

# statewatch

monitoring the state and civil liberties in the UK and Europe

vol 16 no 1 January-February 2006



## EU: Border control for the 21st century: “automated passenger processing”

Since the EU decided to go headlong into "biometric" passports (December 2004) and visas (June 2004), under the banner of the "war on terrorism", it has become clear that policy-making has moved ahead of technological capability and any idea of how to implement it. For while it is possible for a state, like the UK, to draw up a national "e-Borders plan" (see Statewatch vol 15 no 3/4) the same cannot be said of the EU as a whole.

The first scheme to bite the dust was the proposal on visas. The idea is that the central EU Visa Information System (VIS) will store the fingerprints (all 10) of all visa applicants taken at national consulates around the world. These biometrics were to be stored both on the central VIS database (which is going ahead) and on a "chip" in a visa permit attached to passports. There was a minor problem of whether the countries targeted ("high-risk regions/countries" like China, India, Algeria, Egypt etc) would agree to have EU visa permit inserted into their national passports. The major problem, however, evident since September 2003, is that if these countries decided to insert their own biometric "chips" into their passports (as they are being urged to do by the EU and USA) these would "clash"/"collide" with those in the EU visa- that is, the readers of the "chips" would not be able to work. After lots of huffing and puffing it took the EU until February 2006 to formally announce that the biometrics of visa applicants would not be inserted into passports but would only be held in the central VIS database.

This decision presents an obvious problem: a visa applicants' biometrics (fingerprints) are held on VIS and a person arrives at an EU border (land, sea or air) with their passport and a visa permit. How are the border officials to check the biometrics of the person to prove who they are? True the passport and visa contain a so-called "digitised" image (simply a copy of the usual passport photo) but this is simply the current technology. To check the person is the same as that on the VIS system their fingerprints will have to be taken and checked at every border crossing (quite excessive for someone "doing Europe") and checked against the central VIS. It is estimated that around 100 million people come to the EU every year with a visa - which is going to create a lot of work and expense.

To an extent the same goes for EU passports. A UK citizen re-entering the country can have the biometrics on their passports checked against the national central records, proving they are one and the same person. However, the same citizen entering another EU country presents a problem in that until there is a central EU database of finger-prints - which a very long way off - their fingerprints too will have to be taken to check against the copy held on the "chip" in their passport (a "one-to-one" check).

An EU Note from the Presidency on "VIS and border control" (EU doc no 7575/06, 28.3.06) confirms these problems. The JHA Council Conclusions of 1 December 2005 on VIS called for "processing biometric data at border crossing points". Similarly on passports there is a need to "verify the biometric data of the document holders at the external borders". The Presidency Note goes on to say that the Schengen Border Code, adopted on 21 February 2006, mentions "controls":

*but so far mentions nothing about where checks of biometric data should be performed*

For VIS it is "explicitly permitted" (under Article 16) that the "identity of holders of visas" are checked but:

*obviously, although not explicitly mentioned, using biometric data*

As to EU passports:

*there is a wide divergence of views [between Member States] on how the necessary checks should be carried out*

It is no wonder the EU Presidency calls for a "coherent" approach. Especially as, stating the obvious, checks at border crossing points:

*should be complete, as an incomplete roll-out is considered to jeopardise the effectiveness of the VIS*

That means all border have to have controls in place or anyone could slip through an uncontrolled road, station or port.

The Presidency poses a number of far-reaching questions yet to be answered:

Do member states intend to establish "biometric readers and a VIS online connection":

*at all border crossing points, to check all passports, check identity of all or only specific holders of visas, or just a percentage? (see over)*

### IN THIS ISSUE

**EU: Security Research Programme** see page 14

**UK and Germany: Rendition, flights and torture** see pages 17 & 19

Statewatch, PO Box 1516, London N16 0EW, UK

Tel: (00 44) 020 8802 1882 Fax: (00 44) 020 8880 1727 E-mail: [office@statewatch.org](mailto:office@statewatch.org) Website: <http://www.statewatch.org>

© Statewatch ISSN 0961-7280. Material in the bulletin may be used if an acknowledgement is given.

and what are their "ideas" concerning controls of:

*buses, trains (regular and high-speed), aircraft (larger aircraft carrying up to 800 persons), passenger and cruise ships?*

The Presidency Note ends with the thought as to:

*whether the presence of biometrics should not open the way to what during a seminar in London was called "border control of the 21st century, opening the way for **automated passenger processing** and a harmonised system to be developed for and by all Member States (emphasis added)*

In other EU fora they are discussing the creation of EU-wide databases of fingerprints and DNA in the post-SIS II era - even though currently in nearly every EU state, except the UK (5%), less than 1% of their populations' DNA are on file for criminal offences. "Automated passenger processing" could work with "iris scans" but at the moment only the UK is intending to use this for "low risk" passengers. It could work too, theoretically, if everyone had to give their fingerprints at the beginning and end of every journey, every time.

## CIVIL LIBERTIES

### DENMARK

#### Prosecutor reluctant to take television station to court

The Kurdish television station, ROJ TV, which broadcasts from Copenhagen, is in the searchlight of the Danish authorities, accused by the Turkish government of supporting terrorism. However the prosecutor has found that the material supplied to him by the police was insufficient to press charges. Regional prosecutor (*statsadvokat*), Mr Karsten Hjort, has asked the police to reinvestigate the accusations. The final decision to prosecute will fall to the Minister of Justice, Lene Espersen, since the justice department is in overall charge of Danish prosecutions.

Turkey and the USA allege that ROJ TV is financed by Kurdish organisations, for example, the PKK. Turkey has repeatedly asked the Danish authorities to prevent ROJ TV from broadcasting from Denmark. The PKK itself and its successor, KONGRA-GEL, appear on the EU terrorist list.

In November 2005 the Turkish Prime Minister, Recep Tayyip Erdogan, visited Copenhagen. During his stay he refused to take part in a press conference with his host, the Danish prime minister, Anders Fogh Rasmussen, because a reporter from ROJ TV was present. Fogh Rasmussen said that he found no grounds to single out ROJ TV to leave the press conference. The allegation against the television station was a question for the police to investigate.

The television station rejects the allegations that it is financed by the PKK. In any case, receiving funds from a group accused of terrorism is not defined as a crime in Denmark, whereas giving support to a group on the EU terrorist list might be an offence according to Danish law.

### UK

#### Sarin death settlement angers veterans

In February the Ministry of Defence (MoD) admitted that Leading Aircraftman Ronald Maddison was unlawfully killed due to gross negligence when he died participating in lethal nerve gas tests at the Porton Down chemical warfare facility 50 years ago. Maddison, who was 20 years old when he died after

having sarin applied to his arm at the laboratory on Salisbury plain in 1953, never gave his informed consent to the experiment, believing that he was testing a cure for the common cold. While the original inquest into his death in 1953 reached a verdict of death by misadventure in 2004, a Wiltshire coroners court returned a verdict of unlawful killing. Now the High Court has approved a deal between the MoD and Maddison's family, which means that the second inquest verdict stands (see *Statewatch* Vol 13 no 5).

The settlement was greeted with anger by other veterans of the Porton experiments who said that the agreement "smothers" evidence that Maddison did not give his informed consent. Eric Gow, chairman of the Porton Down Veterans Group, who was the subject of tests with LSD and mustard gas experiments, told the BBC:

*Young servicemen were subjected to dangerous non-therapeutic experiments without being properly informed of the risks*

He added:

*They were not told that the object of the exercise was to discover the boundaries of vulnerability of the human body to dangerous war gasses.*

The High Court rejected these arguments in agreeing to the settlements, saying: "*Whilst recognising the strength of feeling on behalf of the Porton Down Veterans Group, we do not feel there is sufficient public interest to be served by a further legal and factual assessment concerning consent to non-therapeutic test such as occurred in this case.*"

Porton Down carried out tests on thousands of military personnel during World War II and after the war so-called "volunteers" participated in nerve-agent trials. This practice continued until at least 1989. During the 1950s, when Maddison participated in the sarin trials, the facility also tested hallucinogens. This February three ex-servicemen who volunteered to be guinea pigs in Porton's tests for the common cold in 1953-1954 were awarded compensation after being dosed with LSD in mind control experiments. The Ministry of Defence did not make any admission of liability in relation to the payments, which are reported to be less than £10,000 for each man.

*For background on the Porton Down experiments see Rob Evans' book Gassed; BBC News 13 & 24.2.06; Wiltshire Advertiser 14.2.06*

### UK

#### Chagosians protest at theft of their country

Chagos Islanders protested at the High Court in December, demanding the right to return to their homeland. The islanders were removed by the British government during the 1960s and 1970s to enable the USA to build a military base on the island of Diego Garcia. The base was a key component for the US Air Force in its invasions of Afghanistan and Iraq; some journalists have also reported that it is also used as a torture and interrogation centre, a smaller version of Guantanamo Bay, although the British government insists that it is ignorant about these allegations. The Chagosian population was flown into exile in Mauritius after their forced eviction; many of these exiles now live in destitution and poverty. The island of Diego Garcia was first settled in the late eighteenth century and was inhabited by at least 2,000 people before it was "ethnically cleansed".

The demonstration at the High Court accompanied a legal action by Louis Bancoult, one of the thousands of Chagosians evicted from their homes, to overturn the legislation that prevented the islanders from returning. In November 2000 Bancoult won a historic High Court decision quashing their eviction but in a 2003 follow-up case the islanders were refused

compensation. In June last year the Foreign Office overruled the Court's 2000 decision using the anachronistic "royal prerogative" to overturn the High Court. A decree was issued that bans the islanders from ever returning to their home.

## Civil liberties - in brief

■ **UK: "Mosquito" targets children:** A high-pitched device designed to disperse groups of teenagers is increasingly being used throughout Britain. "The Sonic Teen Deterrent", nicknamed "The Mosquito", emits an ultra-sonic tone at a frequency only teenagers and children can properly hear. The noise becomes so annoying it forces them to move on. Adults are less affected because the human ear experiences a drop in the upper frequency sounds it can hear around the age of 20 and onwards. A number of local authorities and police forces have been testing the device and many have also been sold to members of the public. However, in March 2006 the Newport Community Safety Partnership told the owners of the Spar supermarket to stop using the device because it indiscriminately targets anyone under the age of 20. According to their spokesperson: "There have been discussions locally and nationally on the legality of a device which does not distinguish between those causing nuisance or anti-social behaviour and those who do not." *The Times* 24.3.06; *BBC website* 24.3.06

■ **UK: ASBO over-use becoming "routine".** A former senior civil servant, who recently left the Home Office to become chief executive of the children's charity Barnardo's, has criticised the "over-use" of Anti-Social Behaviour Orders (ASBOs) against children. Martin Narey's claims come in response to new government statistics which show that 43% of the 2,700 orders issued between January and September 2005 were made against juveniles. He argued the use of orders against young persons is becoming "entirely routine" and is "catapulting children into a custodial system that has so many children in it that the chances of rehabilitation are slim and the chances of deeper criminalisation likely." Just as disturbing is a November 2005 report by the British Institute for Brain Injured Children which found that 35% of children given ASBOs had either a diagnosed mental health disorder or an accepted learning difficulty. Despite these concerns, Dundee City Council is to give school teachers the power to apply for ASBOs against unruly students as part of a new scheme. Examples of behaviour the orders might be used to combat include disrupting classes, abusing teachers and bullying other children. Although ASBOs are civil orders if breached its owner has committed a criminal offence and can face court action. The maximum penalty for children is a two-year detention and training order. *The Times* 30/3/06; *The Scotsman* 21/2/06; *The Herald* 21/2/06.

## Civil liberties - new material

"I just want an apology" Lofti Raissi. *Independent* 16.2.06, p.43. Lofti Raissi was branded by the United States as the man who had trained the 11 September bombers and as one of the world's most notorious criminals. He, and other members of his family, were arrested 12 days after the attacks on New York when the US launched extradition proceedings against him on terrorism charges that carried the death penalty. After serving five months in Belmarsh high-security prison the case against him collapsed when the US "evidence" was shown to be fatally flawed. Nonetheless, the Raissi family are still prohibited from travelling by every airline in the world. Despite his wrongful imprisonment Lofti is still awaiting an apology for his treatment from both the British and the US governments, but Home Secretary Jack Straw's response has been to deny permission for any compensation to be granted.

**Fake news in the UK,** David Miller. *Free Press* no 150 (January-

February) 2006, p3. This article considers British Satellite News, which is "provided by World Television which makes internal videos and fake news releases for multinationals such as GlaxaSmithKline, BP and Nestle. World Television also produced *Towards Freedom Television* on behalf of the British Government. This was a propaganda broadcast distributed in Iraq by US Army psychological operations teams."

**The Torture Complex.** *The Nation*, 26.12.05. This special edition of *The Nation* focuses on the use of torture by US agencies. It contains articles on the role of the Bush administration (Anthony Lewis), US military cover-ups (Tom McKelvey), Abu Ghraib (Sasha Abramsky), medical complicity (Jonathan A. Marks) the role of music and "torture lite" (Moustafa Bayoumi), rogue academics (Tom McKelvey), television (Richard J Greenberg) and the law (Lisa Hajjar). While the Bush administration continues to fly in the face of the evidence by denying any US involvement in torture (Bush: "We do not torture") at least a dozen reports from the US Defense Department demonstrate the exact opposite. *The Nation* can be accessed at [www.thenation.com](http://www.thenation.com)

**The moral mirror,** John Pilger. *Free Press* no 150 (January-February) 2006, p1. Pilger discusses "the "noise" of twenty-four news that is often not news at all, but a series of tales spun by those with power, justifying their deceptions and violence." He argues that journalistic objectivity and impartiality "have become code for profound establishment bias." *Free Press* is the journal of the Campaign for Press and Broadcasting Freedom: [www.cpb.org.uk](http://www.cpb.org.uk)

**War without rules: yes, the US has used chemical weapons in Iraq,** George Monbiot. *The Guardian*, 15.11.05. Monbiot examines US troops' use of white phosphorus against the citizens of Falluja in November 2004.

## IMMIGRATION

### DENMARK

## New expulsion rules "violate" refugee convention

A proposal to amend the Aliens Act, put forward by the liberal-conservative government headed by Anders Fogh Rasmussen, has been criticised for violating the UN Refugee convention. The proposal will make it easier for the Danish authorities to expel immigrants and refugees. Current expulsion rules for foreigners violating the penal code are built upon a system that grades foreigners' legal protection according to the length of their stay in Denmark. Refugees, prior to this proposal, automatically received the highest legal protection, normally after they had been in the country for a period of seven years.

Under the new proposal this period will rise from seven to nine years. Furthermore refugees will be included in the proposed amendment of the Aliens Act, and the highest level of protection will not be given before eight years. Even with the highest legal protection a refugee can be expelled if they receive a criminal conviction that carries a sentence of more than two years imprisonment. On the other hand, refugees with less than five years residence will be able to be expelled for minor crimes - for instance theft - even if their sentence is suspended. The UN Convention states that a refugee can only be expelled under special circumstance and only for very serious crime, Anne La Cour, head of asylum at the Danish Refugee Council told the daily newspaper *Politiken* (26.2.06). She pointed out that one cannot just equate refugees with other foreigners, who after a short stay can be expelled for shoplifting or criminal damage.

The government disagrees with critics of its proposals who say that they are in violation of the UN Refugee Convention. It says expulsion orders are not carried out if there is a threat to an individual's life. Law professor and expert in the Foreigner's law,

Jens Vedsted-Hansen from the University of Aarhus, maintains that the proposal will violate the purpose and intention of the Convention, because refugees will be left without legal rights.

## Immigration - new material

**"Managed migration" ignores rights of immigrants**, Don Flynn. *Labour Left Briefing* March 2006, pp.18-19. Flynn discusses so-called "managed migration" (the "management of immigration in accordance with the needs of the British economy") the success of which is measured by the government hitting targets for "the removal from the country each month of more people than enter it to claim political asylum." He observes how the government's business-friendly approach results in "the arrest and detention of thousands of people, including whole families with young children" and "is taken as a quite acceptable mechanism for the routine management of the movement of people across national frontiers". He argues that the "logic of permitting immigrants entry when it was demonstrably in the interests of British employers has proven especially damaging to the interests of humanitarian migrants - refugees and others whose movement across international frontiers was forced through such reasons as environmental catastrophe or criminal trafficking."

**Immigration law update**, Alan Caskie. *SCOLAG Legal Journal*, February 2006, pp38-40. Review of significant court cases from Scotland and England in the fields of asylum, immigration and nationality law.

**"Derechos humanos en la frontera Sur. Informe sobre la inmigración clandestina durante el año 2005"**, *Asociación Pro Derechos Humanos de Andalucía*, January 2006, pp.28. The latest annual report by APDHA, which focuses on policies to prevent the entry of migrants through Spain's southern border and their implementation. Special emphasis is placed on events in Ceuta and Melilla, on the expulsion of 73 sub-Saharan to Morocco without giving them the opportunity to file asylum claims, on the reasons for which Africans choose to emigrate and on the detention of migrants who attempt the dinghy-crossing to Spain, alongside a detailed chart of the instances in which crossings have cost would-be migrants their lives. **The number of verified deaths in 2005 is the highest ever (368, up from 288 in 2004)** and the victims are predominantly sub-Saharan (267), although APDHA estimates that the actual number may be as high as 700. The role that Morocco is playing as the EU's border guard is resulting in an "unbearable" situation for sub-Saharan, which is marked by constant harassment, raids and violence by the Moroccan public security forces in the border regions and large cities like Rabat or Casablanca, as well as expulsions which have seen migrants abandoned in the desert. Moroccan security forces have carried out large-scale operations to clear the woods where migrants camped out in Gourougu (near Melilla), and the army has also been involved in raids targeting migrants. Details are provided of the instances from August to October when attempts to cross the border fences of the Spanish north African enclaves of Ceuta and Melilla resulted in deaths (16), drawing attention to the role played by the *Guardia Civil* (Spain's paramilitary police force).

