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Europol: “operative powers” and “organised crime” plan

“a group of persons with a common purpose”

New proposals to be adopted by the European Council in Amsterdam in June would make Europol “operational”, give a wide definition of “organised crime”, and create new bodies to coordinate judicial and prosecution policies. The “Action Plan to combat organised crime” prepared by a “High Level Group” of national prosecutors makes no mention of data protection provisions to protect alleged offenders nor is there any reference to democratic accountability.

This Plan, examined below, taken together with the stories on the work of the Europol Drugs Unit and the justice and home affairs “work programme” illustrates a series of developments which are outside of any democratic control.

The Dublin meeting of the European Council in December set up a “High Level Group” of national prosecutors to draw up an “action plan to combat organised crime”. Their report was adopted at an unscheduled extraordinary meeting of the Council of Justice and Home Affairs Ministers in Luxembourg on 28 April. The report, which has 15 “political guidelines” and 30 “specific recommendations”, is going to the European Council meeting of EU Prime Ministers in Amsterdam in mid-June. The report is based on the now familiar argument that: “Crime is increasingly organising itself across national borders, also taking advantage of the free movement of goods, capital, services and persons.” The objective being, as in the draft intergovernmental treaty, to create “an area of freedom, security and justice”.

The “action plan” is concerned with “organised crime” but, like the Europol Convention, closer examination reveals enlarged roles for Europol and the European Commission and a highly questionable definition of “organised crime”.

Defining “organised crime”

Faced with as many different definitions of “organised crime” as there are police forces in the EU the report itself offers no definition. The first “political guideline” calls on the Council of Justice and Home Affairs Ministers to adopt a “Joint Action” to make it:

an offence under the laws of each Member State for a person, present in its territory, to participate in a criminal organisation, irrespective of the location in the Union where the organisation is concentrated or is carrying out its criminal activity.

Recommendation 17, based on political guideline no 1, states that:

Such an offence could consist in the behaviour described in Article 3, paragraph 4 of the Extradition Convention..

Article 3 paragraph 4 of the Extradition Convention, which is currently before the 15 EU national parliaments for ratification, in turn refers to Article 2.1, 3.1 and 3.3 of the Extradition Convention and to the European Convention on the Suppression of Terrorism.

The combination of these various criteria leads to “organised crime” combining the following features. The offence must carry a sentence of 12 months or more in the “requesting Member State” and 6 months in the “requested Member State” (Article 2.1) and be “classified” as a “conspiracy or an association” (Article 3.1). Such a low standard encompasses a whole range of offences.

Article 3.4 refers to:

behaviour of any person which contributes to the commission by a group of persons with a common purpose of one or more offences

1) covered by Articles 1 and 2 (which covers acts against property) of the European Convention on the Suppression of Terrorism, 2) “drug trafficking and other forms of organised

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crime”, 3) “other acts of violence...” and 4) “creating a collective danger for persons”. These criteria apply “even where the person does not take part in the actual execution” but has “knowledge either of the purpose and the general criminal activity of the group or the intention of the group...”

Broad definitions like “other forms of organised crime” ring alarm bells for those who have looked at the Europol Convention and its accompanying regulations. So too does “creating a collective danger for persons” which could be narrowly defined to cover terrorism and organised criminal activity like drug trafficking or widely defined to embrace public order and political protests. And, “behaviour of any person which contributes to the commission by a group of persons with a common purpose” is all too familiar to civil liberties groups in the UK seeking to amend the 1997 Police Act.

Europol

The Europol Convention, which took over three years to agree amongst the governments of the EU, is currently before EU national parliaments for ratification. A persistent line of defence, from governments and police chiefs, for the powers to be given to Europol when it is set up is that it would “not be operational”, it would only gather information and intelligence for national police forces to act on.

The recommendations from this “high level group” confirm that Europol is to be given “operative powers”. It suggests to the intergovernmental conference negotiators that this might require an amendment to Article K.1.9 of the Treaty of European Union (the Maastricht Treaty). However, it remains to be seen whether the Council takes this road which would take years - the new Treaty would have to be ratified before a new Convention extending Europol's role could be drawn up and then again ratified by national parliaments - or seek a quicker solution:

The Council will need to assess.. whether the development of the role of Europol requires amendment to the Convention and, if so, immediate steps should be taken.

The new roles set out in the report include: 1) Europol should “be enabled to facilitate and support the preparation, coordination and carrying out of specific investigations... including operational actions of joint teams (with Member States) comprising representatives of Europol in a support capacity; 2) “Europol should be allowed to ask Member States to conduct investigations in specific cases”; 3) “Europol should develop specific expertise which may be put at the disposal of Member States to assist them in investigating cases of organised cross-border crime”; and 4) recommendation 25.d lists a whole range of roles for Europol that go hand in hand with the creation of a European police force.

As if to confirm the criticisms levelled at the Europol Convention that it could be linked to other databases:

Access by Europol may be sought to the Schengen Information System or its European successor (recommendation 25.e).

The “central national contact points” (National Criminal Intelligence Services) set out in the Europol Convention:

should be the contact points on behalf of all law enforcement authorities in the Member States. It is advisable that existing contact points, such as the Interpol NCB (national central bureaux), Sirene bureaux etc should be brought together in this central contact point... (recommendation 19)

The report recommends that “one or more suitable legal instruments” should be drawn up to enable Europol to “entertain” cooperation and liaison with “third countries and international organisations” including the Commission, Interpol and the World Customs Organisation (WCO).

The report speaks of “Europol” as if it already exists. There are eight mentions of “Europol” in the action plan's recommendations - all within time limits likely to precede the completion of ratification by national parliaments.

“breeding grounds” for organised crime

The report's recommendations start with the need for “Europol” (which does not exist), the Commission (which has no defined or publicly known or planned role) and the Council and Member States to set up a joint “Contact and Support Network”. This “Network” would collect and analyse data on the “organised crime situation”, make it accessible for “investigations and prosecutions at national level” and ensure it can be actively “exchanged with other Member States” and:

The academic and scientific world should be further stimulated to contribute by their studies and research to the understanding of the phenomenon of organised crime.

