was originally drafted as an EU Framework Decision which would have made the obligations it placed on member states legally-binding. As a non-binding Resolution, those Member States which wish to begin exchanging profiles can begin doing so ahead of the others.

First drafted under the Finnish presidency in 1999, the original Framework Decision "urged Member States to establish national DNA databases", again called for the establishment of a European database and would have obliged member states to apply the harmonised DNA "markers" in their criminal justice systems within a year of adopting the decision. These provisions do not appear in the current proposed Resolution, but a number of areas of concern remain.

Data protection and legal safeguards

Astonishingly, the "legal safeguards" were withdrawn from the current Resolution on the table. There is no reference even to the inadequate safeguards in the 1997 DNA Resolution, despite the current proposal allowing member states to begin exchanging profiles. Consequently, there is a real risk that profiles will be copied onto other national databases and subsequently exchanged with other national databases, third states or international organisations in the absence of data protection rules. This means no effective guarantee for the individual to be able to gain access to their file or legally challenge the use of the profile; no enforceable rules concerning the expiry, correction or

deletion of files; no rules on jurisdiction over complaints or damages; and no principles governing independent data protection supervisory bodies.

It was noted earlier that the UK holds thousands of individuals DNA profiles illegally. Also missing from the current proposal are provisions to ensure access to the use of DNA evidence if relevant to the defence in a criminal trial, or to a challenge to an earlier conviction (as in Weir). Again, in respect to the UK, there is the possibility that illegally held samples could be exchanged in the absence of legal safeguards or supervision.

No limitation of offences or on use of DNA evidence

Both the 1997 Resolution and the current proposal refer only to the use of DNA evidence in "the investigation of crime", with no reference to a limitation of circumstances for which people can have their DNA taken (as there is in most EU member states).

This certainly suits the UK - one of the countries openly pushing hard for a European database. According to a Home

Office Explanatory Memorandum on the proposed Resolution:

The UK's Forensic Science Service leads the field in DNA analysis, and we wish to encourage other Member States, and eventually, those beyond the European Economic Area, to follow our lead.

Where EU harmonisation concerns peoples rights, it is usually the lowest common denominator (the lowest judicial standards among the member states) that is agreed. However, it seems that when it comes to law enforcement powers, it is the highest common denominator that is required.

Guardian, 1.8.00, 2.9.00, 27.10.00; Times, 16.6.00, 1.9.00; Independent, 28.9.00; Police Review 25.2.00, 14.7.00; "Under the microscope", report for Her Majesty's Inspector of Constabulary, July 2000; "Private Matters", Simon Davies, Index on Censorship no. 3, 2000; "Draft framework decision on the exchange of DNA analysis results", 11634/99, Limité, Enfopol 65, 7.10.99; "Draft framework decision on the standardisation of DNA technology and the exchange of DNA analysis results", 11634/1/99, Limité, Enfopol 65 rev 1, 9.12.99; "Draft Council resolution on the standardisation of DNA technology and the exchange of DNA analysis results", 8937/00, Limité, Enfopol 36, 29.5.00; Home Office Explanatory Memorandum on Enfopol 36, 21.7.00.

UK

Terrorism Act 2000

New definition of "terrorism" can criminalise dissent and extra-parliamentary action

After years of parliamentary opposition to the renewal of the Prevention of Terrorism Act, Labour in government has produced a new anti-terrorist law which is not only permanent but also broader in its scope and application than previous "emergency" and "temporary" legislation. The Terrorism Act 2000 received royal assent on 20 July and provisions relating to Northern Ireland came into immediate effect. The remainder of the Act will be implemented in early 2001.

The process began six years ago when the then Conservative government set up an "Inquiry into Legislation Against Terrorism", chaired by Lord Lloyd of Berwick. The Inquiry was asked to consider the need for counter-terrorist powers in the wake of the emerging Irish peace process and the likely decline in activity by the armed groups. It produced a two volume report in 1996 (Command Paper Cm 3420) (see Statewatch vol 7 no 1) which concluded that the UK required permanent anti-terrorist legislation to deal with internal and international threats, irrespective of the Irish situation. The Lloyd Report came up with a new legal definition of "terrorism" and considered a range of new and existing powers to form the basis of any future legislation. Each of these was looked at with respect to existing European Convention on Human Rights' jurisprudence, such as the Brogan ruling against seven-day detention. It is because the government wished to retain the power to detain and question people for up to seven days without charge that it entered a derogation from the Convention on grounds that the "life of the nation" was under threat. This notion, that the situation in Northern Ireland constituted such a threat, was last tested in the European Court of Human Rights in 1993 - the derogation was upheld. The Human Rights Act continues the derogation.