**I tanti volti di una religione: l'islam in classe**", Costanza Bargellini and Daniela Frascoli (eds.), *Quaderni ISMU* 1/2005, pp.127. Fondazione ISMU, Via Copernico 1, Milano 20125. This volume is the product of a seminar to reflect upon the role of Islam in schools, now that it is no longer a "foreign" reality in Italy. It seeks to provide an introduction to this culture and to reflect about possible models for education and schooling and the interaction between school and family life that take into account the needs of children from Muslim backgrounds. It features the transcript of a debate in which Michael Andenna, a student of Islam and Arab language teacher, answers a wide range of questions and tackles stereotypes about the Islamic faith, and is divided in sections about "Plural Islam", "Muslim boys and girls in class" and "Educational models and teaching methods".

**!Percorsi di integrazione degli immigrati e politiche attive del lavoro**, Marco Lombardi (ed.), pp.285, September 2005. Franco Angeli, Fondazione ISMU, Via Copernico 1, Milano 20125. An analysis of the

process of integration of migrants and of active employment policies, which focuses on different aspects of the integration and employment opportunities of migrants. After providing an outline of the situation at a European level and of best practices adopted by national governments worldwide concerning public policies to promote integration, it looks at different issues in the context of Italian regions, namely "Immigrants and professional training" in Veneto; "Second generation youths and policies for the prevention of exclusion from employment" in Piedmont; "Foreign enterprise in central Italy" in Tuscany; and "The moving frontier of an invisible contest. The evolution of competitive relationships between the local workforce and migrants" in Sicily.

**Children first, migrants second**, Alison Stanley. *Legal Action* March 2006, pp. 7-8. This article discusses the increasing tension between family law, policy and practice and immigration law, policy and practice, which is associated with the increasing use of 'welfare state' agencies as a tool of immigration control.

**Representation at Immigration Appeals: a best practice guide**, Jane Coker, Jim Gillespie, Sue Shutter & Allison Stanley. *Immigration Law Practitioners Association* (ILPA), December 2005, pp99.

**Against 'God's law'**, Simon Jessop. *Red Pepper*, Issue 138 (February) 2006, p14. Article on the case of Innocent-Prospere Nkung Empi which highlights how the UK is failing homosexual asylum seekers.

## MILITARY

### GERMANY

## Deployment of armed forces for World Cup?

The football World Cup in Germany has raised some serious questions of concern. August Henning, president of the *Bundesnachrichtendienst* (Foreign Intelligence Service) from 1998 to December 2005 and currently State Secretary of the Federal Ministry of the Interior, has argued that parliamentary control of the intelligence agencies would "paralyse" the services because they have to prepare for the World Cup. Law enforcement authorities are currently working on biometric identification systems, RFID chips in tickets and cross-border police cooperation involving personal database conflation, all with limited public scrutiny and in the name of security against the threat to football (see *Statewatch* Vol 15. nos 3/4). Alongside these internal control mechanisms, conservative interior minister Wolfgang Schäuble (*Christlich Demokratische Union* - CDU) has been pushing for a change in the German constitution (*Grundgesetz*) to allow for the deployment of the armed forces inland. It is an absolute necessity for the World Cup, he argues, because the police cannot cope with the enormity of the task.

Article 35.2 sentence 2 and 35.3 sentence 1 of the constitution regulates the employment of the armed forces for the control of natural disasters or in the case of especially grave accidents. It does not permit the Federation of German States to order armed missions. However, the CDU is now using a Federal Constitutional Court (*Bundesverfassungsgericht* - BVerfG) decision from 15 February this year, which ruled the 2004 Aviation Security Act unconstitutional (as it gave powers to the army to shoot down hijacked airplanes, see *Statewatch* Vol. 14 nos 3/4) to argue for a change in the constitution to allow army deployment inland. To effect a change in the constitution the government needs a two thirds majority in the Lower and Upper Houses of Parliament. As a state secretary of the CDU was quoted as saying while awaiting the court's decision, if the BVerfG rules against the Aviation Security Act: "then we get the instruction for making the necessary change to the constitution

presented on a silver plate".

This logic has so far not convinced the CDU's SPD coalition partners, as the BVerfG decision is rather concerned with the protection of the basic right to life (Article 2.2) and the protection of the inviolability of human dignity (Article 1.1), both of which cannot be violated even with a parliamentary majority, as is laid down in Article 79 of the Constitution. The court's ruling reads as follows:

*The passengers and crew members who are exposed to such a mission are in a desperate situation. They can no longer influence the circumstances of their lives independently from others in a self-determined manner. This makes them objects not only of the perpetrators of the crime. Also the state which in such a situation resorts to the measure provided by '14.3 of the Aviation Security Act treats them as mere objects of its rescue operation for the protection of others. Such a treatment ignores the status of the persons affected as subjects endowed with dignity and inalienable rights. By their killing being used as a means to save others, they are treated as objects and at the same time deprived of their rights; with their lives being disposed of unilaterally by the state, the persons on board the aircraft, who, as victims, are themselves in need of protection, are denied the value which is due to a human being for his or her own sake*

Further,

*Under the applicability of Article 1.1 of the Basic Law (guarantee of human dignity) it is absolutely inconceivable to intentionally kill persons who are in such a helpless situation on the basis of a statutory authorisation. [...]*

*The opinion, which has been advanced on some occasions, that the persons who are held on board have become part of a weapon and must bear being treated as such, expresses in a virtually undisguised manner that the victims of such an incident are no longer perceived as human beings. The idea that the individual is obliged to sacrifice his or her life in the interest of the state as a whole in case of need if this is the only possible way of protecting the legally constituted body politic from attacks which are aimed at its breakdown and destruction also does not lead to a different result. For in the area of application of '14.3 of the Aviation Security Act the issue is not the defence against attacks aimed at abolishing the body politic and at eliminating the state's legal and constitutional system.*

The court ruled that the air force could only attack a hijacked aeroplane when no passengers or crew were on board. Even this would require a change in the constitution as it implies the deployment of the army inland to act on criminal acts for which the police forces already have responsibility. However, the fact that neither the army nor the police, the public or even the coalition government partners want the army deployed inland is not stopping Schäuble's quest. Schäuble and SPD justice minister Brigitte Zypries are currently working on drawing up a white paper as a reaction to the BVerfG decision to allow the air force to attack a plane holding only the attacker. Many SPD MP's are maintaining they will not agree on a constitutional change.

*Süddeutsche Zeitung 15, 17, 21.2.06; BVerfG press release "Authorisation to shoot down aircraft in the Aviation Security Act void", <http://www.bverfg.de/cgi-bin/link.pl?aktuell>*

UK

## British role in CIA killer drones exposed

The Observer newspaper has revealed the key role played by a British technology company in manufacturing the computer boards that control drones, which are deployed by the US military to attack political opponents in foreign countries in the fight terrorism. The drones are controlled remotely via satellite with a joystick and it is alleged to be able to identify a target before firing a Hellfire missile at it,

One of the more recent examples of drone's deployment was the slaughter of more than 20 innocent people in the small village of Damadola Bukanday in the North West Frontier Province of Pakistan in January. The drone circled the village for days before delivering what George W. Bush described as "sudden justice".

Radstone Technology, which is based in Northamptonshire, was unable to comment on its contract with the US nor the role its equipment, described as the "brains of the predator", played in January's massacre. However, the incident did prompt Amnesty International and the Liberal Democrats to say that they would pressurise the government to reveal the truth about the UK's role. Amnesty International's UK campaigns director, Stephen Bowen said: "These kinds of targeted attacks - with surface to air missiles taking the place of the judicial process - appear to be in breach of international law" and called for the government to "investigate what role UK supplied technology has played in the attack."

The Liberal Democrats have written to Defence Secretary, John Reid, to demand whether British personnel and US military bases in the UK are being used to support the US assassination policy. The images taken by the drones are studied at the secret US base at RAF Molesworth in Cambridgeshire, and staff at the American Joint Analysis Centre then use this data to target their victims. A spokesman for the MoD was unable to comment on the issue as it was "a matter for the Americans". Amnesty International maintains that according to international law, extra-judicial killings are always unlawful; that is to say that they cannot be justified by invoking a spurious war on terror.

## Military New Material

**Defensive measures** Should the European Union have a defence budget? *The Economist* 23.2.06

**Bayonets bared for Europe's military future**, Enzo Mangini. *Eurotopia* Issue 2, 2006

**Graduates and gun-runners**, Mike Lewis. *Red Pepper* Issue 138 (February) 2006, p10. This piece examines the arms trade and growing corporate influence on our universities and "the growing threat it poses to academic freedom."

## EUROPE

EU

## To COSI or not to COSI, that is the question: "Any reference to COSI should be avoided"

At the beginning of 2005 concern was expressed over the proposed role of a Standing Committee on Internal Security (acronym, COSI) under the EU Constitution (Statewatch vol 15 no 1). By the summer of 2005 there were moves within the Council of the European Union (the 25 governments) - despite the referendums in France and the Netherlands putting the Constitution on ice - to resurrect COSI (see Statewatch vol 15 no 3/4). The then incoming EU Presidency, the UK, proposed in July 2005 that COSI should set the "priorities for operational cooperation".

After the first meeting of the "interim COSI" in May 2005 there was a long silence until a "Meeting on Coordination of Operational Cooperation" was called by the current Austrian EU Council Presidency on 10 February 2006. The legal basis for the meeting was not the EU Constitution but point 2.5 in the Hague Programme (adopted 5 November 2004). The Outcomes (Minutes) of the 10 February meeting note that at the Informal

Meeting of the Justice and Home Affairs Council on 12-14 January 2006 it had been decided that:

*no new structures should be created but that existing ones should be strengthened or even made more efficient. Any reference to COSI should be avoided (emphasis added)*

The meeting was attended by Europol, Eurojust, the Police Chiefs Task Force, SitCen (Joint Situation Centre), the Council's counter-terrorism co-ordinator and the European Border Agency - a membership reminiscent of the interim COSI meeting (EU doc no: 6290/06). The Police Chiefs Task Force and SitCen have no legal basis for their existence.

Each of the "actors" reported on their work. The Director of SitCen said that 18 of 50 forthcoming threat assessments would deal with terrorism; the Commission representative said their priorities were: the principle of availability, the future of Europol and the architecture of internal security; and the Council Presidency's included "information exchange between the various bodies as a key theme (availability)".

One document before the meeting concerned; "The Architecture of Internal Security" prepared and presented by the Council Secretariat - that is, the full-time officials working on justice and home affairs for the Council (EU doc no: 7039/06). This presents very general objectives for: threat assessment, priorities, implementation and evaluation to be effected by: "the Presidency, in close cooperation with the Council Secretariat, the European Commission and supported by the various agencies". The options for who should be setting priorities presented are: a) a "meeting of the Police Chiefs" - a new fora of dubious status (see Statewatch vol 15 no 6) or at Article 36 Committee meetings (high-level officials from Home/Interior Ministries). A subsequent letter from the Commission to the Council said that it favoured the first option. The future of "COSI" (or not "COSI") remains unclear, though the concept of "internal security" now permeates Council thinking.

The February meeting also had a detailed report, from the General Secretariat of the Council on drug trafficking in and from Afghanistan, Western Balkans, Northern Africa (migratory movements). There was a lengthy discussion on the "Western Balkans" which included the following conclusions: Kosovo: a "strong international presence should be maintained for the next five years"; "corruption is the main problem in the police of Kosovo" and "the Balkan is [sic] full of weapons" (SitCen).

The European Commission stressed the importance of "closely interlinked" activities between Europol and SECI. Europol supported the idea of a "Police Chiefs Task Force for the Balkans" and an "appropriate legal base for SECI" would enhance cooperation with them.

### What is SECI?

SECI is the Southeast European Co-operative Initiative, launched in December 1996, on the basis of the "Points of Common EU-US Understanding" to develop a viable economic strategy from the region. The SECI Regional Centre for the Combating of Trans-Border Crime (Crime Centre) in Bucharest was set up in October 2000, in order to identify, arrest, and prosecute criminals operating in the region. SECI participating States include Albania, Bosnia and Herzegovina, Bulgaria, Greece, Hungary, Moldova, Romania, Slovenia, the Former Yugoslav Republic of Macedonia, and Turkey.

However the funding for SECI is coming from Austria, Italy, Liechtenstein, Switzerland, and the United States of America (countries such as Belgium, France, Germany, Serbia & Montenegro and Ukraine have observer status).

On the other hand the EU has its own programme, CARDS, Community Assistance for Reconstruction, Development and Stabilisation, set up in 2000 under the Commission's Europe Aid. CARDS helps law enforcement agencies in the region - though apparently "operational cooperation" is hampered by "data

protection issues".

## EU/AFRICA

### Dinghy deaths continue, as Mauritania enters the picture

In the first quarter of 2006 migrants continued losing their lives at sea during attempts to enter European territory, in the Mediterranean and Aegean seas and in the Atlantic Ocean, en route to the Spanish archipelago of the Canary Islands. Following the annual report for 2005 from the *Asociación Pro Derechos Humanos de Andalucía* (APDHA), which documented the highest ever number of deaths on the Spanish "southern border" (368), the most important development regarded the route along the lengthy sea crossing (around 1,000 km) from the Mauritanian coast, where thousands may have died, according to estimates from Spanish security services and the Red Cross and Red Crescent.

- On 4 January, one person died when a small vessel sank near the island of Lesbos in Greece.

- On 21 January, three people froze to death in two dinghies found drifting off the island of Evia in Greece on their way from Turkey, which were carrying 57 undocumented migrants from Pakistan and Bangladesh.

- On 23 January, three migrants died and five disappeared off the coast of Alhucemas (northern Morocco) in a shipwreck after they had set off in a Zodiac launch.

- On 30 January, off the coast of Oran (Algeria), nine people were deemed to have disappeared in an attempt to reach Spain.

- On 13 February, an Afghan migrant died of shock in Patras harbour in Greece, allegedly due to a beating that his cousin allegedly suffered at the hands of border guards after attempting to smuggle himself onto a ferry travelling to Italy.

- On 15 February, an unidentified migrant woman was found after having died of exposure to cold on Mount Falakon during an attempt to cross the Greek-Bulgarian border.

- On 18 February, nine people disappeared in a shipwreck off the Libyan coast, during an attempt to reach Italy.

- On 19 February, a 25-year old Afghan drowned near the coast of the islet of Ounosses, near Chios in Greece, when an inflatable dinghy in which six Afghans were attempting the crossing from Turkey sank.

- On 19 February, there were two deaths near the island of Alborán near the coast of Almería in a dinghy crossing attempt that ended with an operation by *Salvamento Marítimo* (the Sea Rescue service) in which 24 migrants were rescued during a storm.

- A similar incident during a storm two days later (21 February) ended with the rescuing of four migrants. The crew of the merchant ship that gave the alarm saw two people falling into the sea, whose deaths were confirmed, while a further 26 are believed to have disappeared, based on estimates of the number of passengers travelling in the dinghy.

- On 22 February, a ship flying a Panamanian flag arrived in Puerto de la Luz y las Palmas (in the Canary islands) from the Ivory Coast with four dead stowaways on board, believed to have died of asphyxia.

- On 5 March, one man died and nine disappeared in a shipwreck off Ahrax Point in Malta, en route to Sicily, after having fled from Hal Far and Safi detention centres.

- On 7 March, 3 dead stowaways were found in a lorry that arrived in Bari (Italy) on a ferry from Durazzo (Albania).

- A dead sub-Saharan migrant was found by the *Guardia Civil* near the port of the Spanish north African enclave of Melilla on 16 March.

- On 17 March, Moroccan authorities confirmed the disappearance of 13 youths after they had set off towards the

Canary islands from the Western Saharan town of Laâyoune.

On 7 March, the first news surfaced of what was to become the major development during this quarter, the deaths of migrants attempting the crossing to the Canary islands during a mass influx from Mauritania. The death of 45 sub-Saharan who were travelling in two dinghies on 5 March that suffered shipwrecks en route to the Canary islands opposite the Mauritanian and Western Saharan coasts. APDHA responded to this development by arguing that border control measures implemented by Spanish authorities (particularly the *Sistema Integral de Vigilancia Exterior*, SIVE) were resulting in migrants attempting crossings using routes that are longer and more dangerous. It later emerged from estimates by both the Red Crescent in Mauritania and the Canary islands' *prefecto* (official in charge of public security) that over 1,000 migrants (between 1,200 and 1,300 according to the Red Crescent) may have died in the previous four months attempting the crossing from Mauritania to the archipelago. In spite of the deployment of Spanish boats to patrol the Mauritanian coast, the deaths continued. Mass expulsions of migrants soon followed, with 170 people deported in late March, after the Spanish defence ministry had sent out a team of engineers on 21 March to set up a camp for returnees in Nouadhibou in northern Mauritania. One incident saw 24 corpses retrieved from the sea on 15 March by a navy hospital ship in the Atlantic Ocean, over 126 km away from the Mauritanian coast at the border with the Western Sahara and 700 km from the Canary islands. On 21 March, the defence minister, José Bono, confirmed that a *Guardia Civil* report from December 2005 which contained information from the *Centro Nacional de Inteligencia*, CNI, had warned that between 1,200 and 1,700 would-be migrants had died during attempts to reach Spain after setting off from Mauritania.