While on the other hand EU funding:

should be mobilised to prevent large cities in the Union from becoming breeding grounds for organised crime... Particular attention should be given to groups not fully integrated in society, since these may be vulnerable targets for criminal organisations.

And, “vulnerable professions” should be “shielded from influences of organised crime.. notaries, lawyers, accountants and auditors..”

The “candidate countries” (central and eastern Europe and the Baltic states) to join the EU, who as yet have no date set, should be asked for “undertakings to rapid ratification and implementation” of a “Pre-accession Pact on cooperation against crime” based on Council of Europe instruments and the “acquis of the Union in the field of organised crime.” By the “end of 1998” Europol should act as “intermediary” to bring about “concrete proposals for closer cooperation” with “the Union's Transatlantic partners” (USA and Canada), Russia and Ukraine.

In a disguised reference EU-FBI global surveillance system (see *Stewatch* vol 7 no 1) the report calls for “law enforcement and judicial authorities” to “have the means, as a complement to the specific responsibilities laying on technology and service-providers, to prevent and combat the misuse of these new technologies.” But further on the report says:

a legal basis could be created for the trans-boundary application of certain modern investigative methods, such as controlled delivery, deployment of undercover agents and the interception of various forms of telecommunications.”

Member states, and the “candidate countries of central and eastern Europe including the Baltic states” to implement the “Pre-accession Pact”, are themselves to be called to account if their national parliaments take too long (a euphemism for conducting a thorough scrutiny) to ratify conventions:

they shall report to the Council in writing on the reasons every six months until the convention is ratified.”

The report proposes that a permanent “Network for judicial cooperation” be set up to provide an EU-wide “clearing-house, problem-solver and contact maker between judicial authorities at national level”. The Network “should be given a special mandate and consist of practitioners having extensive practical experience in fighting organised crime.” This seems to represent the first step in creating an EU prosecution service to work in tandem with a Europol with “operative powers”. The report says an “in depth study should be carried out” to examine:

the role of judicial authorities in their relations with Europol, in step with the enlargement of Europol's competencies.. [and examine] whether it should in the long term be transformed into a more permanent structure, which could become an important interlocutor of Europol.

A number of measures are proposed to deal with money-laundering. It proposes that “the Europol Convention be supplemented with a provision permitting Europol to be instrumental.. [in] a system for exchanging information concerning suspected money-laundering..” The proceeds of organised crime or corruption should be confiscated and there should be “a study of the possibility to share, at the level of

Member States, assets confiscated through international cooperation.”

Finally, it should be that the powers and practices proposed in this report for “organised crime” would set up mechanisms which could easily, and simply, be extended to public order and political protests (see for example in the story below on the justice and home affairs work programme the planned extension of cooperation on football hooliganism to wider public order areas like demonstrations).

Action Plan to combat organised crime, report from High Level Group to the European Council, JAI 7, Rev 4, Limite, 6276/4/97, 9.4.97.

EUROPE

EU

EDU work programme

The work programme of the Europol Drugs Unit (EDU) for 1997, and the report on its activities for 1996, refer to a major project “involving clandestine immigration networks”. The 1997 work programme says the EDU are undertaking:

under the lead of a Member State, an operational analysis on specified targets on the Balkan Route Project.

The 1996 report on EDU activities says:

The Balkan Route project, focusing on clandestine immigration networks involving Turkish national and Turkish organisations, was developed and a strategic analysis was carried out by the EDU taking into account the contributions already supplied by the Member States, additional detailed information and details of cases dating from 1994 and 1995.

Based on the national reports on the subject of illegal immigration networks available in each country, the production of an EU General Situation Report is now being undertaken. This general situation report, including the strategic report on the Balkan Route, to be finalised at the beginning of 1997, will go in depth on technical points and develop operational projects.

The EDU’s “Balkan Route Project” is of interest for two reasons. First, because the timing of developing “operational projects” and “specified targets” appears to overlap with Joint Action to combat drug smuggling on the Balkan Route which was adopted by the Fisheries Council on 20 December 1996. This Joint Action run by the Customs Cooperation Council, with whom the EDU was working in 1996 on a “strategic analysis on *Drug Trafficking Activities by Turkish Criminal Organisations from an EU Perspective*”, included “monitoring road traffic.. carrying out specific inspection measures.. collecting information and intelligence.. [and] setting up appropriate communications links for exchanging information..”. Under the banner of combatting “organised crime” the Balkan Route Project appears to have two objectives, not one - drug trafficking and “clandestine immigration networks”.

The second reason concerns the use of the terminology “under the lead of a Member State”. The Joint Action governing the activities of the EDU limits its work to exchanging information through national liaison officers based at its headquarters in the Hague and the “preparation of general situation reports and analyses of criminal activities” (Article 2.3). It is not allowed to hold “personal information” nor take part in operational activities or “transmit any personal information to States other than Member States or to any international organisation.” (Article 4.2). It appears that when “analytical support to investigations and operations” (1996 report on “Legal Situation”) is done “under the authority of Member States whose involvement is particularly useful “in

respect of operational work”. Put in plain language it appears that when the EDU reaches the limits of its remit a Member State(s) takes over and by this means the line behind gathering and supplying intelligence and “operational work” is fudged.

This is of special concern because the two reports show that the EDU is directly supporting the “controlled delivery” of drug trafficking “operations”. It is:

implementing measures arising from the Special Techniques Policy Document (including controlled deliveries), in order to facilitate a possible common use of the methods and techniques for multilateral operations.. [it is] considering the results of the Controlled Deliveries Practices Study... [and], constantly reviewing the EU Manual on Controlled Deliveries..” (1997 work programme)

The role, if not of the EDU as such, but of the national European Liaison Officers (ELOs) based at the EDU is set out:

the total amount of controlled deliveries carried out by the competent agencies of the Member States using the ELO network and EDU facilities was 33 [in 1996].