The next step was the publication of a joint Northern Ireland Office/Home Office document - Legislation Against Terrorism. A Consultation Paper (Cm 4178) - in December 1998. The government's intention was to modernise counter-terrorist powers, to make them permanent and to "maximise the appropriateness and effectiveness of the UK's response to all forms of terrorism" including "new forms of terrorism which may develop in the future". In other words, the new provisions were to cover "international", "domestic" and "Irish" terrorism.

The latter, however, would remain subject to a range of additional temporary powers incorporated into the new law.

The consultation period, as well as subsequent parliamentary debates on the Terrorism Bill, generated much discussion around the proposed legislation's compatibility with the Human Rights Act 1998 (incorporating the European Convention into UK law). Some of the argument went further, challenging both the need and desirability of legislation which would expand the type of actions and threats defined as "terrorism", thereby widening the criminalisation of expressions of support for international and internal groups. Notwithstanding government assurances that no domestic groups are likely to be proscribed under present circumstances (aside from those relating to "Irish terrorism") there is, nevertheless, widespread concern among campaigning groups that *any* extra-parliamentary activity may come within the scope of new legislation. It is likely, however, that the government would wish to proscribe organisations in other countries, and this is sure to have an impact on freedom of expression and open political debate, not to mention solidarity work.

Interpretation of definition crucial

Much of the legal argument surrounding the passage of the Terrorism Act focused on the definition of "terrorism". Section 1 of the Act elaborates the meaning of "terrorism" over five subsections. "Terrorism" can mean the threat of, as well as the use of, an action. Section 1(4) makes it clear that this "action" can occur anywhere within or outside the UK. Similarly, the persons, property or government affected by the threat or action itself can be anywhere in the world. The purpose of the action or threat is important for the definition of terrorism. The purpose must be to influence government "or to intimidate the public or a section of the public" for any "political, religious or ideological cause" (S1(1)b and c). The types of action are defined in Section 1 (2) and include "serious violence against a person", "serious damage to property", endangering a person's life, creating a "serious risk to the health and safety of the public", and "seriously" interfering or disrupting an electronic system. "Terrorism" is also defined by the weaponry involved, whether

or not it is designed to be used to influence government or the public. Firearms and explosives deployed in any of the actions in S1(2) means that "terrorism" is involved.

This is a far cry from the old definition of terrorism in the Prevention of Terrorism Act (PTA): "the use of violence for political ends" and "any use of violence for the purpose of putting the public, or any section of the public in fear". The powers described in the PTA applied specifically to "terrorism connected with the affairs of Northern Ireland". In 1984, this was extended to cover "international terrorism". With the new extended definition, there are a number of areas for interpretation: what constitutes a "threat"? What is an "ideological cause"? What is meant by "serious" as opposed to any other variety of violence? What is a "serious risk to health" and what is meant by a threat to intimidate the public? How explicit do such intentions have to be? All this is important because all other powers elaborated in the Terrorism Act flow from Section 1.

The Terrorism Act replaces the latest versions of the PTA (1989) and the Northern Ireland (Emergency Provisions) Act (1996). Most of the powers in both pieces of legislation, as well as the Criminal Justice (Terrorism and Conspiracy) Act 1998 (passed after the Omagh bomb) find their way into the new Act, either as permanent provisions or as time limited measures applying to Northern Ireland only. The Act contains 131 sections and 16 schedules, including Schedule 2 which lists the currently proscribed organisations. Following the definition of "terrorism" the Act goes on to describe the procedures for proscription, which now include appeals and applying for de-proscription. Sections 11 to 23 describe a range of offences including membership of and support for a proscribed organisation. Under 12 (2) it is an offence to arrange a meeting at which a member of a proscribed group speaks, or which supports a proscribed organisation or furthers its activities. The wearing of uniforms or an item of clothing which indicates support for a proscribed organisation is covered by Section 13. Other offences include fund-raising, the use of property for terrorist purposes, money laundering and failure to disclose information about a terrorist offence. Sections 24 to 31 cover the "seizure of terrorist cash" where an officer has a reasonable suspicion that the cash is being used for terrorist purposes. Among the more controversial sections are those concerned with "directing terrorism", collecting information and the possession

or any article, such as a coffee jar, which might be of use to terrorism.