*ABC*, 24.1.06; *El Mundo*, 20.2.06; *La Verdad de Murcia*, 22-23.2.06; *Informativos Sur*, 22.2.06; *Diario Vasco*, 1.3.2006; *Asociación Pro Derechos de Andalucía* statement, 7.3.06; *Diario de Noticias*, 8.3.06; *El País*, 16.21.3.06; *Sur*, 23.3.06; *L'Express*, 28.3.06; *Kathimerini*, 15-16, 20, 23.2.06. A compilation of incidents leading to migrant deaths is available at: <http://fortresseurope.blogspot.com/> For daily immigration news from Spain (run by Mugak, *Centro de documentación sobre racismo y xenofobia*): <http://www.mugak.org/prensa/index.html>

## EU

### Hesitations about military mission in Congo

Leading EU member states are reluctant to heed a United Nations request to send troops to the Democratic Republic of Congo for the period of the elections in June: they are too stretched by commitments in other areas.

In January, the United Nations (UN) asked the EU to send a battle group of up to 1,200 soldiers to the Democratic Republic of Congo to support the current UN mission MONUC by offering protection on the ground during the presidential elections.

Although the EU had planned to announce a final decision on its military commitment in the Democratic Republic of Congo by the end of February, the decision was postponed several times. The EU wants to show up as a global security player. The Congo mission would be its sixteenth operation to date. Others range from peacekeeping in Bosnia to monitoring the Gaza-Egypt border and peace monitoring in Aceh, Indonesia. However the member states are hesitating as to who should take the lead on the operation in Congo. France, for instance, is unwilling to take on the role due to its current commitment in the Ivory Coast and its previous leading role in the "Artemis" operation in the Congo in 2003. The UK will not offer forces as it feels over-stretched with its involvement in Iraq and

Afghanistan. Germany is the only other EU nation with sufficient planning capacity for such an operation but is has shown unwillingness to be put in the lead role.

EU military planners are now sifting through options starting with the deployment of a force of between 200-450 soldiers to the capital Kinshasa. To that could be added a reserve force of up to 800 troops based either in Africa (Gabon) or in Europe. Tasks for any troops on the ground could include protecting Kinshasa airport, helping to train the Congolese police and supporting UN forces.

According to Congolese observers mentioned in the German newspaper *TAZ* the delay has also to do with the conviction of the US and France and their African friends that the victory of the incumbent president Kabila is now inescapable. A smaller EU force would according to diplomats only have the role of evacuating Europeans in case of riots.

The costs of the EU-mission in Congo are estimated at 5 to 15 million euro depending on size and length.

*www.euractiv.com*; *Reuters* 21.2.06 (Mark John); *Taz* 28.2.06 (Dominic Johnson)

## EU

### High Level Working Group on Asylum and Migration: crucial body in EU's externalisation policies

Initially, the mandate of the High level Working Group on Asylum and Migration (HLWG), a council body, expired in 2000. It was set up on 7-8 December 1998, on the initiative of the Netherlands and in conjunction with German and Austrian EU Presidency initiatives. It consists of civil servants from interior, development, trade and foreign ministries. Its task was to engage in cross-pillar activities, linking justice and home affairs (JHA) and External affairs and develop the external dimensions of an EU migration policy. According to its terms of reference six so-called action plans on the influx of immigrants have been prepared, one each on Afghanistan, Albania, Morocco, Somalia, Sri Lanka and Iraq and their neighbouring countries. The HLWG was to 'be disbanded upon submission of its final report'. However, as early as 2000, the European Council in Tampere agreed on the continuation of its mandate which was prioritised by the Swedish presidency in 2001.

Two years later, the HLWG in a pro-active move suggested a further extension and expansion of its role at its meeting on 22 May 2002. But because of its relative failure with respect to the implementation of the action plans separate funding was identified through Article B7-667 (see below). Accordingly, the HLWG has been commissioned to:

*develop a strategic approach and a coherent and integrated policy of the European Union for the most important countries and regions of origin and transit of asylum seekers and migrants, [which is CONTRARY to its previous mandate] without geographical limitations' including some analysing and monitoring tasks, hence to integrate JHA issues in the EU external relations policies. It has been mandated to work out strategies to deepen political and diplomatic consultations with the concerned countries, evaluate possibilities for readmission agreements and explore 'measures aiming at voluntary repatriation.*

The mandate also contains some references to human rights situations and to development policies.

This brief enumeration indicates that the HLWG was assigned a crucial role in preparing the ground for the EU's present externalisation policy in the field of asylum and migration. For example, the Dutch government expresses its view that the HLWG should be 'the main forum for negotiations

[on international cooperation] within the EU' whilst the HLWG 'should handle':

*direct or indirect support or exerting pressure on [countries of origin and transit] ... to secure their cooperation*

Whilst the action plans have received widespread attention, and criticism, by NGOs as well as by concerned third country governments, such as that of Morocco, the prolonged activities of this body have been much less visible. The group, supported by the General Secretariat of the Council, seems to have considerable discretion in performing its tasks including journeys to the countries and regions under consideration. It is financed by the EC B7-667 budget line, in 2004 replaced by the AENEAS programme. In 2001 and 2002, the budget of B7-667 was set at €10 and €12.5 million respectively. For 2003 the budget was determined at €20 million, but €7 million of this was earmarked specifically to implement the EU's Plan for Return to Afghanistan. Within the framework of the HLWG external bodies such as UNHCR, IOM (International Organisation on Migration) or ICMPD receive money to run specific projects.

Following the extension of its mandate the new roles of the HLWG became clearer. For example, since 2001, it held meetings to consult the USA, Canada and Australia. Following a HLWG meeting on 10 July 2002, a list of 38 countries was prepared with whom cooperation is sought in migration matters and in each case one to four member states volunteered to start this process. The HLWG, at its meeting on 29 October 2002, and in accordance with the Seville Council conclusions laid down the principles of the EU's external policies in the field of asylum and migration, which were then accepted by the Council. It was especially emphasised that cooperation with Morocco and Libya is important. During the Greek presidency in 2003, the HLWG further discussed matters of cooperation with Libya and Morocco, but also with Tunisia and Turkey. Furthermore, the HLWG has been involved in the integration of returned migrants from Albania, Kosovo and the Former Yugoslav Republic of Macedonia (FYROM) and to 'to ensure that those who return with assistance do not re-emigrate [a policy called sustainable return]' (some of the field work has been commissioned to IOM). According to Andrew Geddes, the HLWG:

*has funded a programme encouraging Moroccan migrants to set up businesses in Morocco and another project to establish a savings bank for the remittances of Moroccan migrants.*

On 4-5 March 2004, a 'meeting between the European countries [14 member states] and the Latin American and Caribbean countries [18] on migration' took place in Quito, co-chaired by the chairperson of the HLWG and the Ecuadorian Undersecretary for migration. This was the first meeting of this kind and illustrates the expansive nature of the activities of the HLWG. In the same year, the HLWG, and SCIFA, on behalf of the council 'have been extensively considered' draft presidency conclusions on the 'development of a common readmission policy'. And more recently, the HLWG, following discussions during the informal ministerial JHA meeting in Newcastle on 8 and 9 September 2005, submitted a draft conclusion to the HLWG stressing the priority to focus on relations with Africa.

To sum up, the HLWG, as 'council preparatory body [B3]', is the council's instrument to 'follow-up on the external dimension of the European asylum policy'. It is the interface between the Council and various international, inter-governmental and non-governmental organisations, ranging from UNHCR and IOM to ICMPD and MPG. It is jointly with the Strategic Committee on immigration, frontiers and asylum (SCIFA) the Council's forum for discuss Commission initiatives and presidency draft conclusions. Furthermore, it appears to be the Council's means to circumvent the Commission's leading role in submitting initiatives. Finally, despite acknowledging the relevance of humanitarian and development issues the focus of HLWG is exclusively on migration control, only taking

development issues as another means to discipline third countries. Within this context, development is not primarily understood as improving peoples' lives but rather as a strategy to prevent migration.

*Sources: Council of the European Union, 22/1/1999, terms of references of the High Level Working group on Asylum and Migration, 5264/2/99, JAI1, AG1; Council of the European Union, 29/11/2000, High-Level Working Group on Asylum and Migration – Adoption of the report to the European Council in Nice, 13993/00, JAI152, AG76; Ministry of Foreign Affairs, Sweden, 27/4/2001, High level working group on asylum and migration activities undertaken during Swedish presidency, Memorandum; Council of the European Union, 23/5/2002, Modifications of the terms of references of the High Level Working Group on Asylum and Migration, 9137/02, JAI 94, AG19, ASIM17; Council of the European Union, 5/11/2002, Draft Council conclusions on intensified cooperation on the management of migration flows with third countries, 13754, Asim46, Reflex216; Council of the European Union, 27/10/2004, Draft Council Conclusions on the priorities for the successful development of a common readmission policy Council of the European, JAI 389, Migr 92, Relex 459; Union, 29/6/2005, Presidency programme on asylum and immigration, 10703, JAI 243, ASIM 28; Report by Minister for Migration and Asylum Policy Maj-Inger Klingvall in the European Parliament on 19 June 2001; Government of the Netherlands, 2005, Mainstreaming Migration into Development Policy Agendas, International Dialogue on Migration, Geneva, 2-3 February; ICMPD, July 2005, ICMPD Activities in the Field of Integrated Border Management; Steve Peers, 2003, Readmission agreements and EC external migration law, Statewatch analysis no 17; Aninia Nadig, 2001, The High Level Working Group on Asylum and Migration and its action plan for Afghanistan, Journal for Refugee Studies, 14(4): 428-35; Stephen Castles and Nicholas Van Hear with Jo Boyden, Jason Hart, Christian Wolff and Paul Ryder, February 2005, Developing DFID's policy approach to refugees and internally displaced persons, , A Research Consultancy by the Refugee Studies Centre for the Conflict and Humanitarian Affairs Department, Department For International Development, UK, Volume I: Consultancy Report and Policy Recommendations; Council of the European Union, 18/9/2002, Selection of countries of origin or transit countries with which cooperation on management of migration is to be started or intensified, 12122/02, Asim 34, Reflex 168; Development Research Centre on Migration, globalisation and Poverty, Newsletter, October 2005; Andrew Geddes, 2004, Towards Common EU Immigration and Asylum Policies?, Paper prepared for conference on 'Immigration Issues in EU-Turkish relations', Bogazici University, Istanbul, Turkey, 8-9 October; Meeting between the European countries and the Latin American and Caribbean countries on migration', 4-5 March, Quito, report adopted by the plenary session; Council of the European Union, 11/11/2005, Draft council conclusions on migration and external relations, ASIM 50, DEVGEN 210, Relex 623; Luxemburg Presidency, 2005, Determining an approach for the external dimension of the European Asylum Policy, Informal Meeting of the Justice and Home Affairs Ministers, Luxembourg, January 27-29, 2005.*

## EU

### Direct access to DNA data

The Council of the European Union (the 25 governments) has set up an "Ad Hoc Group on Information Exchange on DNA" in the name of the so-called "principle of availability" under the Hague Programme..

A report from the EU Presidency (EU do no: 6259/1/06) says that this is only possible "through the expertise of highly qualified and specialised experts in information exchange". They, it appears, are to draft the legislation finding "legal, technical and administrative solutions" to allow for: "on a hit/no-hit basis by direct automated access".

However, another unreleased document (EU doc no: 13558/05), see the question as a "technical", not a political issue and see the legitimation to be to meet the objectives:

*as is set out in the Prüm Treaty. This would obviously imply that all Member States establish DNA data bases for the investigation of a criminal offences and ensure the availability of reference data to other Member States. (emphasis added)*

The "Prüm Treaty" drawn up by a self-appointed governmental



pressure group: Belgium, Germany, Spain, France, Luxembourg, Netherlands and Austria.

## Europe - new material

**Asylum support: new rights under EC law**, Anneliese Baldaccini, *Legal Action* February 2006, pp.26-8. This article discusses a number of significant amendments to the Immigration Rules (HC 395) and Asylum Support Regulations 2000 to comply with the EC Directive on reception conditions for asylum seekers. Baldaccini highlights some key areas where the Home Office has failed to write into domestic law important requirements placed on it by the Directive.

**EU-USA meeting on justice and home affairs - on Statewatch News Online (April 2006):** The full-text of an Informal meeting between the EU and the USA on justice and home affairs covers contentious issues, for example "US side indicated that it was considering approaching each [EU] Member State to ensure that the data collected on the basis of the recently adopted Directive on data retention be accessible to them". This is the measure which will enable the surveillance of all phone-calls, e-mails, faxes, mobile phone-calls and internet usage. Also the: "US side expressed serious concern about the negative impact that the draft Framework Decision on data protection would have on its bilateral relations with Member states if it was to be adopted in its present form". This is a reference to Article 15 of the proposed measure referring to "an adequate level of protection is ensured in the third country" - which raises yet again the fact that there is no protection for non-US citizens. The EU side at the meeting clearly sought to meet this point by saying that: "Member States were divided on the need for such a provision".

## POLICING

### SPAIN

## Guardia Civil officers face minor charges for Roquetas killing

Charges of involvement in degrading treatment and causing bodily harm have been brought against nine officers who took part in a beating which caused the death of 39-year-old farmer Juan Martínez Galdeano in the *Guardia Civil* station of Roquetas del Mar (Almería) on 24 July 2005. Martínez Galdeano had gone to the *Guardia Civil* to seek protection after being involved in a car crash. The incident that followed was described in parliament by the interior minister, José Antonio Alonso, on 11 August:

*today, it is already impossible to ignore an incontrovertible fact: a citizen who arrived at a police centre voluntarily on his own initiative experienced his death, inside the centre, after a long, violent encounter in which up to nine police officers took part, among whom was the leading officer in charge of the police unit.*

An internal investigation and the autopsy found that Martínez Galdeano's death was caused by a "cardiorespiratory failure" caused by an "adverse reaction" to drugs resulting from "prior consumption of cocaine". This adverse reaction was caused by the "stress" of his detention, the blows that he received and the use by officers of a spray and an electric truncheon which are not part of the force's regulation equipment. The police officers involved face charges of treating the farmer in a degrading manner, and of causing grievous bodily harm. The autopsy stresses that "the injuries received or self-inflicted during the struggle were in no way the cause of death" [emphasis, in original], as the death would not have occurred without the prior consumption of cocaine. The investigation considered that the officers had acted to restrain the deceased who had entered the station in an "altered state". Thus, neither charges of murder or

manslaughter will be brought, in spite of evidence that illegal electric truncheons were used in the beating and it was partly caught on camera in the station's CCTV system. A number of horrified bystanders also witnessed the incident, which took place both inside and outside the station, when officers tried to force Galdeano into a van (see *Statewatch Vol. 15 nos 3/4, Statewatch News Online, September 2005*).

Another suspicious death resulted from a violent intervention by officers, this time of the municipal police in Marbella, on 7 February 2006, when a man who police sources claimed was semi-naked and insulting passers-by in a drunken stupor died after being restrained. The Belgian man's death was deemed an "untimely death" by a judge, raising concerns over police brutality and accountability in such cases. The *Asociación Pro Derechos Humanos de Andalucía* (APDHA) issued a statement in response to these allegations, claiming that the man was neither drunk nor behaving aggressively. Witnesses gave a very different reconstruction of the incident, arguing that the man's face was held down, preventing him from breathing, by one of the four officers involved after a blow to the back of his neck had caused him to fall. The onlookers reportedly criticised the officers, calling them "murderers", during the incident. The APDHA statement notes that only 10 of the 80 initial witnesses have continued to cooperate with judicial inquiries into the killing as a result of pressure and the threat of action being taken against individuals who insult or slander the police, issued from both police and town council officials.

*APDHA newsletter, 23.2.06; El País, 7.7.06; Autopsy report, 3.2.06, available full-text from El País at:*

*[http://www.elpais.es/elpaismedia/ultimahora/media/200601/16/espana/20060116elpapunac\\_1\\_Pes\\_PDF.pdf](http://www.elpais.es/elpaismedia/ultimahora/media/200601/16/espana/20060116elpapunac_1_Pes_PDF.pdf)*

### ITALY

## Police officers investigated over Ferrara death

Four police officers (three men and a woman) were placed under investigation on 14 March 2006 in relation to the death of Federico Aldrovandi, an 18 year-old who died as he made his way home late at night on 25 September 2005, after an encounter with the police (see *Statewatch news online*, January 2006). The officers are suspected of *omicidio preterintenzionale* (having deliberately inflicted injuries leading to a death). In January 2006, Federico's mother told her story and expressed her suspicion that her son may have died as a result of police brutality. She also complained about the five hours that passed before she was informed of her son's death and noted that "they are trying to kill him a second time" in relation to claims that a drugs overdose was the reason for his death. Her claims drew a response from the *questore* (local authority in charge of security) of Ferrara, who defended the actions of the police officers and called on the public to refrain from slandering the police. The inconsistency of police claims which originally stated Federico had died after feeling ill, then that they had intervened to stop him from harming himself and later that he had suffered an overdose has caused concern. Further evidence emerged, including witnesses who saw him asking for help and pleading with the policemen to "stop it"; two truncheons that were broken during the encounter, are further elements of concern.