Extending EDU's remit

The original task of the Europol Drugs Unit, as its name implies, was dealing with drug trafficking when it was set up by the Ministerial Agreement in June 1993. On 10 March 1995 this Agreement was replaced by a Joint Action, under Article K.3.2.b of Title VI. This extended the EDU's roles by adding: illicit trafficking in radioactive and nuclear substances; crimes involving clandestine immigration networks; illicit vehicle trafficking; plus the “criminal organisations involved and associated money-laundering”. The EDU now had four roles.

The 1996 EDU report sets out its “Extended mandate and new tasks” agreed in July, November and December 1996. One of the six roles is an extension of the EDU's formal mandate, others give its “new tasks”. The six are:

1. an extension in the EDU's mandate to include trafficking in human beings and sexual exploitation of children (Joint Action formally adopted by the General Affairs Council on 24 February.
2. the creation and maintenance of a directory of specialised skills and expertise in the fight against organised crime (Joint Action 29 November 1996).
3. the exchange of information on chemical profiling of drugs (Joint Action 29 November 1996).
4. prevention and detection of illicit cultivation and production of illicit drugs (Resolution, 16 December 1996).
5. curbing drug tourism (Resolution, 29 November 1996).
6. creation of a manual on controlled deliveries (Decision, July 1996).

The scope of the EDU's work extends year on year. In 1996 “the EDU was invited by the Schengen cooperation, as part of their pilot project on stolen vehicles routes, to carry out an analysis focusing on controls of routes known as being frequently used by traffickers”. The 1997 work programme shows this to be ongoing, the EDU is to “participate with the Schengen and ICPO/Interpol working groups on stolen vehicles to encourage Member States to coordinate action using the ICPO/Interpol database with EDU providing the analytical function.”

Although the EDU “is not in a position to initiate official negotiations, less formal contacts took place” with ICPO/Interpol, the World Customs Organisation, UN, European Monitoring Centre for Drugs and Drug Addiction, Heads of EU National Units (HEUNI), European Commission (Unité de Coordination de la Lutte Anti-Fraude, UCLAF) and Schengen “to coordinate interrelated activities”. Authorisations for these “less formal contacts” is described:

The agreement of the presidency and/or the Working Group on Europol was reached before contacts were initiated. The Working

Group on Europol was informed on a regular basis so that control of these activities was further assured."

The self-regulation of EDU's activities by another group also composed largely of police officers must be a cause for concern especially because the Council of Justice and Home Affairs Ministers agrees the EDU's reports and work programmes on the nod (without debate), and the European Parliament and national parliaments have no opportunity to exercise democratic scrutiny or control over the EDU's practices.

Report on the Activities of the Europol Drugs Unit in 1996, 7.3.97; Europol Drugs Unit Working Programme 1997.

Third pillar work programme

The work programme under the Dutch Presidency (January-June 1997) on justice and home affairs includes two initiatives on developing the EU-FBI telecommunications surveillance system (see *Statewatch*, vol 7 no 1). Under Steering Group II (police cooperation and customs cooperation) one of the targets is:

making it technically feasible for justice and police to carry out real-time interception of satellite telecommunications traffic.

While Steering Group III (judicial cooperation in criminal and civil matters) is preparing a new (supplementary) Convention on Mutual Assistance in Criminal Matters which will include: "interception of satellite telecommunications".

The first initiative is geared to ensuring "law enforcement agencies" (police, customs, immigration, and internal security) are able to tap (surveil) into phone calls, e-mails and faxes. The second is to cover the passing of information gathered between EU police forces and ensuring that it can be submitted in evidence in court.

Public order

The work programme of Steering Group II includes:

Extending existing public order cooperation in the area of sport (i.e. football) to other situations such as demonstrations, major public events and other large-scale events involving citizens from several EU Member States and compiling a manual listing national crisis centres.

Also set out are:

- a) "creating a databank to store DNA; liaison will be ensured with either Europol or Interpol";
- b) "developing the Europol computer system (TECS)";
- c) coordination of the work of Europol and the Customs Information System (CIS);
- d) coordination of the Working Party on Terrorism with the "Working Party on Terrorism under the Second Pillar" (defence and foreign policy);
- e) to deal with "legal and practical problems in the area of controlled deliveries" within the EU and with "the countries of Central and Eastern Europe";
- f) recommendations are to be drawn up on "the exchange of operational information.. between national criminal intelligence departments".

Illegal immigrants and "voluntary repatriation"

The work of Steering Group I (asylum and immigration) starts with the anticipated completion of the ratification of the Dublin Convention on asylum applications (the introduction of the "one-stop" rule) which has taken seven years to complete.

They are also to dust off the Parallel Dublin Convention (prepared in May 1992) which would extend the Convention to "third countries" and are considering whether Norway and Iceland should be "involved in the negotiations" as they have associate status with the Schengen Agreement.

Under the heading of "Expulsion" the strengthening of measures:

to counter illegal immigration and illegal employment and improved cooperation on the expulsion of illegal immigrants and problems encountered over readmission..

Also on the agenda is the "problem" of countries of origin refusing to take back their "own nationals", this is to be discussed by a "combined meeting of experts from working parties from the three pillars..". This no doubt is being seen in the context of another initiative where "experts under the Second and Third Pillars" will discuss "the more political aspects concerning the situation in countries of origin" - namely, the need for political and economic pressure to be brought on third world countries.

The Dutch Presidency is also to prepare a Council Decision on the "national practices concerning assistance for the voluntary repatriation of third-country nationals" - if the model provided by EU Extradition Conventions is followed "voluntary" may be followed by "enforced" (involuntary).

Provisional work programme for Steering Group I (asylum and immigration) for the period from 1 January 1997 to 30 June 1997, Note from the Netherlands delegation to the K4 Committee, CK4 61, Limite, 12743/96, 11.12.96; Provisional work programme for Steering Group II (Police cooperation and Customs Cooperation Working Parties) for the period from 1 January 1997 to 30 June 1997, Note from the Netherlands delegation to the K4 Committee, CK4 60, Limite, 12729/96, 11.12.96; Provisional work programme for Steering Group III (judicial cooperation in criminal and civil matters) for the period from 1 January 1997 to 30 June 1997, Note from the Netherlands delegation to the K4 Committee, CK4 57, Limite, 12342/96, 11.12.96.