Most of the Act is concerned with police powers such as stop and search of vehicles, arrest without warrant, searching of premises without warrant, powers concerning access to bank accounts and other financial records, the cordoning off of areas and specific powers to detain and question at ports and borders. Sections 65 to 113 relate solely to Northern Ireland and have to be renewed periodically. Seven day detention remains but is now subject to judicial rather than executive authority. Detainees can be refused access to a lawyer as before.

The main challenges to the new Act are likely to involve Human Rights Act provisions on freedom of expression, association and assembly which arguably are contradicted the defined offences covering meetings and speaking at meetings. Another area for contest are the presumptions of guilt involved in sections on the collection and possession of information and articles likely to be of use to terrorists. The onus is on the suspect to prove that items are for another purpose and this goes against the presumption of innocence written into the Convention. There are also concerns about the degree to which powers in the Act are delegated to the Secretary of State rather than subject to parliamentary oversight.

Two years ago, human rights lawyer Conor Gearty warned that the government's consultation paper was indicative of "legislative planning in the old, pre-Human Rights Act style".(1) This involved the executive taking the European Convention on Human Rights seriously "only when it throws a European Court judgement across its path, but otherwise treating human rights and civil liberties as desirable but wholly dispensable accessories". It might have been anticipated that the consultation period and subsequent parliamentary debates would have made the Act more sensitive to Convention rights, but this does not appear to be the case. The pace of litigation will depend on how quickly the government moves to proscribe international and "domestic" groups, and the continuing use of anti-terrorist powers in respect of Irish-related matters. But once this legal "bedding down" occurs, the prospects for removing permanent anti-terrorist law and associated specialist police bodies and actions becomes remote, with the inevitable consequence of the criminalising of dissent and extra-parliamentary politics.

Footnote: 1. Gearty, C (1999) "Terrorism and human rights: a case study in impending legal realities", Legal Studies, vol 19 no 3, pp 367-379.

UK

Re-interpreting stop and search statistics

Home Office comes up with a new way of justifying disproportionate level of "encounters" with black people

In 1999 the report of the Inquiry into the Matters arising from the Death of Stephen Lawrence (Macpherson Report) was published and concluded that there was institutional racism within the Metropolitan police. One of the specific areas of concerns, which it highlighted, was the discriminatory use of stops and searches. The Report argued that:

It is pointless for the police service to try and justify the disparity in the figures purely or mainly in terms of the other factors which are identified

It went on to argue that any attempt to explain away the disparity was sending out the wrong signals:

Nobody in the minority ethnic community believes that the complex arguments, which are sometimes used to explain the figures for stop and search, are valid. Attempts to justify the disparities through the identification of other factors, whilst not been seen vigorously to address the discrimination that is evident, simply exacerbates the

climate of distrust.

Shortly after the publication of the Macpherson Report the Home Office commissioned the largest ever research programme into stops and searches. The overall programme led to the publication of six reports:

- *The Impact of Stops and Searches on Crime and Community;*
- *An Evaluation of Recommendations of the Stephen Lawrence Inquiry on Stops and Searches;*
- *The Views of the Public on Stops and Searches;*
- *Police Stops and Decision-making and Practice;*
- *Profiling Populations Available for Stops and Searches;*
- *Managing the Use and Impact of Searches: A review of force interventions.*

The Home Office also published a Briefing Note Police Stops

and Searches: Lessons from a Programme of Research, which brings together the main conclusions and recommendations from the programme as a whole within a wider discussion about public confidence, legality and effectiveness.

The stop and search differential

Since the Police and Criminal Evidence Act 1984, all forty three police forces in England and Wales have been required to collect statistics on the use of a number of police powers: stops and searches of people and vehicles, road checks, detention of persons and intimate body searches. Every year since 1987 the Home Office has produced a Statistical Bulletin recording the details. In 1997 the Home Office began publishing a new series entitled Statistics on Race and the Criminal Justice System. These reports provide information on the ethnic appearance of those stopped and searched and arrested. *Statewatch* carried a comprehensive analysis of the ethnic data for 1996/97 and 1997/98 (*Statewatch*, vol 8 no 3/4 and vol 9 no 1). It showed that for both years there was a disproportionate number of black people stopped and searched and arrested compared white people.