Two different reports emerged from the autopsy, one by the forensic legal medical unit, and the other from counsel for the Aldrovandi family. Both establish that there were a number of injuries caused by blows (Federico's body and face were heavily bruised), although they were not deemed to have been the cause of his death. The interpretations as to the cause of the death differ. The forensic doctor claimed that the death was caused by

a heart failure provoked by several factors including his excitement, the strength and anger that he released in his struggle with the police, and the consumption of drugs. The family's legal counsel claims that Federico Aldrovandi died of "positional asphyxia" due to "compression of the thorax" after being restrained for several minutes, face down, handcuffed and with an officer leaning on his back. The team added that the traces of drugs that showed up in the toxicological tests were insufficient to cause Aldrovandi's death. Further forensic tests whose outcome is expected in April have been ordered by the judge who is in charge of the case.

Federico's mother, Patrizia Moretti, responded to the news of the investigation of the officers by claiming that it should have taken place six months earlier, as well as questioning the appointment of a legal medical doctor from Ferrara whose work has drawn controversy in the past, and who is not an expert in toxicological issues, to run the new set of tests.

*Kataweb special dossier on the Aldrovandi case: [http://www.kataweb.it/spec/home\\_speciale.jsp?ids=1253530](http://www.kataweb.it/spec/home_speciale.jsp?ids=1253530); Blog about the case set up by the Aldrovandi family:*

*<http://federicoaldrovandi.blog.kataweb.it>; Comitato verità per Aldo: <http://www.veritaperaldro.it>; Repubblica, 13.1, 17.2, 22.2, 15.3.06.*

UK

## Oyster card a "straightforward investigative tool"

The Metropolitan police force has said that it uses data stored on Oyster cards - which are used by approximately five million Londoners to travel on the bus, underground or train - to track the movement of suspected criminals. The smartcards, which were only introduced in 2003, have a unique identification number and record details of each journey a traveller makes over an eight week period. The cards have been the subject of an expensive London-wide campaign to encourage their use by commuters by the Mayor of London. This has seen extensive advertising and the price of the card has been pegged, while other forms of ticket have risen sharply. In January 2006 the police requested journey information 61 times - in 2004 there were seven requests. In total 243 requests for information have been made by the police and access has been granted on 223 occasions.

The Met has described the Oyster card as "a straightforward investigative tool". A Transport for London (TfL) spokesman assured their customers that there was "no bulk disclosure of personal data to third parties for any commercial purposes." However, Heather Brooke from Privacy International said that it was "outrageous", pointing out that "Londoners are already the most watched people on earth". *BBC News 13.3.06*;

*Privacy International <http://www.privacyinternational.org/>*

UK

## No accountability for armed police

Harry Stanley was a 46-year old painter and decorator, who was recovering from a successful cancer operation when he was shot dead by two Metropolitan police officers in Hackney, east London, on 22 September 1999. He had just collected a table leg that had been repaired and was on his way home with it wrapped in a bag when he stopped at a local public house. There, a customer who mistook Harry's Scottish accent for an Irish one and his bagged table leg for a firearm, phoned the police to report a suspicious armed man. Within minutes a Metropolitan police armed response unit (SO 19) arrived. As the father of three made

his way home the police officers approached him from behind, shouting twice for him to stop; as Harry turned the police officers opened fire, one shot hitting him in the head the other hitting his left hand. When his bag was searched the officers recovered the table leg.

The controversial killing was the subject of a Surrey police investigation under the supervision of the Police Complaints Authority (PCA, which was replaced by the Independent Police Complaints Commission, IPCC, in April 2004). In June 2002, after the Crown Prosecution Service (CPS) ruled that Inspector Neil Sharman and PC Kevin Fagan should not face criminal charges, an inquest jury returned an open verdict on the killing. However, the jury's verdict was overturned by the High Court in April 2003 and a second inquest was ordered. This was held in October 2004 and on this occasion the jury returned a verdict of unlawful killing. Their verdict led to Sharman and Fagan being suspended from duty which resulted in a major policing crisis as members of SO-19 downed arms and went on unofficial strike. This show of force caused panic in the government and at the Home Office. By May 2005 the High Court had quashed the second jury's verdict, (see *Statewatch* Vol. 10 no 2 and 6, Vol. 12 no 5, Vol. 13 no 2, Vol. 15 no 2).

In June 2005 Sharman and Fagan were arrested by Surrey police after new forensic evidence surfaced, indicating that the officers' claim that Harry had implausibly aimed the bag carrying the table leg at them was false. The CPS was considering charges of murder, gross negligence manslaughter, perjury, attempting to pervert the course of justice and misconduct in public office. The new forensic evidence "appeared to indicate that Mr Stanley may have been shot as he turned towards the officers, in contradiction to the statements provided by them" said a CPS press release. However, the CPS concluded in October 2005 that "the prosecution evidence is insufficient to rebut the officers assertion that they were acting in self-defence. We have also concluded that the threat which they believed they faced made the use of fatal force reasonable in the circumstances as they perceived them."

This decision, alongside the police shooting of Jean Charles de Menezes after a terrorist scare on 22 July 2005, prompted Lord Berkeley to ask the Minister for State in the House of Lords in November 2005, "Under what circumstances a Metropolitan Police Officer is authorised to shoot to kill?" Baroness Scotland replied:

*all police use of firearms is subject to the usual law on the use of force. Any decision to use firearms must be justifiable according to the circumstances of the case - if necessary, before a court. Police operations involving firearms will be intended in appropriate circumstances to bring an end to an imminent threat to life or of serious injury. Tactics will be aimed at ensuring that that is done quickly and with certainty. If a firearm is discharged, death may result, but that is not the objective. (House of Lords debates 3.11.05)*

When Lord Berkeley pointed out that Harry Stanley (and Jean Charles de Menezes) "did not fall into that category" Baroness Scotland agreed that "an extreme threat must be present" but was unable to comment on Harry's case because "these issues are under investigation."

In February 2006, the IPCC decided that Sharman and Fagan would not face even disciplinary charges over the shooting of Harry Stanley. Irene, Harry's wife, said that she was "appalled" that there will not be disciplinary action. The IPCC report accepted that the police officers' "detailed and consistent accounts lack credibility" and criticised the "pooling [of] their recollections" by writing their notes up together on the night of the shooting.

Having been denied justice, Irene Stanley expressed anger and disappointment at the outcome: "I am bitterly disappointed by the IPCC decision. I am very angry that these officers have walked away untouched. This is not justice". A spokesman for the Metropolitan police told the *Police Review* that the outcome

was "right and proper". He hoped "that the IPCC report represents the final chapter of this story, which has now been going on for six years."

Deborah Coles of INQUEST, who has worked closely with Irene Stanley, felt that the Stanley family had been denied justice. She said:

*The Stanley family have been utterly failed by the criminal justice system. The decision follows a pattern of cases where police officers have escaped criminal and disciplinary charges following controversial deaths. The officers accounts of the events surrounding the shooting of Harry Stanley were not accepted by two inquest juries and the credibility of their evidence has also been questioned by the IPCC. The fact that these officers can shoot dead an unarmed man and walk away untouched is abhorrent. The rule of law must apply equally to all citizens including those in police uniform and where they are suspected of a criminal offence they should be treated like any other suspect.*

In another case that also demonstrated the lack of accountability of police officers involved in controversial shootings, four former officers and one serving officer who were involved in the killing of unarmed James Ashley at his home in Hastings, Sussex in January 1998, are suing the Sussex police force for damages over corporate failures, (see *Statewatch* Vol 11 no 3/4). Ashley was shot dead in front of his girlfriend during a police raid on his house. The intelligence for the police operation was criticised by the Kent Constabulary/Police Complaints Authority investigation as being based on information that was "not merely exaggerated, but was false." The Chief Constable of the force, Paul Whitehouse, resigned after the criticism. *Crown Prosecution Service press release 20.10.05, House of Lords debates 3.11.05; INQUEST press release 9.2.06; Police Review 17.2.06.*

## UK

### Justice for Nuur Saeed and Paul Coker

The Justice for Nuur Saeed Campaign held its second protest outside Plumstead police station in South London in March. Several hundred people attended the first demonstration in February and a similar number turned out in March. The Campaign called the actions "to protest at the silence surrounding the tragic and suspicious death of the 22-year old Somali man Nuur Saeed as a result of a police operation." The death occurred against a backdrop of rising harassment of the Somali community by Woolwich police because "two of the suspects allegedly involved in the shooting of WPC Sharon Beshenivsky in Bradford in November 2005 were two Somali men who have prior links to Woolwich". The Campaign has received many complaints of police harassment from local Somali youths in the Woolwich and Plumsted areas. The Campaign says that Muur died when police executed a search warrant at a house in Plumsted on 10 January 2006. The police say that he fell from a second floor balcony and that they found him on the pavement. He died in hospital from massive brain injury two weeks later.

Nuur's death follows the violent death of Paul Coker, who died in Plumsted police station after being arrested by 15 police officers, in August 2005. A demonstration and vigil was held outside the police station to commemorate him in September where Paul's mother prophetically told the vigil: "Paul died alone in pain, fear and anguish. Do not think that this cannot happen to your family; it can." She continued: "The state has obligations to protect the lives of all citizens. The duty of care is particularly important for those in custody. The state has betrayed many families and it has failed", (quoted in *News Line* 8.9.05).

The Nuur family and the Campaign are demanding that "the police officers involved in the action that led to Nuur's violent death be suspended" and that details of what happened are

released to the family. The Independent Police Complaints Commission (IPCC) should meet "the needs of a family who have lost a son and a brother".

The Campaign has made the following demands:

- \* a truly independent inquiry into the circumstances of Nuur's death
- \* no police or IPCC cover up
- \* that the police officers involved are suspended from duty
- \* that Woolwich police halt their racist vendetta against Somali youth
- \* an immediate and independent inquiry into the police vendetta

*The Nuur Campaign email is: justicefornuurcampaign@googlemail.com*

## Policing - new material

**Behind the cameras**, Martin Gill & Jenna Allen. *Police Review* 3.2.06, pp24-25. This article looks at CCTV and how the police force can "use the information gleaned from them properly." It concentrates on relations with the controllers and control rooms (the majority of which are run by local authorities) of the estimated five to seven million CCTV cameras in the UK.

**Más de 3.000 policías vigilan al alumnado** {Over 3,000 policemen surveil the student body}, Laura Corcuera. *Diagonal*, 2-15 February 2006, p.41. In response to an increase in drug consumption by minors, the "Plan for a Police Response to prevent and combat drug consumption in a school environment" came into force on 10 January. It involves the deployment of 3,124 officers from the *Guardia Civil* and National Police for surveillance activities around schools, during breaks, out-of-school activities and at the end of the school day. Police officers, who may be in plainclothes, will be able to bring charges against pupils caught in the area surrounding the school. The plan will be accompanied by a plan to surveil areas in which leisure activities take place, for which a "map of specific threat points" has been drawn up.

**Customer Care**, Sir Ian Blair. *Police Review* 3.2.06, p21. In this short piece the Metropolitan police commissioner sets out his views on the future of the police force in the 21st century. He covers "Safer Neighbourhoods", "Policing by Consent" and "Public Accountability".

## PRISONS

## UK

### Belmarsh High Security Unit

It is established by Article 6 of the European Convention on Human Rights that those charged with a criminal offence have the right to adequate time and facilities for the preparation of their defence, the right to legal assistance and protection of lawyer/client communication. Apparently the European Convention on Human Rights does not apply to HMP Belmarsh. A number of prisoners remanded to the High Security Unit (HSU) there - predominantly but not exclusively Muslim prisoners, and all facing serious charges - have complained about the constant interference by prison staff in their preparations for trial.

IT is alleged that solicitors are routinely told that there are no slots available for legal visits and visits cannot be block-booked. They are told that legal papers, CDs and DVDs cannot be handed in on visits - even though they contain evidence it is essential the prisoners have the opportunity to examine - but must be sent in as "property", where they are routinely "lost" or take 6-8 weeks to reach the prisoners. Even in situations where the Crown Prosecution Service confirms that prisoners require access to laptops to adequately examine evidence, such facilities

are routinely denied. Legal mail sent under the protection of rule 39 is routinely opened by staff. IT is also alleged that money sent to Muslim prisoners by Islamic charities has been stolen by staff. HMP Belmarsh HSU has a long track record in this regard - denying some advisers access on security grounds, copying legal mail and sending it to the police, and allowing surveillance devices to be placed in the jail. Solicitors denied access to their clients should learn from this and seek judicial review rather than engage in prolonged correspondence with the jail. Others concerned with prisoners rights can write and fax the Governor Claudia Stut at: HMP Belmarsh, Western Way, London SE28 OEB. Fax: 0208 331 4401.

## Prisons - in brief

■ **UK: Prisoner "contracts".** Prisoners are to be asked to sign contracts on entering jail, pledging to go straight on release, in return for help with jobs, accommodation, healthcare and benefits. The "contract" will be one of the proposals arising from the merger of the Prison and Probation service into the National Offender Management Service, wherein the offender management service will be opened up to tender by the private and voluntary sectors. Charles Clarke, Home Secretary, has stated that he wants to redefine the relationship between the prisoner and the state through the introduction of a "contract between the criminal and the state where each individual in prison, on remand or on probation, is required to commit to a non-criminal future, to no future re-offending." It appears that the Home Secretary does not recognise that remand prisoners have not been found guilty of any offence, and Clarke seems to be proposing a regime of permanent punishment, whereby the right to housing, benefits and healthcare becomes entirely conditional on future behaviour for those with criminal convictions. This is indeed a redefinition of the relationship between prisoners and the state, in that it reduces the prisoner to a sub-species with only provisional access to rights which are otherwise universal. *Observer 5.2.06*

■ **UK: Unacceptable pain inflicted on children in jail.** Lord Carlisle's independent investigation into the treatment of children in prison has found that pain was used to enforce compliance, and that the level of pain used to restrain children in secure custody was entirely unacceptable. The report, commissioned by the Howard League for Penal Reform, states that unnecessarily painful restraints are used to deal with dissent in some situations. Handcuffs were used on children in the four privately run secure training centres. The inquiry found that one in five restraints on children resulted in injury. Lord Carlisle's report concluded that police should be ready to prosecute in cases where children appear to have been assaulted. The inquiry was launched following the death of Garth Myatt, 15, in April 2004, after being restrained by three members of staff at Rainsbrook secure training centre. *BBC News 17.2.06; Howard League for Penal Reform.*

■ **UK: Report on "struggling" HMP Lincoln.** An unannounced visit to HMP Lincoln found the jail struggling to deliver a satisfactory regime. The reception environment was poor, with limited information for prisoners and a rushed induction process. Anti-bullying and suicide/self-harm prevention measures were inconsistent. Vulnerable prisoners required better support, access to faith services was inconsistent; food was served at inappropriate times and provision for foreign nationals was poor. HMP Lincoln struggled to provide purposeful activity for prisoners or to focus effectively on resettlement. Prisoners spent too long in their cells - longer than official records suggested. What work was available was mundane and of little vocational value. There was minimal offending behaviour work and drug treatment patchy. HMP

Lincoln was "merely housing its prisoners." *HM Chief Inspector of Prisons "Report on an unannounced full follow-up inspection of HMP Lincoln, 12-15 September 2005"* [http://inspectorates.homeoffice.gov.uk/hmprisons/inspect\\_reports/hmp-yoi-inspections.html.lincoln.pdf?view=binary](http://inspectorates.homeoffice.gov.uk/hmprisons/inspect_reports/hmp-yoi-inspections.html.lincoln.pdf?view=binary)

■ **UK: "Depressing" report on HMP Woodhill.** The Chief Inspector of Prisons makes 166 recommendations for improvement at HMP Woodhill in what is described as a "depressing" report. At-risk prisoners were poorly supported, despite 10 suicides in the past three years, and anti-bullying measures had not been brought in. Seven out of ten prisoners reported bullying incidents in the last month. There were just five Samaritan trained listeners in the whole jail and no posters advertising their availability. Staff in charge of youth at the prisons had not been trained or vetted to work with them. Anne Owers noted "Woodhill was not providing a sufficiently safe and positive environment for its prisoners. Moreover, this finding appeared to come as a surprise to many staff and middle managers." *HM Chief Inspector of Prisons "Report on an unannounced full follow-up inspection of HMP Woodhill, 12-15 September 2005";* [http://inspectorates.homeoffice.gov.uk/hmprisons/inspect\\_reports/hmp-yoi-inspections.html.woodhill.pdf?view=binary](http://inspectorates.homeoffice.gov.uk/hmprisons/inspect_reports/hmp-yoi-inspections.html.woodhill.pdf?view=binary)

■ **UK: Police to investigate prison officer racism.** Police have launched an investigation into claims of systematic racial assaults, racist abuse and brutality by prison officers at HMP Whitemoor. Several firms of solicitors are pursuing complaints on behalf of prisoners. Black prisoners complain of being referred to as "nigger" and "monkey man" and Muslim prisoners have complained of being denied access to prayer facilities and being called "Paki." There is fear of systematic abuse meted out by a hard core of officers. In one case, a prisoner states he was hit on the head with a riot shield, dragged into a cell, stripped and an officer then climbed onto him and pushed his thumbs into his eyes as if he was trying to blind him. *Guardian 30.1.06*

## Prisons - new material

**Recent developments in prison law - Part 2,** Hamish Arnott, Simon Creighton and Nancy Collins. *Legal Action* February 2006, pp.22-25. Latest update in the law relating to prisoners.

## RACISM & FASCISM

### ITALY

## Electoral alliance between governing coalition and far right

For the election scheduled for 9 and 10 April 2006, in which they are trailing in polls, the parties from the outgoing government coalition headed by Silvio Berlusconi will be running alongside a number of far-right groups: the *Alternativa Sociale* (AS) coalition, the *Movimento Sociale - Fiamma Tricolore* (MS-FT), the *Nuovo MSI Destra Nazionale* (MSI-DN) and the *Movimento Idea Sociale Lista Rauti*.