Football supporters' complaints not upheld but European Ombudsman sets up inquiry

The European Ombudsman, Mr Söderman, has set up an "own-initiative inquiry" into the way that the European Commission handles complaints regarding Article 169 of the Treaty on the European Community (TEC). Mr Söderman says:

it appears that the procedure currently used by the Commission causes considerable dissatisfaction amongst European citizens. The procedure appears not to promote the degree of transparency which European citizens increasingly expect in the functioning of Community institutions and bodies.

The Ombudsman found that there "is no evidence of maladministration" on the part of the Commission on four complaints lodged by Liberty on behalf of Alun, Rhys and Gwilym Boore - three Welsh football fans who found themselves caught up in a bizarre series of events which involved trying to get their names removed from police databases in the UK and Belgium (see *Statewatch*, vol 3 no 2, vol 4 no 5, vol 5 no 5, vol 6 no 4). The Ombudsman's conclusion states:

The Commission has obtained both from the UK and Belgium assurances that the rights of the complainants to free movement will be respected..

In a useful precedent Liberty had sought to get the European Commission to open infringement proceedings against the UK and Belgium under Article 169 of the EC Treaty.

EU-IGC

Asylum between EU states

The Spanish government has withdrawn its demand for the elimination of the right of asylum within the EU for citizens of member states, having been unable to overcome the strong resistance by major international humanitarian organizations

including the UNHCR and Amnesty International. The demand, hitherto presented by the Spanish as non-negotiable, has been replaced by a less ambitious goal of limiting the right to three special circumstances: the existence of a state of emergency; the violation by a member state of the principle of democratic government; and a decision to that effect taken by a member state, although this would have effect for six months at most.

The juridical status of the proposed new regime would also be of a more limited nature, since it would not be incorporated in the body of the new treaty to come out of the intergovernmental conference, but in an annexed protocol, thus allowing any member state to add a clause excepting itself from the new regime. The final defeat of the Spanish government on this issue took place on 26 February, when the Portuguese Supreme Court rejected the Spanish authorities' application for the extradition of José Luis Telletxea, a Basque accused of assisting ETA. The support which he received from many quarters included that of several leading members of Portugal's ruling party, the deputy speaker of the Assembly, and various intellectual figures, who denounced the use of torture in the Spanish state and the violation of the human rights of Basque political prisoners. The Spanish government called in the Portuguese ambassador to whom it made a formal protest.

The original Spanish proposal

The Spanish government has been campaigning to limit the right of asylum within the EU since the first discussions on the Extradition Convention (which is now before national parliaments for ratification). Support from other governments led to a statement in the Presidency Conclusions to the European Council in Dublin on 13-14 December 1996. This asked the IGC negotiators:

to develop the important proposal to amend the Treaties to establish it as a clear principle that no citizen of a Member State of the Union may apply for asylum in another Member State...

The Spanish proposal to the IGC on 4 February read as follows:

Every citizen of the Union shall be regarded, for all legal and judicial purposes connected with the granting of refugee status and matters relating to asylum, as a national of the Member State in which he is seeking asylum.

Consequently, no State of the Union shall agree to process an application for asylum or refugee status submitted by a national of another State of the Union.

Their paper goes on to argue ways of getting round the provisions of the Geneva Convention, especially Articles 1A, 3 and 33 and of exploiting the weak limits placed on changing international treaties under the Vienna Convention on the Law of Treaties.

It remains to be seen how the Dublin Presidency Conclusions will be interpreted in the new IGC treaty to be presented to the Amsterdam European Council on 16-17 June in view of the new proposals from Spain.

EC Treaty amendment to establish a principle that no citizen of a Member State may apply for asylum in another Member State, Discussion paper, SN/507/97 (C 8), Conference of the Representatives of the governments of the Member States, 4.2.97; letter from Office of UNHCR to the Dutch Presidency, 3.2.97.

GERMANY

The Chancellor's illusions

The German Chancellor Kohl's plan to protect Europe's citizens from international crime with a FBI-like body cannot be realized in the near future. This is the result of an internal analysis of the German Interior Ministry. According to the Ministry, the preconditions for the creation of operational competencies are missing as long as there are 15 different national criminal law

systems. Kohl was campaigning for an extension of Europol to an operational police force in the run-up to the Dublin IGC in December last year. A majority of his European colleagues agreed - with reservations - on more competencies for Europol. Kohl got support from the Europol coordinator Jurgen Storbeck who stated in his report that "no success has been achieved in the fight against internationally organised criminal organisations or their leaders despite some success stories".

Der Spiegel, 9.12.96 & 10.3.97.

EU

OECD rejects US-UK-France plan

The Organisation for Economic Cooperation and Development (OECD) of 29 nations meeting in Paris on 27 March rejected an initiative by the US backed by the UK and France to allow "law enforcement agencies" to tap into Internet communications. The proposal would have allowed the surveillance of encrypted (scrambled) e-mail messages and transactions by police, customs, and other agencies. An agreement on a "key-escrow system" would give law enforcement agencies the "keys" to break and unscrambled messages sent through encryption programmes.

Some of the OECD countries such as Australia, Canada, Denmark (see below) and Finland have laws to protect individual privacy which would not allow state agencies to hold the keys to break encrypted messages. While opinion in Germany is divided France already has in place a law which only authorises the use of encryption programmes to which the "keys" can be passed to law enforcement agencies.

One of the most restrictive proposals, on "Trusted Third Parties" (TTP's) is out for consultation in the UK. It proposes that to use an encryption programme which is not "officially licensed" would be a criminal offence and give police powers to raid and arrest anyone whose communications are indecipherable.

Denmark: Encryption report clashes with EU-FBI

The Danish government's expert committee on encryption, set up in 1996 and consisting of representatives from government departments, issued a report in April. The remit of the committee is to deal with possibilities and problems concerning regulation by public authorities of the use of intermediate technology (IT) communications and encrypted messages. The report will be seen as containing recommendations for a "constitution" on Danish IT-policy said Mads Bryde Anderson, Chairman of the IT-Security Council.