The Home Office, however, has consistently argued that the stop and search figures must be treated with caution on the grounds that they are unreliable and subject to misinterpretation. Quoting from Home Office research by Fitzgerald and Sibbitt, it argued that searches of white people were more likely to be under-recorded than those of black people and that the use of the power varied by location, time of day and 'legitimate targeting' and therefore this explained the differential impact. More crucially, the research suggested that there might be no clear relationship between the "population at risk" of being stopped and the population of an area.

More recently, Her Majesty's Inspectorate of Constabulary has joined in the debate with a report entitled Policing London: Winning Consent. It recommended that the issue of disproportionality should be explored further. In caustic language it pointed out that the Metropolitan Police was now left with the:

multiple problem of addressing the disproportion... whilst isolating the variable factors that may quite rationally account for some of the disproportion, in order to reach a judgement as to what part of the disproportion was in fact attributable to stereotypical thinking and discriminatory action.

It went on to point out that this had to be achieved at a time when "the visible (sic) ethnic minority public, was in no mood to suffer tortuous explanations".

In February of this year, the Chair of the Police Federation claimed that:

In many parts of this country - and especially in multi-racial inner city areas - officers are not exercising their powers of stop and search. They are not exercising them in the same way as they were before Macpherson. The facts are simple: stop and searches are down, street crimes are up. Cause and effect.

He produced no figures to support his position but went on to suggest that the decline stemmed from officers' fear of being labelled a racist.

The Home Office research programme was, therefore, a part of a broader political campaign by the Home Office and the police to fight a rearguard action to the widespread criticisms of police practices and allegations of institutional racism. In such a context research and the methodologies which are adopted also become politicised.

Controversial findings

A number of major findings emerge from the Home Office research. First, the evidence suggests that more than 70% of encounters between the police and the public were not recorded. While the data on searches, compared with stops only, is more

accurate it is still less than perfect. Experts in the area have long suspected that there was some under-recording, but the extent is staggering. As the Briefing Note states, it places "in doubt the accuracy of any statistical picture". In other words, the statistics published over the last ten years have been virtually useless as an index of the total number of stops and searches.

Figure 1 shows the number of stops and searches between 1988 and 1998/9. As can be seen the recorded numbers have been climbing steadily and have increased from under 149,600 in 1988 to over 1,080,700 in 1998/99. The number of recorded arrests has also increased. Whether this reflects a real increase or simply an increase in the numbers recorded is a matter of conjecture. The main point is that if less than one third of all stops and searches were recorded in 1998/99, then there must be around 3,000,000 million stop and searches in England and Wales as a whole. Put another way, 65 people in every 1000 people aged 10 and over were subject to a stop and search. The number of arrests resulting from the stops and searches reached 121,300 in 1998/99 - some 11 per cent of all recorded stops and searches. If these figures are related to the 3,000,000 stops and searches, it suggests that less than 5 in every 100 stop and searches leads to an arrest.

The second major finding from the Home Office studies is that there is a wide variation in officers' understanding of the concept of reasonable suspicion and in the nature of officers' suspicions. This is an extraordinary state of affairs after the legislation has been in force for more than fourteen years. The research found that a number of factors aroused suspicion: appearance, behaviour, time and place and police intelligence. In terms of appearance, youthfulness, clothing, types of vehicles and incongruence, all gave rise to suspicions. In addition, suspicions are aroused as a result of wider generalisations made by officers. Few, if any, of these factors have anything to do with crime. The Briefing Note then went on to say, that "suspicions, which in some sense might be reasonable, have the potential to alienate the public and to develop into negative stereotypes". This is certainly true. The point that should have been made, however, is that suspicions, which are not reasonable, have an even greater potential of alienating the public.

The most controversial finding resulted from the study entitled Profiling Populations Available for Stops and Searches. It adopted a radically new methodology. Instead of relating the stop and search figures to the resident population, it attempted to relate them to what it called "the available population for stop search" - in other words, those people who are out on the streets. It identified zones where the most stops and searches occurred in the five study areas and then attempted to profile the number and characteristics of those in the zones.