AS is a group of previously existing parties that came together under Alessandra Mussolini's leadership after her departure in November 2003 from *Alleanza Nazionale* (AN), the party of Gianfranco Fini, the minister for foreign affairs and vice-president in the Berlusconi government. The rift took place when AN leader Fini disavowed the party's fascist past in a trip

to Israel (see *Statewatch vol. 13 no. 6*). The AS coalition has brought together neo-fascist groups like Roberto Fiore's *Forza Nuova* and Adriano Tilgher's *Fronte Sociale Nazionale* and will be running alongside Mussolini and the parties of the *Casa delle libertà* (CdL) in an attempt to confound predictions of a defeat for the right. Both Fiore and Tilgher have been investigated for unlawful far-right activity in the past (Fiore was in exile in England when he was sought by Italian judicial authorities on charges of terrorism for which he was acquitted, Tilgher was jailed in the 1980s after being found guilty of "reconstituting the Fascist party").

The AS coalition won a seat for Alessandra Mussolini in the European Parliament in the 2004 European elections, as did the MS-FT, whose leader Luca Romagnoli became an MEP, running separately from AS. Romagnoli took over from Pino Rauti in 2003 as leader of the MS-FT, leading to the latter's acrimonious departure after the two had expelled each other from the party. Rauti went on to found the *Movimento Idea Sociale Lista Rauti*. In the run-up to the 2004 European elections, an international coalition of far-right groups from around Europe, the European National Front, put up electoral posters featuring the names of partner groups in different countries, which included *Forza Nuova* from Italy, *La Falange* from Spain, and the *National Sozialistische Partei Deutschlands* (NPD) from Germany.

The CdL's electoral ticket will also include the MSI-DN, a party which is led by Gaetano Saya, who was caught running a self-styled parallel anti-terrorist unit in July 2005 (the DSSA, see *Statewatch vol. 15 no 3&4*) which carried out surveillance operations targeting Muslims and had access to law enforcement databases due to the involvement of officers in the network. Saya was also charged in November 2004 for "divulging information based on ideas of racial superiority" from his party's website.

This move to include as wide a spectrum of parties as possible from the fragmented Italian right into the CdL, is strongly opposed by AN (the party from whose internal disputes and splits many of the other parties were born) and was personally promoted by Silvio Berlusconi. It is apparent to observers that intolerant views are increasingly being voiced by institutional figures and members of government coalition parties from the 'mainstream' right (see *Statewatch vol. 15 no 6*). The *Lega Nord* MP Mario Borghezio has repeatedly intervened at meetings organised by neo-fascist groups, most notably *Forza Nuova*. Moreover, the mainstream right's alliance with the far right is not unprecedented, as electoral alliances between the CdL (then *Polo delle Libertà*) and the MS-FT (led by Pino Rauti at the time) were struck up at the local level for the regional elections in 2000, general elections in 2001 and in Sicily in 2002 (see *Statewatch Vol. 10 no 2 & Vol. 12 no 1*).

The Islamophobic discourse arising from the institutions (see *Statewatch Vol. 15 no 6*) worsened in response to the crisis opened by the publishing of cartoons of the prophet Mohammed in Denmark. Roberto Calderoli of the Northern League, then minister for institutional reforms, appeared at a press conference sporting a T-shirt bearing one of the cartoons, sparking rioting in Libya which resulted in over a dozen deaths, and causing a diplomatic rift with the north African country. Calderoli was made to resign from his post as a result of the crisis, and argued that "It was never my intention to offend the Muslim religion or to be used as a pretext for yesterday's violence" in his resignation letter. However, in the wake of his exit from the government he continued to voice his offensive views on Islam, arguing that "moderate Islam does not exist".

Even the Catholic church has received criticism for being "too timid" with Islam, after a cardinal argued in favour of an hour of Islam in schools with a large number of Muslim students. The criticism came from Marcello Pera, president of

the Senate (*Forza Italia*), who is fast becoming a champion of Christian conservatives. He published a manifesto for the defence of European culture, which he considers guilty of "hiding and denying" its culture, and of failing to react to terrorist aggression.

Pera's account of current discussions between the government and Muslim community, organised by the interior ministry, illustrates his understanding of "integration" as "assimilation", and of "multiculturalism" as a threat. He welcomes a document that was agreed upon, which "rejects violence and terrorism, condemns the preaching of hate against Christians, Hebrews and Westerners, equality between men and women, the recognition of the right of the State of Israel to exist". On the other hand, he condemns the requests of the *Unione delle comunità e delle organizzazioni islamiche in Italia* (Ucoii, Union of Muslim communities and organisations in Italy), such as "censorship in texts, the creation of Islamic banks and mutual trust funds, and the introduction of an hour of Islamic religion in public schools". This approach is described as being "the opposite of any efforts towards integration, which tends towards reinforcing the idea of an autonomous Islamic community within Italy. That is, multiculturalism".

*Corriere della Sera*, 18.2.06; *Repubblica*, 5.3.06; *Umanità Nova*, n. 7, 26.2.06, year 86, "Bazar di voti e liste. Le alleanze del Cavaliere: Patumiera neofascista":

<http://www.ecn.org/uenne/archivio/archivio2006/un07/art4109.html> ;

From Marcello Pera's website: *La Stampa*, "Il Corano in classe? Sarebbe inaccettabile", 10.3.06, <http://www.marcellopera.it/rassegna-stampa/2006/03/10/rassegna-20060310/>; Pera's manifesto, "Per l'occidente" : <http://www.perloccidente.it/> *Diario*, "Rapporti con l'Islam: due fatti poco incoraggianti", 9.3.06,

<http://www.marcellopera.it/diario/2006/03/09/mp-20060309/>

## UK

### BNP's bogus "trade union"

The racist British National Party (BNP) has launched a "trade union", *Solidarity - The Union for British Workers*, which has been listed by the Trades Union Certification Office as meeting the basic statutory requirements of a trade union. *Solidarity* claims that it will be a normal trade union but it is described by the anti-fascist magazine *Searchlight*, as "a scab union and a front for the BNP." *Searchlight* journalists have seen the registration forms which state that the organisation will "resist and oppose all forms of institutional union corruption" and will "improve relations between employees and employers." Although there is no reference in the documents to the BNP, *Solidarity* will set up a political fund to publish material from sympathetic groups and will "aid and join" any organisation supporting their views.

*Searchlight* says that the president of *Solidarity* is Clive Potter, a long time BNP activist from Leicester who was expelled from the Unison trade union for improper conduct. Other luminaries include John Walker, the BNP's national treasurer and Jay Lee, a BNP activist who was recently expelled from the Transport and General Workers Union. Lee was one of a number of BNP members who have infiltrated the trade union movement in an attempt to undermine it. *Searchlight* told the *Labour Research* journal: "after years of encouraging members to infiltrate existing unions in the hope of seeking confrontation with officials, the BNP is now setting up an alternative structure."

It is not only trade union fronts that the far-right party is attempting to establish. It recently set up the *Christian Council of Britain* (CCB) to rival the *Muslim Council of Britain*, in a move that was denounced by the religious think-tank, *Ekklesia*, which warned that "the party was attempting to employ religious

arguments in the run up to May's local council elections."

*Searchlight Election Bulletin* issue 17, 2006; *Searchlight February 2006*; *Labour Research March 2005*; *Media Watch Watch*, [www.mediawatchwatch.org.uk](http://www.mediawatchwatch.org.uk); *Ekklesia*, [www.ekklesia.co.uk](http://www.ekklesia.co.uk)

## Racism & fascism - new material

**When Tony met Joey, and Warren and Angie walked out**, Nick Lowles. *Searchlight* no 369 (March) 2006, pp3-6. This article covers recent splits within the British National Party, that have resulted in the (temporary?) removal of Tony Lecomber.

**France inflamed: riots and reactions**, Tim Cleary. *European Race Bulletin* no 54 (Winter/Spring) 2006, pp28. This issue of the Bulletin examines the riots in the deprived French *banlieues* in October and November 2005 and the discourse around issues of integration and segregation that place security rather than justice at the heart of the debate.

## SECURITY & INTELLIGENCE

### DENMARK

## PET takes control of fighting terrorism

Last autumn a Working Group of high level officials from the Ministry of Justice presented a package of 49 proposals to step up the fight against terrorism. The changes will see some police functions transferred to the intelligence service. Critics have claimed that the move will weaken democratic control and undermine the citizen's civil liberties.

After months of preparation the Minister of Justice, Lene Espersen, revealed a set of legal amendments and administrative changes in police work in order to implement some of the 49 proposals.

One consequence is that 160 of the 280 employees at the National Investigation Center (NEC), which fights organised crime, will be transferred to the police intelligence services (*Politiets Efterretningstjeneste*, PET) in an administrative measure that does not require a change in the law.

Critics say that this move will blur the distinction between police work, investigating and solving serious organised crime, and the work of the intelligence service, which is tasked to prevent serious crime against the state. Furthermore, it will undermine attempts to ensure the democratic control of police work.

The proposals weaken public control of the police, said the chairman of the Lawyers Association, Sys Rovsing Koch. She

continued: "It moves new and large areas from the police service...and the courts to the closed PET system." Another critic is the former head of PET, Ole Stig Andersen, who supports the Lawyers Association position.

The PET is directly under the control of the Minister of Justice and a small, closed committee under the national parliament. It is made up by a representative from the five largest parliamentary parties. It is feared that this transfer of powers will lead to a reduction in the possibilities of the defence to defend an accused in a court of law, because of the reduced transparency implicit in cases involving the intelligence service.

## Security - new material

**Beating for Britain**, Naima Bouteldja. *Red Pepper* Issue 138 (February) 2006, p17. This article examines the involvement of MI6 in the abduction, interrogation and torture of 28 Pakistanis in Greece. The Greek newspaper *Proto Thema* named MI6 agent, Nicholas Langman as being present at the interrogations, while the Foreign Office adamantly stated that the story was "complete nonsense", before being forced to admit that it was true.

## LAW

## Law - new material

**The dishonour of torture evidence**, Eric Metcalfe. *Legal Action* February 2006, p6. This piece considers the Lords' ruling in *A and others v Secretary of State for the Home Department* [2005] UKHL 71, which prohibits the UK government from relying on evidence obtained by torture.

**Suspect Communities: the real "war on terror" in Europe: proceedings of the conference**. *The Human Rights and Social Studies Research Institute, The Institute for the Study of European Transformation, The Muslim Parliament, The European Association of Lawyers for Democracy & World Human Rights and The Haldane Society of Socialist Lawyers*, 2005, pp74. This publication contains the keynote speeches and background papers from the conference last May.

**Special Advocates - a change in the rules of the game?** Kay Everett. *Legal Action* February 2006, pp.7-8. The government's attempt to hold suspect individuals for up to 90 days following the London bomb attacks on 7 July was defeated in the House of Commons in November 2005. This article considers suspects' legal representation - or lack of it - and the "shortcomings" of proposed Special Advocates.

**Recent developments in European Convention law**, Philip Leach. *Legal Action* February 2006, pp32-38. Review of cases at the European Court of Human Rights that have relevance to the UK.

## Statewatch/TNI report on the EU Security Research Programme

### "Big Brother" meets market fundamentalism

A forthcoming report from *Statewatch* and the *Transnational Institute (TNI)* examines the development of the security-industrial complex in Europe and in particular the establishment of the EU Security Research Programme (ESRP). The section on the development the ESRP is reproduced here. Spawned by the military-industrial complex, the security-industrial complex has developed as the traditional boundaries between external security (military) and internal security (security services) and law enforcement (policing) have eroded. With the global market for technologies of repression more lucrative than ever in the wake of 11 September 2001, it is on a healthy expansion course.

The story of the EU Security Research Programme is one of "Big Brother" meets market fundamentalism. It was personified by the establishment in 2003 of a "Group of Personalities" (GoP) comprised of EU officials and Europe's biggest arms and IT companies. The GoP's concern was a simple one: European multinationals are losing out to their U.S. competitors because the U.S. government is providing them with a billion dollars a year for security research - it recommended the EU match this level of funding to ensure a "level playing field". The European Commission has obliged with a "preparatory" budget for security research 2004-6, with the full ESRP to begin in 2007, and

appointed an EU Security Research Advisory Board to oversee the programme. This makes permanent the GoP and gives profit-making corporations an official status in the EU, shaping not just security research but security *policy*.

The decision to create the EU Security Research Programme (ESRP) was taken informally by the European Commission in 2003. There was no formal legislative proposal as is usual for the establishment of EU budget lines, so there was no consultation of the European and national parliaments. Instead, drawing on the experience of the EU “Strategic Aerospace Review” (the “STAR 21” report) and the “Leadership 2015 High Level Advisory Group” on the future of the European shipping industry, the European Commission decided to form a “Group of Personalities” (GoP) to oversee the development of the ESRP – or a “Group of Dr. Strangeloves” as *Statewatch* described them.

### **The “Group of Personalities”**

The GoP included the Commissioners for Research and Information Society, plus, as “observers”, the Commissioners for External Relations and Trade, Mr. Solana from the Council, together with representatives of NATO, the Western European Armaments Association and the EU Military Committee. Also represented were eight multinational corporations – again including Europe’s four largest arms companies, joined now by some of Europe’s largest IT companies – and seven “research” institutions, including the Rand Corporation. Four MEPs were there as well to try to add a democratic sheen to the process. The proceedings were familiar to at least to one of them – Karl von Wogau MEP had also been a member of the European Advisory Group on Aerospace.

Each member of the GoP assigned a “sherpa”. The GoP *rapporteur* was Burkhard Schmitt, assistant director of the EU Institute of Security Studies (see further below) and someone described by the US Army War College’s Strategic Studies Institute as a “proponent of free trade in the defense industry”. Schmitt was also involved with the STAR 21 report (above) and would later co-author “More Euros for European Security Policy” in von Karl von Wogau’s (Ed.) book: “The Path to European Defence”.

Given the relevance of security research and technology to EU Justice and Home Affairs policy, JHA Commissioner Vitorino was the most notable absentee, his exclusion reflecting the overall military (rather than civilian) orientation of the GoP (note also the inclusion of defence ministries and the exclusion of interior ministries). Another notable absentee, given the implications of the research, was the European Commission’s “Group on Ethics in Science and New Technologies” which was set-up to advise the EU on precisely this kind of issue.

The Group of Personalities only met twice and there exists very little public information about its proceedings. After its first meeting, in Brussels on 6 October 2003, the Commission produced a “fact sheet” explaining that the GoP was advising the EU with “guidance” for the “European Security Research Agenda”. According to a subsequent note from the Commission, dated 10 October 2003, the GoP’s recommendations would “be included in a Communication to be presented by the Commission by the end of 2003”. This Communication was produced in February 2004; the GoP report was produced a month later.

### **Commission Communication on preparatory action for security research**

The European Commission’s Communication of February 2004 – “Enhancement of the European industrial potential in the field of security research 2004-2006” – was extraordinary. Rather than setting out policy options – the usual purpose of Communications – the European Commission did indeed reproduce the GoPs recommendations, also announcing that it

had *already established* a 65 million euro budget line for “Preparatory Action for Security Research” (2004-06), paving the way for a full European Security Research programme from 2007.

There was no apparent consultation of the EU member states (the Council) or the European or national parliaments, as is normal in the establishment of EU budget lines. The Commission instead claimed a mandate for the security research programme from the meeting of EU heads of state at the Thessaloniki European Council in June 2003. This is ambiguous to say the least: the Thessaloniki Council had merely asked the Commission to “promote in liaison with the Community’s research activities where appropriate, research aimed at leadership in strategic technologies for future defense and security capabilities”; it had not instructed the Commission to enact specific legislation or to commit EC funds.

More controversial was the choice of legal basis. The Commission cited Article 157 of the EC Treaty on the “competitiveness of the Community’s industry” as the basis for the “Preparatory Action” budget line when it should have used Article 163(3) which deals explicitly with “research and technological development”. As the European Scrutiny Committee in the UK House of Commons observed:

Article 163(3) provides that “All Community activities under this Treaty in the area of research and technological development, including demonstration projects, shall be decided on and implemented in accordance with the provisions of this Title” (that is, Title XVIII). On the face of it, therefore, the proposal for “security research” should be dealt with under Title XVIII and not under any other.

In the absence of an explanation of why an incorrect legal basis was used for the programme, said the Committee, “the Government should seek to prevent approval being given for the funding of the second and third year of the Preparatory Action if the Commission fails to provide satisfactory answers”. No explanation has been given by the Commission, nor has the sound advice of the Commons been followed.

### **The Group of Personalities’ report**

The report of the Group of Personalities, “Research for a Secure Europe”, was published in March 2004. It had clearly provided the basis for the Commission Communication on security research (above) issued a month earlier. The GoP report began by reiterating the threats to the EU outlined in Solana’s Security Strategy: “terrorism, proliferation of weapons of mass destruction, failed states, regional conflicts and organised crime”. It was “increasingly clear”, said the GoP, that these are “the main sources of anxiety for both citizens and policy-makers alike”. A “Eurobarometer” survey from 2002 was reproduced to support this claim. While some 50 % of respondents apparently fear conventional war in Europe, there was no mention of the public despair about climate change, financial insecurity and market fundamentalism, for example.