The report claims that security measures have not kept pace with developments in communication in open networks, such as e-mail and the Internet. This deficit concerns protection against unauthorised tapping, security of the sender's identity and protection against changes in the message during communication. Encryption can in principle, the report claims, solve these problems. However, one problem they perceived with encryption was that the police, and other authorities, would not be able to break the secrecy in communication.

The committee tried to find a solution which would, on the one hand, promote encryption products and on the other, avoid the negative consequences of such products: that the authorities do not have access to such messages. It concluded that it is not, for the moment, possible to achieve regulation of encryption in Denmark. Neither a general ban against encryption nor regulation of the sale of encryption products would be possible. A ban would be impossible to enforce and criminals would simply find other ways of communicating, it said. Denmark's future policy has to be related to the encryption policy of its international partners. In coming months the Committee will consider voluntary solutions, where businesses and other organisations can deposit a key, in a so-called "key-escrow", that the police, with

permission from a court, could have access to.

One reaction to the report came from the Commissioner of Police and Police Intelligence Service (PET) who said that he feared an escalation in serious crime and advocated tapping as an effective investigation measure.

EU countries have co-operated with the FBI in demanding that all network and service providers make their telecommunications tappable. The Danish committees recommendation takes a different direction, similar to one adopted by the Organisation of Economic Cooperation and Development (OECD). The OECD argues that the defence of data security outweighs the requirements of the police to investigate crime. Representatives of Danish trade unions are strongly opposed to a law against encryption. The Danish government's standpoint in this debate is still unclear. The Research Minister, however, believes that a proposal concerning "digital signatures" will be put forward during the spring.

AP, 27.3.97; Guardian, 11.4.97; Reuters, 17.4.97; Rapport fra ekspertudvalget om kryptering Forskningsministeriet (April) 1997; Ingenioren and Danish newspapers.

Europe - in brief

■ **France: telephone-tapping up:** the annual report of the French National Commission for Control of Intercepts and Security (CNCIS) said that police agencies were making increased demands for phone-taps, up from 4,492 to 4,603 warrants. The CNCIS had also authorised an increase in the number of lines that can be tapped simultaneously from 1,180 to 1,540. *Reuter, 17.4.96.*

■ **UK-Poland agreement signed:** The UK and Poland signed a mutual cooperation Declaration on organised crime on 27 February covering "swift, effective extradition", drugs, arms and explosives trafficking, and the confiscation of "the proceeds of crime". "The Declaration is modelled on a similar bilateral agreement on international crime which Poland signed with the USA in July 1996." *Home Office press release, 27.2.97.*

Europe - new material

Openness and transparency: meaningful or meaningless? Access to information on the European Union. Seven papers - including ones from the Council, the Commission, the European Parliament, Swedish Justice Ministry and Statewatch - from the conference organised by the European Information Association in December 1996. EIA, Central Library, St Peter's Square, Manchester M2 5PD, 38 pages, copies £5.00.

Draft revision of the EU Treaties: response on the Dublin II Outline and the Addendum of the Dutch Presidency. Standing committee of experts on international immigration, refugee and criminal law, April 1997, 13 pages. Very useful resume with proposals on openness, national parliaments, the new chapter on asylum and immigration and the "old" Title VI.

Postnational democracy: the European Union in search of a political philosophy. Utrecht University, April 1997. Inaugural professorial lecture by Deirdre Curtin tackles the role of groups in civil society in the EU. A revised and substantially expanded version is published by Kluwer, ISBN 90-411-0447-x.

A European common foreign and security policy. Wilton Park paper no 123, HMSO, £5.00, 32 pages. Discussion on the future of the "second pillar".

United Europe, Norman Baxter. *Policing Today*, March 1997, pp26-28. Basic summary of post-Maastricht policing which notes in passing that "there is little information available about crime trends within Europe and few serious attempts have been made to identify crime levels across Europe, not to mention cross-border crime."

Democracy, Migrants and the Police in the European Union: The

1996 IGC and beyond, Standing Committee of experts in international immigration, refugee and criminal law, Utrecht (Forum), 1997. Chapters on open government in Schengen and the European Union, the European Court of Justice and the Third Pillar, Europol, the refugee concept in the EU, asylum procedures, forced repatriation, readmission agreements and proposals for the revision of the Treaty at the IGC.

Schengen-Europol-Interpol: Konkurrenz oder Partnerschaft? (Competition or Partnership?), Joachim Sturm, *Kriminalistik*, 1997, No.1, pp.99-104. The author, a senior civil servant in the German Interior Ministry, argues that an incorporation of Schengen into the EU at the present could endanger the "dynamic of Schengen", and that "the Schengen cooperation as the motor of the development of the EU has to be preserved".

CIVIL LIBERTIES

SPAIN

New legislation on official secrets

The government is shortly to present to parliament a draft bill on official secrets, which would establish a Commission on State Secrets charged with confirming or revoking decisions of the cabinet to refuse secret documents requested by a court. The Commission is to consist of the president of the Supreme Court and two other Supreme Court justices. The draft does away with the administrative penalties provided for in the previous draft bill, withdrawn by the government itself as a result of widespread opposition. The earlier draft envisaged fines of up to Ptas 100 million for media organisations which published official secrets.

UK

"Gays in military" case to ECJ

A case involving a gay serviceman who was fired from the Royal Navy because of his sexuality was referred to the European Court of Justice on 15 March. Campaigners against the ban are hailing the decision as an important breakthrough in their campaign against the current ban on homosexuality in the armed forces, which leads to over a hundred people a year being sacked because of their sexuality.

Terry Perkins was thrown out of the navy in 1995 after five years service after an informant tipped off a special investigative unit set up to investigate serving personnel's sexuality. He had previously trained with the Marines and had won early promotion. His record was generally regarded as being exemplary. Mr Perkins welcomed the decision, describing it as "brilliant". He added: "I have a lot of friends in the military who don't have a problem with it (homosexuality) at all".