A number of vehicles were equipped with discreet video cameras, no more than the size of a thumb. One camera was mounted alongside the driver in a forward facing position to allow an unrestricted view of pedestrians and vehicles on the offside. Another miniature video camera was mounted to film all the pedestrians on the near side of the road. For each area, within each site, two sets of 18-hour shifts were devised. Drivers were then required to follow a specified route at specific times. In total over 20,000 people and nearly 50,000 drivers were filmed and data on age, gender and ethnic appearance was subsequently abstracted. It amounted to one of the largest clandestine surveillance exercises ever carried out for research purposes.

The main finding using this methodology was that there was "no general pattern of bias against people from minority ethnic groups, either as a whole or for particular groups". On the contrary, "white people tended to be over-represented in stops and searches". The Times reported the research with the headline "Stop and search police are "rude but not racist" ". The Briefing Note added the caveat, however, that "Despite these findings, the possibility of discrimination by officers in their use

of stops and searches could not be dismissed". Nevertheless, the main finding clearly challenges the conclusions of both qualitative and quantitative studies, which have consistently found that ethnic minorities were disproportionately stopped and searched and arrested. It also challenges the everyday experiences of thousands of members of ethnic communities' encounters with the police. Perhaps most importantly it challenges the Macpherson Report's findings on institutional racism.

Criticisms of the research

The research report noted a number of small technical problems with the methodology but there was no broader assessment. Seven major criticisms can be made. To begin with, the use of the available population (AP) involves selection as it would be physically impossible to ascertain the total population on the streets of Britain for specified periods. In the Home Office study the researchers have selected areas in which the highest numbers of stop and searches take place. In other words, the AP is defined in terms of police practices, which are themselves the focus of the study. The methodology is circular and tautologous.

Secondly, by selecting the high stop and search areas, it obviously ignores the low stop and search areas. But it is in these areas that stop and search is much more likely to take place on a discriminatory basis because members of the ethnic minorities are perceived as "suspicious" because they are in the wrong place at the wrong time. Stops and searches carried out on this basis may contribute disproportionately to stop and search statistics particularly in areas where there is a small proportion of ethnic minority populations.

Thirdly, the AP is not the same as the notion of the "at risk population". This is a statistical term used to refer to the population who are at risk from some specific phenomenon. For example, the population at risk from BSE is the total carnivorous population. Thus, all vegetarians would be excluded and the number of BSE cases would be related to the total population of meat eaters. The problem with the concept of "available population" is that it is not a given population. It is highly variable temporally and spatially and, more importantly, it is affected by the very social phenomenon, which is being investigated - the power to stop and search. Many people may decide not to go onto the streets at particular times because they do not want to be stopped and searched.

Fourthly, the AP is measuring a number of different aspects of lifestyle; people's movement to and from work, people's shopping patterns and their social life. It is known that some sections of the ethnic minority populations spend more time on

the streets than others and during the early hours. To relate stop and searches to the "available population", therefore, captures the differential use of public space by different groups. From this perspective, it can be argued that the selection of "available population" rather than the resident population is itself discriminatory and unscientific.

Fifthly, this new methodology is not used to measure other similar events. Indeed if the notion of the "available population" was used in other contexts it would lead to a public outcry. Consider, for example, the number of children knocked down and killed by motor vehicles on the streets of England and Wales. It could be argued that the numbers should be related only to the total number of children "at risk" or in stop and search language, "available to be killed or injured". In other words, the total number of children on the streets would have to be counted and all deaths would then be related to this figure rather than say the total number of children in the resident population. This would be considered to be highly objectionable and no government would consider using such a methodology.

Sixthly, it would be impossible to use this methodology to produce annual statistics. It would be far too expensive and would subject the whole of the population on the streets in England and Wales at specific periods to mass surveillance. While the Home Office admits that resident population statistics are important in describing the overall experiences of searches among different ethnic communities, it recommends that the new methodology should also be used.

Finally, the study provides no explanation why the use of this new methodology shows that whites are more likely to be discriminated against, whereas all the analysis of stop and search figures, which are related to the resident population in each of the forty-three police forces, show that in some police forces the differential between black and white stops and searches is as much as eight times as great and four times overall. In any event, it does little to alter black people's perceptions of police encounters to be advised that when the stop and searches are related to the available population, there is no apparent differential, when most know that when related to the resident population methodology shows that overall they are four times more likely to be stopped and searched.

Any further attempts by the Home Office and the police to re-interpret the statistics will only add to this "crisis of confidence".

Police Research Series, nos 127-132, Home Office, 2000; Police Review, 4.2.00; Observer, 8.10.00.

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