The report then goes on to discuss the “synergies” between the defence and security and commercial sectors, setting out areas where future research was needed and the multiple “threats” this would address, concluding with a call for the European Security Research Programme to “bridge the gap between civil and traditional defence research” and “foster the transformation of technologies across the civil, security and defence fields”. Under the heading “the Transatlantic Dimension” the GoP report gets down to the serious business of money by noting that the US Department of Homeland Security budget “includes a significant percentage devoted to equipment, and around \$1 billion dedicated to research”. This is in addition to those activities funded by other agencies related to Homeland Security and the Department of Defense. The scale and scope of the U.S. investment in Homeland Security research, said the

GoP, meant that the US was “taking a lead” in the development of “technologies and equipment which... could meet a number of Europe’s needs”. This is problematic because the US technology would “progressively impose normative and operational standards worldwide” and “U.S. industry will enjoy a very strong competitive position”. “There is no reason”, continued the GoP, “why European security research should not be funded at a level similar to the US”. A US annual per capita spend of “more than four dollars on security-related R&D for each citizen” would “mean that an overall EU security R&T budget of 1.8 billion for 450 million Europeans would be desirable”. The GoP ultimately recommended that:

A Community-funded ESRP ensuring the involvement of all Member States should be launched as early as 2007. Its minimum funding should be €1 billion per year, additional to existing funding. This spending level should be reached rapidly, with the possibility to progressively increase it further, if appropriate, to bring the combined EU (Community, national and intergovernmental) security research investment level close to that of the U.S.

### Implementation

In September 2004 the European Commission produced a Communication entitled “Security Research: The Next Steps”. GoP policy was now EU policy. The Communication incorporated the “main thrust of the [GoP] recommendations and orientations” and promised to:

- establish a “European Security Research Advisory Board’ to advise on the content of the ESRP and its implementation, paying due attention to the proposals of the Group of Personalities” and including “experts from various stakeholder groups: users, industry, and research organizations”;
- establish the “European Security Research Programme (ESRP) to commence in 2007... building on the work of the Preparatory Action on security research, which will continue until the end of 2006”;

- “ensure that the requirements of the European Security Strategy, the Common Foreign and Security Policy (CFSP), the European Security and Defence Policy (ESDP) and other relevant Commission policies associated with internal security are fully taken into account in the development of security research”.

### Preparatory Action for Security Research 2004-2006

By now the Commission was evaluating the first round of proposals under the 2004 Preparatory Action for Security Research (PASR). The PASR has five priority areas identified “in consultation with national authorities, industry and [the] Group of Personalities”: (i) “Improving situation awareness” (shorthand for surveillance and intelligence gathering); (ii) “Optimising security and protection of networked systems”; (iii) “Protecting against terrorism”; (iv) “Enhancing crisis management”; and (v) “achieving interoperability and integrated systems for information and communication” (shorthand for linking national and international law enforcement databases and information systems).

Two of the three rounds of the PASR have now been completed (2004 and 2005) and a total of 24 projects have been funded to the tune of 30 million euros (see following section). Over the two rounds the Commission received 329 eligible proposals – with the PASR already 13 times oversubscribed there will clearly be no shortage of takers when the full blown security research programme gets underway in 2007. The projects funded so far are discussed in more detail in the following section.

The Commission staff overseeing the implementation of the PASR was transferred from its offices in DG Research to DG Enterprise Industry. This reflected the (questionable) legal basis for the PASR budget; there was also more than a little disquiet

among the Commission’s research staff about the objectives of the programme and the way in which it was set-up.

### Security research and the EU research budget

The funding for the full security research programme will come from the EU’s “seventh framework programme of the European Community for research, technological development and demonstration activities” (2007 to 2013), a.k.a. “FP7”. Earlier framework programmes have also been used to fund military research into “dual use” technologies. Under “FP5” which ran from 1998 to 2002, eight per cent of the total number of participants in the BRITE-EURAM (industrial and materials technologies), ESPRIT (international RTD cooperation in IT), ACTS (advanced communication technologies) and TRANSPORT programmes were military organisations. QinetiQ, the UK Ministry of Defence’s former research institute, participated in 34 aeronautics projects, 13 of which also involved Rolls Royce.

Member states reached agreement on the EU budget for 2007 to 2013 in December 2005. It was a particularly acrimonious process in which familiar arguments about the UK rebate and the Common Agricultural Policy were more heated than ever. A budget of €849 billion for the next seven years was eventually agreed by the Council and must now be approved by the European Parliament. €72 billion of this is earmarked for FP7, of which €44 billion is for research cooperation across nine themes.

#### FP7 cooperation framework, budget (€million)

<i>Health</i>	8317
<i>Food, Agriculture and Biotechnology</i>	2455
<i>Information and Communication Technologies</i>	12670
<i>Nanotech &amp; new Production Technologies</i>	4832
<i>Energy</i>	2931
<i>Environment (including Climate Change)</i>	2535
<i>Transport (including Aeronautics)</i>	5940
<i>Socio-economic Sciences and the Humanities</i>	792
<i>Security and Space</i>	3960

*Total* 44432

“Security and Space” has a proposed annual budget of about € 570 million. While the EU Security Research Programme is not mentioned explicitly, the priority areas are identical to those set out in the “Star 21” report, the European Security Strategy, the GoP report and the Commission Communications on security research (above). So where will the rest of the one billion demanded by the GoP come from?

At this point this is far from clear because the ESRP is being developed in effective secrecy outside of the normal EC decision-making process and it is difficult to find out what is planned or intended. In announcing the completion of the second round of the PASR (above), the Commission announced its intention to “substantially increase the yearly budget from €15 million to roughly €250 million a year from 2007” – presumably a reference to the money earmarked for “Security and Space” under the FP7 programme.

It is also likely that additional FP7 money will be channeled into the ESRP. On top of the €44 billion for “cooperation” (above), there is another €26 billion for three further research programmes: “ideas”, “people” and “capacities”, all of which are only vaguely defined. Finally, FP7 will also provide €1.8 billion for research by the European Commission’s Joint Research Centre (JRC, see further below) across four priority areas, one of which is activities “related to fighting terrorism, organised crime



and fraud, border security and prevention of major risks, in relation with law enforcement agencies and relevant EU services”.

Things will be clearer by the end of the year because the Commission has stated that an EU Decision – of the Council and the European Parliament – will be tabled to give effect to the Security Research Programme proper upon expiration of the “preparatory action” budget line.

The full Statewatch/TNI report is 18,000 words with detailed references. It includes background on the militarisation of the EU and the organisations represented on the GoP as well details of the projects funded so far under the Preparatory Action for Security Research. The report will be published in April 2005.

## Germany

### Parliamentary Committee investigates Iraq war and CIA flights

On 12 January this year, the television programme *Panorama* revealed that Germany's foreign secret service (*Bundesnachrichtendienst* - BND), while acting on orders from the chancellor's office, remained in Baghdad during the US-led invasion of Iraq in early 2003 and collaborated with US military intelligence services. Simultaneously, the former chancellor, Gerhard Schröder, was publicly condemning the war (see *Statewatch News Online*, January 2006). Controversially, a former Pentagon official and more recently a classified study by the US military claim that German services provided information on military targets and strategy, which is vehemently denied by the former and current German government coalitions.

These revelations came at a time when Germany's knowledge of and alleged involvement in the CIA's abduction of German nationals became widely debated (see *Statewatch* Vol. 15 no 6) as the BND is also believed to have collaborated and passed on intelligence to the US secret services in rendition cases. The Federal Crime Police Authority (*Bundeskriminalamt*, BKA) is known to have collaborated in interrogations in Syria and the Lebanon, with the knowledge that the detainees were being tortured. Evidence extracted through these interrogations is allegedly being used by the German public prosecutor in proceedings in Germany against the detainees.

Given the illegality of these practices under German law and the contradiction of the government's anti-war rhetoric on the one hand and its collaboration in the same on the other, parliamentary debates and domestic and foreign affairs committee meetings in January and February this year were dominated by the scandal. The government has published a 277-page report which still leaves crucial questions unanswered. After a series of statements by the government denying German agents had delivered military target information - despite contradicting evidence in US military reports - opposition parties finally agreed to set up a special parliamentary committee. It will investigate not only the BND involvement in Iraq but also the CIA rendition flights involving German citizens, the alleged CIA prisons in eastern Europe, the abduction of the German citizen Khaled el-Masri to Afghanistan and the role of German security and police officers in the interrogation of German citizens in Syria, Lebanon and Guantanamo (Cuba).

#### Controlling the secret services

When the BND scandal reached its height in mid-January with the disclosure of its involvement in Iraq, the Green Party response, together with the liberals (*Freiheitlich Demokratische Partei* - FDP) and the new left-wing party (*Die Linke*), was to demand a special Parliamentary Investigations Committee (*Untersuchungsausschuss*). An investigation committee differs significantly from the regular parliamentary secret services control body (*Parlamentarisches Kontrollgremium* - PKG), which has no rights to call witnesses and is not allowed to disclose details of the hearings, and therefore cannot ensure a proper investigation. The committee's powers, regulated under the Parliamentary Investigations Committee Act (PUAG), can

call witnesses, place them under oath (and, with a majority vote, order imprisonment for contempt if they refuse to give evidence or order sanctions if the witness lies) and it can employ special investigators who act as "public prosecutors" for the committee. It also has powers to view relevant evidence (such as BND files), question witnesses and unlike the PKG, it can demand more staff if necessary; the regular control commission PKG has no powers to increase its resources and PKG members are often unable to view all the files of a case. Under Article 18 PUAG, however, the Federal authorities, i.e. the government, is obliged to provide the requested files with a justification for partially concealing sections if there are "constitutional concerns" regarding their disclosure. Critically, the last decision of disclosure does not lie with the government but the with the Federal Constitutional Court, which also has the final decision on the question if a civil servant or officer has an obligation of secrecy, i.e. the Court can order any official to give evidence to the committee.

The Green Party initially backed down from their demand to institute a committee in late January under pressure from the government and particularly former foreign minister Joschka Fischer (Green Party), who admitted he took part in the decision to post two BND officers to Iraq and met one of them on a visit to Jordan on 16 December 2003. In late February this year, opposition parties still lacked unity on the role of a parliamentary investigation: whilst Left Party and FDP representatives pointed out they want the committee to carry out a fundamental review of CIA rendition cases and the use of intelligence extracted through torture, the Greens feared that the FDP and Left party want to discredit former Red-Green foreign policy. Twenty-five per cent of Lower House representatives have to sign the petition for a parliamentary investigations committee to be set up. On 10 March opposition parties finally agreed on an investigation committee and drew up its remit.

#### Dangerous democracy?

Over the last two months, government coalition MPs have made concerted efforts to thwart political support for a parliamentary investigations committee by claiming that it would constitute a security risk and by sidelining the renditions issue. In an attempt to appease parliament, the regular PKG (secret services control commission) was given unusually generous access to information on the role of BND in Baghdad. On 18 January, it heard government and secret service representatives and the two BND officers stationed in Baghdad. They claimed they were not involved in providing information on the whereabouts of Saddam Hussein to the US that led to a bomb attack on 7 April 2003 in Mansour district that resulted in the death of 12 civilians: a former Pentagon official and source for the *Panorama* television programme had claimed the tip for the target had come from the BND.

The PKG hearing was presented by the government as having exonerated the BND and former government. Others argued that principles of democratic control entailed more than governmental oaths: former federal judge and Left Party member

Wolfgang Neskovic said that the PKG could only check if the government's claims were logical in themselves but not call witnesses. He added that BND employees were not even sworn in: "The statements were in themselves logical. But how often have I heard a witnesses in court whose statements were logical - and then another witness came and presented the facts entirely differently".

The government presented a 277-page report to the PKG on 20 February, which it claimed proved the legality of all operations in Iraq, but which Green Party member Hans-Christian Ströbele said showed that the BND was without doubt involved in supplying military targets. Ströbele insists that the BND passed on at least 11 potential military targets in four written reports to the US. The PKG published their own report on 24 February in which the majority of its members said there was no evidence to prove that Germany had been involved in operational activities in Iraq. However, PKG members from the opposition parties, Max Stadler (FDP), Wolfgang Neskovic (Die Linke) and Hans-Christian Ströbele (Bündnis 90/Die Grünen) said questions remained unanswered and their parties argued an investigation committee is still necessary. Neskovic claimed the government was trying to avoid a parliamentary investigation by giving the PKG powers it should not have, that is publicly assessing a government report on the secret services, whilst in reality the PKG lacks any powers to investigate, thereby deceiving the public and giving the illusion of parliamentary control.

### **New York Times evidence contradicts government**

Despite greater information sharing with the PKG and the publication of the government's report, evidence of a greater BND role in the Iraq war than has been admitted is disclosed each week by the media. The first indication that the government had been economical with the truth came with an article in the *New York Times* (27.2.06) by military expert Michael R. Gordon. It disclosed that the BND officers stationed in Baghdad had obtained a copy of Saddam Hussein's plan to defend the Iraqi capital and had passed it to American commanders a month before the invasion. His disclosures are based on a classified study of Iraqi military strategy prepared in 2005 by the Pentagon's Joint Forces Command (obtained during research to his book on the invasion and occupation of Iraq which is to be published in March). The article caused another stir in German government circles, as the PKG demanded another hearing whilst the government denied all allegations.

Another detail proving closer links between the German and US services is the existence of a "third man" in Iraq, a liaison officer operating under the code name "Gardist", who the *New York Times* (2.3.06) claims was stationed in Qatar in the office of General Tommy R. Franks, the American commander of the invasion. Although the PKG knew of the existence of the liaison officer in Qatar, who gave evidence to the committee in the beginning of February, the German government and BND claim he had no direct access to the centre of US operations in Iraq. But whilst the public in Germany is being told that the PKG report from 24 February exonerates the government from military involvement in Iraq, the *New York Times* says it has seen classified parts of the very same report, which reveal the "Gardist" made 25 reports to the Americans, answering 18 of 33 specific requests for information made by the US during the first few months of the Iraq war. Eight of his reports were on Iraqi police and military units, amounting to a systematic exchange between American and German intelligence officials on military targets. The fact that at least three German BND officers have been awarded the *Meritorious Service Medal* by the US army for having delivered "decisive information to the US Central Command for the support of fight operations in Iraq", does not support the German government's claims to the contrary.

The controversy around the disclosures also concerns the exact way the information was passed on, as the German government claims that the BND office in Pullach, Germany, cleared all intelligence and provided only "non-target" (i.e. non-military) information. The government report presented to the PKG on 20 February claimed to disclose all documented intelligence passed to the US and did not mention the disclosure of Iraq's military defence strategy to the US via Germany. The BND leadership and "Gardist" himself also claim to have no knowledge of the matter. The *Süddeutsche Zeitung* (1.3.06) points out there can only be three reasons for these inconsistencies: either the *New York Times* is lying about the military report, the BND is lying to the public and/or the government, or the operational level is semi-independent from the leadership (i.e. officers on the ground cooperate without the knowledge of their superiors). The Greens, apparently careful not to accuse the BND and government of outright lies, is now claiming BND members have obviously passed on military target intelligence to the US via "grey channels", without the knowledge of the government and BND command. But if, as the *New York Times* claims, the liaison officer was stationed under the American commander of the invasion, it is becoming increasingly difficult for the former government to deny knowledge of direct military collaboration, because:

*The decision to install the officer was planned and approved at the highest levels of the German government, including by Frank-Walter Steinmeier, the chief of staff for Gerhard Schröder, then the chancellor, and by the foreign minister at the time, Joschka Fischer. Mr. Steinmeier is now the foreign minister. (New York Times, 2.3.06)*

*New York Times* executive editor Bill Keller defended the paper's claims and quotes the US military report, which says:

*The US obtained the sketch on Feb 03. The overlay was provided in February to the GERMAN Intel LNO in Qatar, who provided it to DIA's rep in CENTCOM Forward...DIA then forwarded it to CENTCOM J2 in Feb.(1)*

### **Investigating the suspension of human rights and civil liberties**

In the face of these contradictory claims, the three opposition parties (*Freiheitlich Demokratische Partei Deutschlands, Die Linke* and *Die Grünen*) agreed on a parliamentary investigations committee, which will not only focus on Iraq but also German knowledge of and possible involvement in the rendition of Khaled el-Masri (who alleges a German officer questioned him in Afghanistan), Mohammed Haydar Zammar (who was interrogated by BKA officers in Damascus, Syria), Mohamed Ramez Sultan (who was arrested by Lebanese secret police at the request of the BKA and subsequently tortured) and Murat Kurnaz (who was questioned by German officers in Guantanamo). Petra Pau (*Die Linke*), who was nominated by her party for the negotiations, said that the objective of the comprehensive remit for the committee was to investigate the "suspension of human and civil rights" brought about by anti-terrorism measures. The "political instructions for the actions" of secret and security services will also be scrutinised, including pinpointing "political responsibility" for the allegations at hand. The committee will comprise seven members, two each from the government parties, the *Christlich Demokratische Union Deutschlands* (CDU) and the *Sozialdemokratische Partei Deutschlands* (SPD) and one each from the three opposition parties FDP, Green Party and Left Party. The CDU will appoint the chair of the committee. It is still not clear if the opposition parties will also institute a special investigator (*Ermittlungsbeauftragter*) to head the committee, who would be independent from the political parties and carry out much of preliminary investigations. They would also have powers to call witnesses and demand relevant files from the government as well

as employing assistants.