This ruling, which states that the armed forces may be covered by an EU Equal Treatment directive, now means that the Ministry of Defence are fighting on two fronts in Europe, following the referral of an earlier case involving four ex-service personnel which has already been referred to the European Court of Human Rights (see *Statewatch*, vol 5 no 6).

The ban is now threatening to become an election issue, with the Conservatives committed to maintain the ban, whilst both the Labour Party and the Liberal Democrats have promised to repeal it. It also appears that elements within the MoD are again attempting to loosen current practice in an attempt to forestall any ruling against the ban from Europe. Britain is the only country within the EU that maintains a ban on homosexuality within its armed forces.

Independent 15.3.97.

Civil liberties - new material

Lobbying from below: INQUEST in defence of civil liberties, Mick Ryan. *University College London* 1997, pp196, £12.95pb. This book charts the development of the pressure group INQUEST, which was formed in response to the increasing number of deaths in state custody from the 1970s onwards. Following the deaths of Blair Peach, Jimmy Kelly and Richard Campbell in 1979-1980 the organisation was setup in June 1981 as a group of loosely organised individuals with little financial support. Ryan examines the early years looking at the role of the Greater London Council and the balancing of a radical agenda with conservative sites' of operation. Other chapters examine specifics; "Deaths in police care, custody and during arrest"; "Prison suicides" and "Deaths in psychiatric and special hospitals" for example. In his conclusion Ryan notes the changes that INQUEST has forced on the Prison Service and points to "its capacity through detailed casework to burrow away in the crevices of the state in search of abuses of power by those who exercise control in our name, and through the public ritual of inquests, forcing the state to reaffirm its authority... to the legitimate exercise of its force."

Monitor. Scottish Council for Civil Liberties, January 1997. This broadsheet includes pieces on CCTV and electronic tagging. It also has a "Legislative Update". Available from SCCL, 146 Holland Street, Glasgow G2 4NG, Tel. 0141 332 5960.

Agenda. National Council for Civil Liberties, No. 19 (November) 1996. This issue contain a feature article on ID cards and a round-up of relevant issues. Available from Liberty, 21 Tabard Street, London SE1A 4LA.

Parliamentary debate

Human Rights Bill *Lords* 5.2.97. cols. 1725-1758

NORTHERN IRELAND

Microwave radiation

In January 1993, *Statewatch* reported the concerns of residents in the Crossmaglen area of South Armagh that British army surveillance equipment was linked to observed clusters and increases in cancer cases in the area (*Statewatch*, vol 3 no 1). Now the RUC has consulted the National Radiological Protection Board (NRPB) following the deaths of three members of the E4A undercover surveillance unit of the Special Branch. All three died of cancer of the colon and the concern is that the deaths may be linked to the wearing of microwave radio equipment which is typically strapped to the skin beneath clothing for concealment purposes. According to the *Intelligence Newsletter*, the RUC press office claims the NRPB's review is not just linked to the deaths but covers the use of all microwave equipment.

Intelligence Newsletter, 13.2.97.

Lloyd Report implementation

The Northern Ireland Office is moving quickly to implement certain provisions recommended by the Lloyd Report (see *Statewatch*, vol 7 no 1). The supposed basis of the Report was to consider what permanent counter terrorist legislation, if any, would be desirable for the UK assuming existing "emergency" laws were no longer required in relation to Ireland. Home Secretary Michael Howard gave the government's formal response to the Report in answer to a parliamentary question on 20 February. He said, "in the continuing absence of a lasting peace we believe that it is too early to reach a firm view on possible fundamental legislative change". This seemed to indicate no immediate action, but Howard then went on to say that the

government intend to "bring forward in due course proposals to strengthen existing controls on terrorist finances, along the lines of Lord Lloyd's very helpful analysis. These proposals will include extending existing controls more widely to international terrorism".

Lloyd made a number of detailed recommendations concerning the seizure and forfeiture of funds. He proposed that the police should have the facility to go to a judge before a suspect has been arrested for an order to seize a suspect's funds. While this could be seen as a direct infringement of the European Convention on Human Rights (which covers the "peaceful enjoyment of possessions") Lloyd felt that careful legal drafting could get round this. He goes on, "I recognise that the introduction of such a power would be a very radical step... [but] the power would be justified because of the paramount need to neutralise terrorist funding before the terrorist offence is committed".

Lloyd also proposed that a conviction for any "terrorist offence" should result in the confiscation of "all identifiable funds in the control of the offender at the time of his arrest". To prevent the confiscation, the onus would be on the convicted person to take a civil action to prove that the origin of the funds was not criminal.

Current powers under the PTA prohibit the giving and receipt of funds for proscribed organisations and allow for the seizure of a proscribed organisations' assets. Such powers will apply to "overseas terrorism", once the power to proscribe organisations is extended to overseas groups.

Another significant recommendation of Lloyd's is that the police should be given the power to seize cash from a person when they have a reasonable suspicion that "the cash is for use in terrorism". This is similar to the power available to customs officers under the Drug Trafficking Act which allows them to seize cash amounts exceeding £10,000. Lloyd says that police officers should confiscate the cash and that the threshold amount should be just £2,500.

Overall, Lloyd presents very little evidence to justify either the existing powers or the proposed new ones. He is "almost certain" that the powers have a deterrent effect, thereby reducing the flow of funds to proscribed organisations. Certainly, few convictions have been obtained under the existing powers. Lloyd reports that in the last ten years, only five people have been charged in Britain with "giving or receiving funds or property for terrorism", resulting in three convictions. In Northern Ireland 173 people were so charged, but somewhat mysteriously, the number of those convicted is not known.