Note 1: LNO is an acronym for liaison officer. DIA is the Defence Intelligence Agency. CENTCOM Forward was General Tommy Franks's wartime headquarters in Qatar. Public version of the control commission's (PKG) report, assessing the information given by the German government: <http://dip.bundestag.de/btd/16/008/1600800.pdf>. New York Times article

claiming the BND passed on military intelligence: [http://www.nytimes.com/2006/02/27/politics/27germans.html?pagewanted=1&n=Top%2fNews%2fInternational%2fCountries%20and%20Territories%2fGermany&\\_r=1](http://www.nytimes.com/2006/02/27/politics/27germans.html?pagewanted=1&n=Top%2fNews%2fInternational%2fCountries%20and%20Territories%2fGermany&_r=1). Statement by NYT's executive editor Bill Keller defending the article:

<http://www.nytimes.com/2006/02/27/international/europe/27cnd-keller.html>; *Süddeutsche Zeitung*, 18.2.06-3.3.06

UK

## Government "colludes" with US in rendition and torture

Two reports, published in February, confirmed the UK's central role in the illegal practice of "rendering" (ie. kidnapping) individuals for the purpose of imprisonment and torture to third countries. On March 28 BBC television's *Newsnight* programme highlighted documents disclosed at the High Court which revealed the extent of the government's collusion with their US allies in its practice of rendition in the cases of Bisher al-Rawi and Jamil el-Banna in 2002. Also in March, the *CagePrisoners* website published a damning report, *Fabricating Terrorism: British Complicity in Renditions and Terror*, which examines cases in which the government has aided and abetted the US to deprive British citizens and residents of their freedom. While the revelations will come as little surprise to anyone who has followed the rendition scandal, the evidence totally contradicts the government's defence of ignorance and Tony Blair's "certain knowledge" that the Guantanamo detainees are "bad men".

*CagePrisoners* was formed in October 2003 as a human rights organisation committed to raising awareness of the plight of the Guantanamo Bay prisoners and other victims of the war on terror detained in separate secret facilities. The civil liberties lawyer, Geoffrey Bindman, describes the new rules of the US game that Tony Blair has signed up to in the introduction to *Fabricating Terrorism*:

*The Bush administration has thrown overboard nearly a thousand years of history by introducing a new concept of pre-emptive action, which in the name of countering terrorism justifies detention, torture and bombing on the basis of guesswork about what could happen, abandoning the need for evidence or fair legal process.*

The *Fabricating Terrorism* report begins with a section on rendition, extradition, torture and international law in which it argues that rendition has substituted for extradition agreements. It discusses the association between rendition and torture and outlines the relevant international law and attempts to bypass or unilaterally redefine them. Section 2 covers the report's findings. These are:

- Systematic violations of international law perpetrated by the British authorities relating to i) illegal rendition flights using British airspace and airport facilities, ii) the role of the intelligence services in gaining information knowingly obtained by torture which forms the basis for the detention, abuse and torture of detainees

- The British government has abrogated its responsibility towards its citizens and residents affording them no or minimal protection against the illegal actions of foreign governments

- Senior members of the government and other state agencies have misled Parliament, Parliamentary committees and the public over the government's role in rendition and torture.

Section 3 of the report tackles the consequences of British complicity in the US policy of rendition and torture. It reaches the following conclusions:

- Britain's involvement in the US policy "tarnishes" its reputation as a supporter of human rights worldwide (the report cites as examples the Craig Murray accounts from Uzbekistan and MI6 involvement in the Greek detention and abuse of Pakistani citizens).

- Accepting evidence obtained from torture undermines

"Britain's policy of returning suspects to countries of origin through the international non-torture agreements...and also Memorandum of Understanding which have been signed by countries such as Libya and Jordan."

- The role of MI5 and MI6 is also called into question: i) by supplying questionable or false evidence leading to kidnapping, illegal detention and torture, b) by using intelligence obtained from torture, and c) by maintaining a presence at interrogations where torture has been known to be used. All of these practices are illegal under international law.

The report highlights case studies where "the British authorities have expressly been involved in the torture and illegal rendition" to Guantanamo Bay of suspects as part of the war of terror. It utilises extensive interviews with the men, as well as analysis of information released by the security services, to follow the government's "systematic violations of international law" in supporting the detention of British citizens or residents without trial or access to law. The cases highlighted are those of:

**Binyam Mohammed al-Habashi:** Binyam Mohammed al-Habashi is a British resident. MI5 agents visited him in Karachi prison, Pakistan, and British officials told him he would be moved - he was, to Guantanamo Bay, where he is still held. The report says: "British MI5 agents supplied Moroccan interrogators with information to help the extraction of confessions in the torture sessions."

**Jamal al-Harith:** Jamal al-Harith was captured by US forces after being imprisoned by the Taliban in Afghanistan. "The British embassy in Kabul worked with British intelligence in the UK and the American military to have Jamal rendered to Guantanamo Bay", where he was tortured by the Americans.

**Martin Mubanga:** British intelligence officials supplied information leading to Mubanga's arrest in Lusaka, Zambia, where he was questioned by British agents, who permitted the US to render him to Guantanamo Bay. He was tortured and abused over a period of nearly three years.

**Moazzam Begg:** Moazzam Begg was picked up by the Afghan and US intelligence services in Pakistan, where he was detained for two weeks and questioned by British agents. He was further questioned by them in Afghanistan before being rendered to Guantanamo where he suffered repeated torture and abuse; the report notes that this "was a direct consequence of the kidnapping that had been allowed by British intelligence."

**Omar Deghayes:** Deghayes was interrogated in Pakistan by a British officer who promised that he could return to the UK if he cooperated. He complied with the request but was sent to Afghanistan where he was further questioned by the British. Finally, he was rendered to Guantanamo. During the course of "interrogation" he lost the sight in his left eye.

**Richard Belmer:** Belmer was held in Pakistan, where requests by his family for a visit from the British embassy were ignored; MI5 was listening, though, and were questioning him without informing them. By the time his family were granted access Belmer was already en route to Guantanamo. Once there he was tortured.

**Shaker Aamer:** Aamer was sold to a group in Kabul, Afghanistan and ended up in Bagram prison where he was abused. From there he was sent to Kandahar and received further torture; he was also interrogated by MI5 and MI6. He is now on hunger strike being force fed in Guantanamo. The British government has refused to make any representations on his behalf.

**Tarek Dergoul:** Dergoul was questioned in Bagram prison, Afghanistan, by British forces. Believing that they were there to help him he complied with them. He was wrong and subsequently rendered to Guantanamo Bay where he was "subjected to various forms of physical and psychological torture."

**Tariq Mahmud:** MI6 tracked Tariq from the UK through Saudi Arabia to Pakistan, where he was picked up, at the behest of MI6, by the Pakistani intelligence services (ISI). During his interrogations with MI6 he was threatened with death if he did not cooperate.

**Zeeshan Siddiqui:** Zeeshan Siddiqui was questioned and tortured by the Pakistani intelligence services (ISI) and, despite his condition, also by MI6.

**Farid Hilal:** The British gave "direct orders" for Farid to be picked up and interrogated in the UAE and Morocco. The report says: "Although not directly kidnapping Farid themselves, his detention was a form of rendition due to their knowledge that he would be picked up once there."

**Ahmad al-Iraqi:** Ahmad al-Iraqi was under surveillance by the British when he arrived in Jordan: "the British practically rendered him by asking for the Jordanians to arrest him." The British authorities stand accused of feeding the Jordanians information despite their use of torture.

**Mohammed Naem Noor Khan:** Khan has been detained in various detention facilities in Pakistan. He was questioned by MI6 "before disappearing and becoming a 'ghost detainee'".

**Abu Farej al-Libbi:** The suspected mastermind of numerous attacks worldwide, Abu Faraj was captured in Pakistan and has become another "ghost detainee". The report says: "With possible links being made between the 7/7 bombings and Abu Faraj, the British government has been relying heavily on information that has been extracted by the secret detention and torture of him."

**Shafiq Rasul, Ruhel Ahmed and Asif Iqbal:** The Tipton Three, Shafiq Rasul, Ruhel Ahmed and Asif Iqbal, were held by US military forces inside Afghanistan (Sherbeghan and Kandahar) before being sent to Guantanamo Bay. While in Afghanistan they were questioned by British officials, including members of the SAS.

**Jamil el Banna and Bisher al-Rawi:** The men were picked up in the Gambia after a tip-off from the British, who also allowed them to be rendered to Guantanamo Bay, where they are still being held without charge. Both men have been tortured by the US military.

On 28 March the BBC's *Newsnight* programme carried a special feature on British collusion with the CIA in the rendering of Jamil el Banna and Bisher al-Rawi to Guantanamo Bay. The two men were arrested at Gatwick airport in November 2002 and the British informed the US authorities that one of them had been carrying part of an improvised explosive device. The men were released when the weapon was identified as a battery charger, although it appears that the US was not informed of this. A week later the two men continued their journey and flew to Gambia. British intelligence officers reminded the US officials of their previous communication about the explosive device and also gave the US their flight details and additional information, suggesting that they were advocates of the radical cleric, Abu-Qatada. The men were arrested at Banjul airport in the Gambian capital, along with Jamil's brother, Wahab al-Banna, a British

citizen, who had arrived to meet the men and was later released. When he asked to meet British representatives he was told: "Who do you think ordered your arrest." One particularly salient point has been revealed by Wahab al-Banna who has said that he only had any contact with Abu-Qatada at the request of British intelligence.

The rendered mens' solicitor, Brent Mickum, told BBC News: "They were taken out in chains and hooded...to separate rooms, where there were seven or eight individuals all of whom were dressed completely in black masks." He continued: "Their clothes were cut off...nappies were put on them. They were taken in chains to a jet". The jet flew them to Afghanistan where they were held at a secret facility known as "The Dark Prison" where the conditions were "hellish". According to Mickum, music blared out for 24 hours a day preventing sleep and screams emanated from other prisoners. In early 2003 the men were flown from Afghanistan to Guantanamo Bay.

The Foreign Office has issued a statement in which it says that the UK: "did not request the detention of the claimants in The Gambia and did not play any role in their transfer to Afghanistan and Guantanamo." The statement has been widely ridiculed, and even the chair of the all party parliamentary group on extraordinary renditions has expressed concern that: "we [ie. the UK] might have handed over people to the Americans knowing that these people may then have been maltreated."

Also in March Channel 4 television aired *The Road to Guantanamo*, a dramatised account of the rendering of the Tipton Three, Asif Iqbal, Ruhel Ahmed and Asif Iqbal. About to get married in Pakistan, Asif invited his friends Rupal Ahmed and Shafiq Rasul to join him there for a holiday. Accompanied by another friend called Monir and Shafiq's cousin Zahid, they headed into Afghanistan, hoping to offer humanitarian aid to fellow Muslims. After several weeks, they realised that they had made a mistake and headed back to Pakistan. Separated from Monir (who has not been seen since), they were arrested by the Northern Alliance and held at Sheberghan Prison. Once it was discovered that the three were English they were handed over to US custody and were transferred from Kandahar airbase to Guantanamo, and from Camp Delta to solitary confinement, facing abuse, torture and endless interrogations.

There are pressing concerns about the law, international and national, for instance, has priority. As the *Fabricating Terrorism* report makes clear, in just about every case the British intelligence service was fully aware of the treatment inflicted on those individuals they colluded in rendering to US justice.

The widely respected lawyer and the chair of the *British Institute of Human Rights*, Geoffrey Bindman, said that the report is "a damning indictment" of British policy. The cases "demonstrate an intolerable level of collaboration and collusion between UK and US authorities in the abuses which have taken place at Guantanamo and elsewhere through the "outsourcing" of torture." He continued:

*The tragedy for the United Kingdom is that its government has been seduced by the rhetoric of the "war on terror" into giving support to failed and inhuman US polices. In doing so it has undermined its own professed commitment to human rights and the rule of law.*

*Cage Prisoner "Fabricating Terrorism British Complicity in Renditions and Terror", <http://www.cageprisoners.com/articles.php?id=13074>; BBC Television, Newsnight, 28.2.06; BBC News 28.2.06.*

## Statewatch News Online

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

Keep up with the news and documentation, sign-up for regular e-mail updates

## Press freedom law to protect journalists after raids

German intelligence and law enforcement agencies have had a tough year. First it was revealed that the secret service (*Bundesnachrichtendienst* - BND) had put journalists and scientists under observation in the 1990s, and then its involvement in CIA renditions became public. The Federal Crime Police Authority (*Bundeskriminalamt* - BKA) did not fare much better. It was severely criticised for raiding press offices and a journalist's home last September in an attempt to find the source of leak in its ranks. In January this year, a BKA employee admitted the agency had provided question catalogues [categories] to the Lebanese secret police and deliberately ignored their use of torture against German terrorist suspects in Beirut. The infringement of press freedom and civil liberties, a casualty of the war against terrorism, has been increasingly criticised by media commentators, civil liberties groups and the German Federation of Journalists. The Green Party has now published a White Paper proposing that the obtaining of confidential information by journalists be made legal under the German Criminal Code; it also wants to increase the threshold required for law enforcement agencies to confiscate journalists' records.

In September 2005, the offices of the monthly magazine *Cicero* and the houses of the journalist Bruno Schirra were searched by police and sensitive material, including e-mail correspondence, was confiscated. The raids were carried out on the basis of an article that appeared in *Cicero* (April 2005) about the Jordanian terrorist Abu Mussab Al Zarqawi, which had cited a classified BKA report. The BKA wanted to find the source of the leak. Schirra's and the editorial office's telephones were tapped and traffic data collected prior to the raid; Schirra had also been put under surveillance. The incident triggered widespread criticism from civil liberties groups, press freedom organisations and MPs, who warned of an alarming increase in the criminalisation of investigative journalism by the state. Commentators have drawn parallels to the 1962 *Spiegel-Affaire*, a well-known scandal triggered by a raid on the offices of the weekly magazine *Der Spiegel* and the attempted prosecution of its editorial board on the grounds of treason. A constitutional challenge to the raids led to a Federal Constitutional Court decision of August 1966, which explicitly laid down that searches of journalists' houses and confiscation of their material could not occur merely on the grounds of ascertaining the identity of an informant.

Last November, the raids were followed by a new secret service scandal, triggered by a BND whistleblower who admitted to the investigative journalist Erich Schmidt-Eenboom, (who has written two books on the BND), that he had him under observation for the BND in 1994. The parliamentary control commission (*Parlamentarisches Kontrollgremium* - PKG) which has the task of checking secret service activities has demanded a special investigation into this case. They also want to clarify further allegations that the BND still had informants in press circles and is spying on journalists, apparently without informing the government of its activities.

Raids on press offices and the houses of journalists are no novelty, according to the German Federation of Journalists (*Deutscher Journalisten Verband* - DJV). They are increasingly being normalised as part of regular criminal investigations, through the use of s.353 of the Criminal Code (*Strafgesetzbuch* - StGB), abetting or inciting the disclosure of official secrets. The prosecution is increasingly applying this clause to journalists when they publish documents marked "confidential" by the authorities. Between 1987 and 2000, the trade union documented

164 cases where journalists' houses were raided, often on grounds of suspicion or incitement to the 'betrayal of state secrets' (*Geheimnisverrat*).

### Some recent cases include:

**December 2003:** journalist Ulrich Sander's office is searched and hard discs confiscated. Sander is the regional chair of the anti-fascist association set up by survivors of the Nazi regime (*Vereinigung der Verfolgten des Naziregimes - Bund der Antifaschisten* - VVN-BdA) and was accused of forgery: former Wehrmacht members had received fake letters claiming they would have to stand trial for war crimes. There was no evidence that Sander was involved in the action.

**June 2005:** The journalist Nikolaus Brauns, who had observed a gathering of the far-right NPD, was placed under preventative detention. Apparently law enforcement agencies had acted on information provided by the NPD, claiming that Brauns was allegedly planning to call in a left-wing action group to interrupt the event.

**June 2005:** Munich police raided the houses of several editors of the internet portal *LabourNet*, also on grounds of forgery.

**September 2005:** A case of the interception of telecommunications of a journalist based in Dresden became public. He had reported a house search against the former regional economic affairs minister of Saxony in May 2005, of which he knew in advance. With the justification of wanting to trace the leak within the service, his phone was tapped. This case created outrage within media circles and was widely condemned for violating press freedom and endangering the confidentiality of sources.

**March 2006:** A case of the telephone tapping of two journalists at the *Wolfsburger Allgemeine Zeitung* newspaper became public. The Journalists' Union DJV demands a parliamentary investigation into the case.

In the Cicero-affair, the prosecution is basing its actions on the above-mentioned legal loophole applying s.353 StGB, under which offices are raided and press freedom infringed when the public prosecutor finds grounds. The principle of proportionality can only ever be checked retrospectively. This, however, violates s.53 of the Criminal Procedural Act (*Strafprozessordnung* - StPO), which holds that journalists do not have to disclose their sources even if information was obtained through illegal means. It is a principle which has been confirmed on various occasions by the German Federal Constitutional Court.

The White Paper to protect journalists from this increasing threat was put forward by the Green party on 7 February this year (16/576). The Green proposal argues that s.53 StPO (confidentiality of sources) is infringed by s.353 StGB (no disclosure of official secrets) and introduces an exception for journalists. It also points out that the official secrets clause only makes direct citations from, and not descriptions of information obtained through, undisclosed documents illegal. Also, the paper foresees an exception to s.100 StPO (interception of telecommunications) for journalists and increases the threshold for house searches by making s.97 StPO (confiscation of personal material) subject to a judge's order under regular criminal procedural safeguards (concrete suspicion, etc). Material not directly relating to any criminal charges is explicitly excluded from s.97 StPO.

The White Paper was debated in the Lower House of Parliament (*Bundestag*) on 16 March and the Green proposal, together with another proposal put forward by the liberal party

FDP (*Freiheitlich Demokratische Partei Deutschlands*) was referred to the relevant committees for further amendments.