Meaning of Life

A number of retired military men, including Sir David Scott-Barrett and Major General Murray Naylor, are spearheading the Scots Guards Release Group which is campaigning for the release of two soldiers given life sentences for murdering 18-year-old Peter McBride in 1992. McBride, a Catholic, was shot dead in North Belfast a few days after a Scots Guardsman had been killed by a sniper in the same area. According to the *Sunday Telegraph* (2.3.97), the release of the soldiers, Gulf war veteran Jim Fisher and Mark Wright, is "imminent". Forty MPs have signed an Early Day Motion calling for the release of the two men. The campaigners' argument is that other British soldiers given life sentences (such as Ian Thain and Lee Clegg) have been released from life sentences after a few years, so on grounds of "precedent" and "natural justice", the same should apply to Fisher and Wright's "tragic misjudgment".

At their trial and subsequent appeals, the soldiers produced the standard defence that they thought McBride was acting suspiciously and was carrying a semtex coffee jar bomb. Justice Kelly was not impressed and concluded, "this was not a panic

situation which required split-second action, or any action at all". At Christmas, the Northern Ireland High Court ruled that the soldiers' case should be reviewed by the Northern Ireland Office's Lifer Review Board.

On 17 April, the Guardsmen were informed that Mayhew had decided to refer their cases to the October 1997 meeting of the Review Board. Explaining the decision, the Northern Ireland Office said that life sentence prisoners normally have their first review after serving ten years. But in the case of Fisher and Wright, "there are exceptional mitigating factors... [including] the difficult circumstances in which the soldiers were operating in the course of their duty and the fact that there was no premeditation".

Howard's last defeat

Home Secretary Michael Howard's ruling that two IRA men, Tommy Quigley and Paul Kavanagh, should spend the rest of their lives in prison, has been overruled by a Belfast high court judge (23 April). The prisoners were transferred to Northern Ireland on a temporary basis which means that they remain under the jurisdiction of the British Home Secretary rather than the Secretary of State for Northern Ireland. They challenged Howard's refusal to grant a permanent transfer on 9 April but were not successful. When first sentenced in England in 1985, Quigley and Kavanagh were given life sentences and the judge made a recommendation that they serve 35 years. This was increased by David Waddington to 50 years, followed by Michael Howard's decision that "life should mean life". The two men argued successfully in the Belfast court that Howard's decision was flawed because he had failed to consult the original trial judge.

Justice for Diarmuid O'Neill campaign

A Justice for Diarmuid O'Neill campaign has been launched and is calling for an independent inquiry into his death at the hands of Scotland Yard's Tactical Firearms Group (SO19). O'Neill was shot six times by 2 officers from the squad, in what police described as a "shootout", when armed police carried out a raid on a house in Hammersmith, west London while searching for members of the IRA. However, subsequent reports that O'Neill, and others in the house, were unarmed have raised questions about a police shoot-to-kill policy. The campaign has raised 5 points that they would like to see an inquiry cover: i. Who was responsible for the decision to shoot Diarmuid?, ii. Why did the police give an inaccurate press briefing claiming that he was armed?, iii. Why was he not asked to attend a police station to answer questions?, iv. Why was Diarmuid's brother, Shane, held for five days before being released without charge? and v. Why was Diarmuid's partner, Karmele, prevented from returning to her home for almost 3 months? The campaign can be contacted at: BM Box D O'Neill, London WC1N 3XX.

Northern Ireland - new material

Failure to account?, Keith Bryett. *Policing Today* Volume 3, No 1 (March) 1997, pp22-25. This article argues against a police authority for Northern Ireland and advocates two alternatives: i. "...place the RUC in some type of relationship with the Secretary of State for Northern Ireland..." or ii. "...place a group of qualified, professional people between the police and government."

Here to stay, here to fight. *CARF* 36 (February/March) 1996, pp10-11. This article considers the situation of the unacknowledged Chinese, Indian, Pakistani and Traveller communities in northern Ireland. The

four communities established the Northern Ireland Council for Ethnic Minorities in an attempt to raise awareness.

Statistics on the operation of Prevention of Terrorism legislation: Great Britain 1996. *Home Office Statistical Bulletin* (Research & Statistics Directorate) 4/97, 18.3.97. Latest PTA statistics bulletin.

CAJ commentary on 1996 Primary Inspection report by Her Majesty's Inspectorate of Constabulary with reference to the Royal Ulster Constabulary. Committee for the Administration of Justice, 45/47 Donegall Street, Belfast BT1 2FG. March 1997, 8 pages.

Just News. Committee on the Administration of Justice Vol. 12, no. 3 (March) 1997. This issue contains articles on Bloody Sunday, ethnic minorities, miscarriages of justice and human rights. Available from CAJ, 45/47 Donegall Street, Belfast.

Global perspective for Royal Ulster Constabulary's Communications systems. *PITO News* Issue 3 (February) 1997, pp4-5. Piece on the RUCs "developing multi-million pound communication network."

Parliamentary debates

Prevention of Terrorism *Commons* 5.3.97. cols. 917-960

Prevention of Terrorism (Temporary Provisions) Act 1989 (Continuance) Order 1997 *Lords* 10.3.97. cols. 9-22

PRISONS

UK

M25's Raphael Rowe on hunger strike

Raphael Rowe, one of the M25 Three, who was jailed after a series of violent robberies that left one man dead in 1988 (see *Statewatch*, vol 2, no 6, vol 3, nos 2 & 4), has started a hunger strike at Maidstone prison. He decided to refuse food after Home Office ministers reneged on promises to refer his case to the Court of Appeal. Raphael's case for appeal has been under review since 1994, and he was given assurances that it would be dealt with before the new Criminal Cases Review Commission (CCRC) took over on March 31. However, the Home Office went back on their promise and has informed Raphael that his case has been passed to the new body, which "inevitably means there will be some further delay before a decision is made on your representations..." Members of the M25 Three Campaign believe that the move is a cynical government manipulation designed to appease the law and order lobby in the run-up to the general election. The M25 Three Campaign can be contacted at: 28 Grimsel Path, London SE5 0TB; Website: <http://www.geocities.com/CapitolHill/3027>.

M25 Three Newsletter (undated); *South London Press* 28.2.97., 2 & 11.4.97; *Guardian* 4.4.97.