"White Paper on the protection of journalists and press freedom in the Criminal Procedural Code" (*Entwurf eines Gesetzes zum Schutz von Journalisten und der Pressefreiheit in Straf- und Strafprozessrecht*):

<http://dip.bundestag.de/btd/16/005/1600576.pdf>; "Transcript of parliamentary debate on the proposed law to protect journalists" <http://dip.bundestag.de/btp/16/16025.pdf>; German Federation of Journalists press release :

[http://www.djv.de/aktuelles/presse/archiv/2006/01\\_03\\_06.shtml](http://www.djv.de/aktuelles/presse/archiv/2006/01_03_06.shtml);

Background article on Cicero raids in September 2005:

<http://www.heise.de/tp/r4/artikel/20/20946/1.html>

## European Civil Liberties Network

<http://www.ecln.org>

You can now sign-up for regular e-mail updates and join the "Call for civil liberties and democracy in Europe"

## Italy: Flood of legislation as term comes to an end

### The harshest drug laws in Europe and the toughest internet regulations

The months leading up to the general election to be held in April 2006 saw the passing of several new laws. These range from the new law on self-defence, which had been awaiting approval since 2003, to the new law on drugs, which was contained in a law introducing "urgent" security measures for the Winter Olympics in Turin after parliament had broken up with a view to the elections. There were also measures to combat child pornography and to protect intellectual property that introduce changes affecting Internet users and service providers.

#### Law on self defence

On 13 February 2006, an amendment to article 52 of the penal code was adopted in a law that extends the right of self-defence in one's residence, shop or workplace. It extends the right of self-defence by allowing the victim of a break-in or robbery attempt to fire a legally owned firearm at the intruder "to protect his or a third party's physical integrity" or "to protect his or a third party's property", if there is no indication that the intruder will desist from doing so or there is a risk of suffering an aggression, deeming that such a response would be proportional. The law was approved in parliament with MPs from the government coalition voting in favour and the opposition voting against, arguing that the measure may lead to a situation that resembles the "Far West". It was promoted by the *Lega Nord*, which has backed initiatives by citizens in the past to clear up neighbourhoods from crime, acting as "vigilantes". The law Legge del 13 febbraio 2006, n.59 is available at: <http://gazzette.comune.jesi.an.it/2006/51/2.htm>

#### Law on drugs

This is possibly the law that gave rise to the most controversy, for both its content and the procedure that was used to obtain its approval. The law, presented by deputy prime minister Gianfranco Fini and submitted for parliamentary scrutiny after its approval by the cabinet on 13 November 2003 (for analysis: "New drugs law heralds the mass criminalisation of drug users" <http://www.statewatch.org/news/2004/feb/italy-new-drugs-law.pdf>, February 2004). It had been experiencing a difficult journey through the legislative process where it was undergoing assessment by the senate, and had given rise to a strong protest movement. The main reasons for this were that it sought to do away with the distinction between "soft" and "hard" drugs, to turn the possession of small amounts of drugs and personal consumption into a criminal offence, to expand prison sentencing for drug-related offences, and to introduce a wide array of "administrative sanctions" and compulsory rehabilitation for drug offenders.

These key aspects of the law (22 articles out of 106) were approved in a decree which was adopted on 30 December 2005 and voted on by parliament through an "urgent" procedure that by-passed the senate on 7 February 2006, to introduce "urgent

measures for security and the financing of the Winter Olympics". It came into force following its publication in the *Official Journal* on 27 February 2006. The decree introduces a radical overhaul of the regime for combating the consumption of illegal substances and decrees an equal status for private and public drug rehabilitation centres, offering an important commercial opportunity for expansion to the former. Measures to allow undercover operations by drug officers are also envisaged, granting plainclothes officers immunity for activities carried out to obtain evidence of offences, which can be extended to individuals whose assistance they enjoy, with prison sentences applicable for people who unduly disclose the names of officers involved in such operations running from two to six years. Officers will have to inform judges that an undercover operation is underway within 48 hours of its start.

The list of drug offences is extended, most notably to include possession, with applicable prison sentences of between six and 20 years (the previous minimum was eight years, although it was not applicable to possession for personal consumption) and fines of between 26,000 euro and 260,000 euro. For offences of "minor importance", the applicable sanctions are of between one and six years in prison, with fines of between 3,000 euro and 26,000 euro, although the prison sentence may be replaced by "community service" for an equivalent period (no more than twice). Individuals caught in minor breaches of drug legislation without committing an offence, will face a range of possible administrative sanctions, for between a month and a year: the suspension of their passport, driving license or permit to bear weapons and, in the case of third-country nationals, the suspension of their residence permit for tourist purposes. Breaches of this law committed by third-country nationals will also be referred to the *questore* (official in charge of public security), who may use the information when deciding on the renewal of residence permits. The issuing of these documents to the affected individuals during the suspension will also be prohibited, and they will be invited to follow a drug rehabilitation programme. For people who are deemed to be a threat to public security (having been charged with offences against people or property, or with traffic offences), a wider range of sanctions is envisaged, including a prohibition from leaving their town of residence, from driving a motor vehicle, the obligation to appear in a police or carabinieri station twice a week, a curfew, and proscription from specified public establishments.

The criteria for the drawing up of tables concerning illegal substances, or pharmaceutical products containing them, that will establish the quantities that are to be considered thresholds for distinguishing minor offences from offences constituting criminal offences are also outlined in the law the drafts prepared when the law was first presented suggest that the threshold will be very low (see *Statewatch* analysis, above, which also carries links to the draft tables). Finally, the law also regulates the

possibility for drug addicts to benefit from alternative sentencing such as undergoing rehabilitation programmes, and introduces stringent controls affecting the research, provision and distribution of pharmaceutical products that contain substances that are included in the tables.

Critics have noted that this measure has been in the pipeline for over two years and is in no way "urgent", apart from the fact that it would be shelved if the governing coalition were to lose the coming elections. Thus, its adoption has been viewed as an attempt to override the legislative process. Moreover, this prohibitionist drive runs contrary to the result of the referendum held on this issue on 18 April 1993, in which 55.4% voted for the de-criminalisation of possession of drugs for personal use. It also threatens to overwhelm the Italian prison system which is already chronically overcrowded, and in which over a quarter of detainees are drug addicts.

Sources: *The text of the decree (Ddl Camera 7.2.06):* [http://www.cittadinolex.kataweb.it/article\\_view.jsp?idArt=31659&idCat=75](http://www.cittadinolex.kataweb.it/article_view.jsp?idArt=31659&idCat=75); *The drug law as amended by the decree (changes in bold):* [http://www.cittadinolex.kataweb.it/article\\_view.jsp?idArt=35475&idCat=75](http://www.cittadinolex.kataweb.it/article_view.jsp?idArt=35475&idCat=75); *For further information:* <http://www.fuoriluogo.it>; *Previous Statewatch coverage:* "New drugs law heralds the mass criminalisation of drug users" <http://www.statewatch.org/news/2004/feb/italy-new-drugs-law.pdf> February 2004; *Appeal against the law: "Dal penale al sociale. Contro la nuova crociata punitiva sulle droghe",* 26 June 2005, [http://www.fuoriluogo.it/speciali/guerraitaliana/appello\\_26\\_giugno.html](http://www.fuoriluogo.it/speciali/guerraitaliana/appello_26_giugno.html); *Effects of the law for migrants, avv. Paolo Cognini, Melting Pot,* 17.3.2006; <http://www.meltingpot.org/articolo6980.html>

### Italy: Measures affecting Internet users and ISPs

In February 2006, the *Associazione per la libertà nella comunicazione interattiva* (ALCEI) issued two statements warning of the likely effects on Internet freedom of two new measures. The first law is concerned with combating the "sexual exploitation of children" and "paedopornography, including through the use of Internet", whereas the second concerned the protection of intellectual property rights.

### Intellectual property rights decree

The decree was approved by the cabinet on 23 February 2006 to transpose the Directive on intellectual property (2004/48). ALCEI argues that in expanding the scope for activities to counter and sanction abuses against the owners of intellectual property rights, it unduly affects ISPs, the development of Internet and the rights of its users, as well as being marred by "instrumental" mistranslations, "vagueness" of concepts and "significant" omissions. The decree is described as being vague about a series of legal concepts, such as the role of "intermediaries", which may affect both ISPs used by individuals who breach intellectual property rights and, beyond the milieu of Internet, couriers carrying material which is in breach of these rights. One of its possible consequences is that of forcing ISPs to act against the interests of their customers, (i.e. through surveillance or the handing over of material to authorities), in order to avoid facing costly claims for damages. In fact, unlike the Directive, it does not hint at the fact that the measures should be applicable to those who knowingly provide Internet services for illegal purposes.

In the decree, the burden of proof required for the taking of urgent investigative measures is lowered from "proof" to "elements of proof" [the French, German, Spanish and Portuguese versions of the Directive explicitly talk of "proof", whereas the English one is more ambiguous, using the term "evidence", although the expression adopted in the decree in question could apply to "circumstantial evidence"]. The failure to include parts of the Directive (such as art 7.2) which envisage the possibility for individuals who are on the receiving end of actions by owners of property rights and are found innocent to apply for damages is described as "significant". ALCEI

considers that the decree is "unbalanced" in that it undermines the rights of Internet users and ISPs in favour of "specific private interests", as well as obstructing the development of Internet in Italy. This fact is said to be especially worrying as the decree seeks to "regulate the Web", while the Directive excludes software rights and "intellectual property rights in the Information Society" from the scope of this measure, because they were already envisaged in Directive 29/2001, which was transposed into Italian law in 2003.

As for the procedure used to approve the decree, ALCEI comments:

*This measure obviously does not have an urgent character. It is symptomatic that when the [legislative] Chambers have broken up, an extraordinary procedure delegating powers to the government is used to produce a norm that is plagued with questionable interpretations and intentional lexical distortions*

Decree to combat paedopornography and the sexual exploitation of children: A law introducing "Provisions in the field of combating the sexual exploitation of children and paedopornography, including through the use of Internet" was approved by parliament on 23 January 2006, and introduces amendments to the law for the protection of minors (269/98). ALCEI stresses that it imposes a number of requirements on ISPs, effectively turning them into "policemen" who are obliged to "control and report" customers. ISPs will be required to:

- report businesses or individuals who divulge, distribute or trade paedopornographic material to the national centre to combat paedopornography in Internet,

- provide available information about such businesses or persons without delay when requested to do so by the centre,

- store the material that gave rise to the report for at least 45 days,

- and apply filters to their network that are decided by the communications ministry and associations of providers to prevent access to the websites that have been indicated by the national centre to combat paedopornography.

Heavy fines will be applicable for failing to carry out these functions. Firms that manage payment systems will have to inform banks or post offices of the use of their systems to acquire paedopornographic material, in order to demand explanations from customers. Banking service providers may be required to suspend services provided to a customer.

ALCEI's summary of the effects of this measure highlights the expansion of the concept of paedopornography to include "virtual paedopornography" (the creation of "virtual", or unreal, images through graphic manipulation) and the creation of a national centre for the surveillance of this phenomenon to carry out investigative functions that will have access to an "enormous" amount of information concerning businesses and individuals without being subjected to judicial control. The ALCEI statement concludes that the issue of paedopornography, as is the case for terrorism, is being used as a "Trojan horse" to introduce principles that undermine civil liberties before expanding them to other areas such as "property rights, the expression of questionable opinions or political struggle".

*Intellectual property decree: "Approvato in gran segreto il recepimento della direttiva 2004/48. Ennesimo ampliamento dei poteri delle major dell'audiovisivo",*

*ALCEI, 17.2.06, <http://www.alcei.it/index.php/2006/02/16/comunicato-del-17-febbraio-2005/>; The law decree on intellectual property rights that transposes Directive 2004/48, <http://www.alcei.it/wp-content/rec482004.pdf>; Directive 2004/48 (in English), <http://www.alcei.it/wp-content/200448en.pdf>. Provisions on paedopornography: ALCEI statement, 13.2.06: <http://www.alcei.it/index.php/2006/02/11/comunicato-alcei-del-13-febbraio-2006/>; "Disposizioni in materia di lotta contro lo sfruttamento sessuale dei bambini e la pedopornografia anche a mezzo interne", legge 6 Febbraio 2006, n. 38:*

<http://www.giustizia.it/newsonline/data/multimedia/1489.pdf>

## **Essays for civil liberties and democracy in Europe**

A. Sivanandan: "The Rules of the Game"?

Paddy Hillyard: **The "War on Terror": lessons from Ireland**

Aidan White: **Why Terror and Tolerance are the Greatest Test of Modern Journalism**

Tony Bunyan: **While Europe sleeps...**

Thomas Mathiesen: **Lex Vigilatoria – Towards a control system without a state?**

Deirdre Curtin: **Checking and balancing polity-building in the European Union**

Ben Hayes: **There is no balance between security and civil liberties - just less of each**

Gus Hosein: **What's wrong with Europe?**

Lorenzo Trucco: **Lampedusa - a test case for the subcontracting of EU border controls**

Liz Fekete: **"Speech crime" and deportation**

Steve Peers: **EU law and family reunion: a human rights critique**

Balthasar Glattli and Heiner Busch: **Switzerland votes in favour of accession to Schengen: a defeat for civil liberties**

Phil Scraton: **The denial of children's rights and liberties in the UK and the North of Ireland**

Max Rowlands: **The state of ASBO Britain - the rise of intolerance**

Virginia Mantouvalou: **UK's anti-terrorism measures fall short of European standards**

Gergana Jouleva and Alexander Kashumov: **Did the Bulgarian Minister of State Administration pay "Microsoft" Corporation out of his own pocket or was it public money?**

All the Essays are available on: <http://www.ecln.org/essays.html>

**European Civil Liberties Network (ECLN)**

## **CONTENTS**

<b>EU: Border control for the 21st century: "automated passenger processing"</b> .....	<b>1</b>
<b>Civil liberties</b> .....	<b>2</b>
Denmark: Prosecutor reluctant to take television station to court	
UK: Sarin death settlement angers veterans	
UK: Chagosians protest at theft of their country	
<b>Immigration</b> .....	<b>3</b>
Denmark: New expulsion rules "violate" refugee convention	
<b>Military</b> .....	<b>4</b>
Germany: Deployment of armed forces for World Cup?	
UK: British role in CIA killer drones exposed	
<b>Europe</b> .....	<b>5</b>
EU: Direct access to DNA data	
"Any reference to COSI should be avoided"	
EU/Africa: Dinghy deaths continue	
EU: High Level Working Group on Migration	
EU: Hesitations about military role in Congo	
<b>Policing</b> .....	<b>9</b>
Spain: <i>Guardia Civil</i> officers face minor charges for Roquestas killing	
Italy: Police officers investigated over Ferrara death	
UK: Oyster card	
UK: No accountability for armed police	
UK: Justice for Nuur Saeed and Paul Coker	
<b>Prisons</b> .....	<b>11</b>
Belmarsh High Security Unit	
<b>Racism &amp; fascism</b> .....	<b>12</b>
Italy: Electoral alliance between government and far right	
UK: BNP's bogus "trade union"	
<b>Law</b> .....	<b>14</b>
<b>FEATURES</b>	
<b>Statewatch/TNI report on the EU Security Research Programme ..</b>	<b>14</b>
<b>Germany: Parliamentary Committee investigates Iraq war and CIA flights</b> .....	<b>17</b>
<b>UK: Government "colludes" with US in rendition and torture</b> .....	<b>19</b>
<b>Germany: Press freedom law to protect journalists after raids</b> ....	<b>21</b>
<b>Italy: Flood of legislation as term comes to an end</b> .....	<b>22</b>

## **Statewatch website**

Statewatch's website carries News online and has a searchable database. The url is: <http://www.statewatch.org>

## **Contributors**

**Statewatch**, was founded in 1991, and is an independent group of journalists, researchers, lawyers, lecturers and community activists.

Statewatch's European network of contributors is drawn from 14 countries.

Editor: Tony Bunyan. News Editor: Trevor Hemmings. Reviews Editor: Nadine Finch. Lee Bridges, Paddy Hillyard, Ben Hayes, Steve Peak, Phil Scraton, Joe Sim, Mike Tomlinson, Frances Webber, Ida Koch, Catherine Weber, Dennis Töllborg, Francine Mestrum, Kees Kalkman, Christian Busold, Heiner Busch, Peio Aierbe, Mads Bruun Pedersen, Vassilis Karydis, Steve Peers, Barbara Melis, Katrin McGauran, Yasha Maccanico, Frank Duvell (PICUM, Brussels), Nick Moss, Max Rowlands, Eleanor Rees, Nicos Trimikliniotis. The Centre for Studies in Crime and Social Justice (Edge Hill College, Lancashire), Liberty, the Northern European Nuclear Information Group (NENIG), CILIP (Berlin), Demos (Copenhagen), Omega Foundation, AMOK (Utrecht, Netherlands), Jansen & Janssen (Amsterdam), Komitee Schluss mit dem Schnuffelstaat (Bern, Switzerland), Arturo Quirantes, Thomas Bugge, Staffan Dahllöf.

## **Statewatch bulletin**

Subscription rates: 6 issues a year: UK and Europe: Individuals and voluntary groups £15.00 pa; Institutions and libraries: £40.00 pa (outside Europe add £4 to the rate)

Statewatch does not have a corporate view, the opinions expressed are those of the contributors.

Published by Statewatch and printed by Russell Press, Russell House, Bulwell Lane, Basford, Nottingham NG6 0BT

ISSN 0961-7280

**Statewatch,**  
**PO Box 1516, London N16 0EW, UK.**  
**Tel: (00 44) 020 8802 1882**  
**Fax: (00 44) 020 8880 1727**  
**e-mail: [office@statewatch.org](mailto:office@statewatch.org)**