Prison ship sails into Victorian England

Dickensian England went on show with the arrival, at Portland Harbour, Dorset, of a US prison ship intended to alleviate chronic overcrowding in the UK's prisons. The floating anachronism, which will be known as HM prison Weare, arrived in March and will begin taking the first of nearly 500 prisoners in May, although delays are predicted. The ship has been almost universally condemned by local residents, businesses, the Tourist Board and campaigners. It has been staunchly defended by Prisons Minister, Ann Widdecombe, and also won the backing of

the Labour Party shadow Home Secretary, Jack Straw, both of whom presumably see it as a sound return to Thatcherite "Victorian values".

In New York, American authorities expressed their delight as they have been trying to get rid of the "rotting hulk" for twelve years, but had been unable to find anyone gullible enough to buy it. Since its arrival concern has been expressed about its safety, particularly concerning fire risks and emergency access. It is also believed that the lower decks are so dark and claustrophobic that they will not be used to house inmates. Although prison ships have not been used since the nineteenth century, unconvicted Republican detainees were held on the HMS Maidstone in Belfast Harbour during the 1970s and in 1987 immigration detainees were held on board the Earl William off Harwich, Essex. It is perhaps worth noting that eight of the Republican detainees on HMS Maidstone made a legendary escape and the Earl William went adrift during a hurricane.

Prisons - new material

Mothers in prison, Diane Caddle & Debbie Crisp. *Research Findings* (Home Office Research & Statistics Directorate) No. 38 1997, pp4. This report notes that "Information about the number of mothers in prison is not routinely collected by the Prison Service." It reports the latest (1994) results of a survey of female prisoners.

Prison Privatisation Report International no 7 & 8 (February-March) 1997. Issue 7 has articles on Lockheed Martin, the UK subsidiary of the US company that was found guilty of bribery in 1995, and is part of a consortia bidding for Prison Service work, Wolds prison and the Private Finance Initiative. Issue 8 includes a piece on the brutal treatment meted out by the Corrections Corporation of America (which owns UK Detention Services Ltd that runs Blakenhurst prison) and reports from the UK, USA, Canada and Australia.

Action Against Injustice Newsletter Issue 1 (Spring) 1997. AAI has been in existence for a year and takes-up cases of wrongful imprisonment and police brutality with the aim of building "links between various individuals and groups campaigning for justice." The first issue covers the Whitmoore escape, the M25 campaign and other cases. Available from PO Box 858, London E9 5HU.

Prison sentence calculation, Simon Creighton & Fidelma O'Hagan. *Legal Action* February 1997, pp15-17. The authors explain that law on calculating the length of prisoners' sentences and release dates in the light of recent judgements.

Projections of long term trends in the prison population to 2005, David Turner, Sheena Gordon & Iqbal Power. *Statistical Bulletin* (Home Office) Issue 7/97 (April) 1997. Predicts that the total prison population will increase to 74,500 (from 55,300 in 1996) by the year 2005. Broken down these projections give the following figures: Adult males - 47,500 (from 34,800); male young offenders - 9,900 (from 6,500); remand prisoners - 13,700 (from 11,500) and female prisoners - 3,500 (from 2,300).

Let the punishment stop the crime, Sir Stephen Tumin. *Times* 28.3.97. Feature article by the former judge and HM Inspector of Prisons which notes how Britain punishes convicted criminals more harshly than other European countries: "In Europe sentencing is concerned with what may be just. Here...we are no longer concerned with justice for the individual."

Grieving twin fights police for answers, David Rose. *Observer* 2.3.97. Detailed account of the brutal death of Leon Patterson whose bloody and battered body was found in a prison cell after six days in the custody of Greater Manchester police (see *Statewatch* Vol. 6, no. 6). Nearly 5 years after his death and one policeman has been "informally disciplined by way of advice".

Deaths in prison 1996. *Prison Watch* February 1997. Detailed breakdown of deaths in prison during 1996, which includes a breakdown by category (ie: Young Offenders, Women, Lifers) and a breakdown of deaths in prison in 1997.

Prison Watch. Press releases 191-193 (February-March) 1997. These press releases cover the self-inflicted death of Katherine Woods (Hmp Risley 19.8.96.) and the inquest into Philip Wood (who died at Hmp Glen Parva, 19.10.96). Release 193 deals with the "unprecedented rise in suicides of young offenders" (5 in the first two months of 1997) and calls for "a drastic reduction of youth imprisonment."

Special security Units: Cruel, inhuman or degrading treatment. Report by Amnesty International on the UK Prison Service use of Special Security Units (SSUs). March 1997, 10 pages.

Parliamentary debate

Prisons (Alcohol Testing) Bill *Commons* 28.2.97. cols. 529-551

LAW

UK

Injunctions SLAPPED on Protesters

Companies are making increased use of court injunction as a method of preventing protest. SchNews, an activist bulletin based in Brighton, has analyzed a trend that apparently started in the USA (where it became known as SLAPPING-Strategic Lawsuits Against Public Participation) and has since been a prominent weapon in the arsenal of companies and Government in the UK.

Among those who have suffered from this new fashion are 76 people involved with the Twyford Down anti-roads protests, who have been served with injunctions by the Department of Transport preventing them from entering the construction site or interfering with work in any way. Disregarding these terms would result in sentences of up to six months in jail. Eight people who have disregarded these injunction have since been given jail sentences.

Other victims include 30 Newbury anti-roads protesters who have been served with injunctions preventing them from trespassing on any part of the route of the proposed bypass or "interfering with work". One person is currently in jail following the breaking of this injunction.

Extreme cases of this trend include 13 people who have been served with a lifetime injunction by British Aerospace preventing them from interfering with their business in any way, even by leafleting or speaking at a public meeting. Another victim was long-time peace activist Lindis Percy, who has recently completed a nine month sentence after breaking an injunction that stopped her from entering RAF Lakenheath.

SchNews advises anyone who needs help dealing with injunctions to contact EarthRights Environmental Law Centre, The Battlebridge centre, 2-6 Battlebridge road London N1 2TL.

SchNews 14.3.97

Animal rights activists charged

Animal rights activists together with supporters of the Green Anarchist magazine are currently facing charges of unlawfully inciting persons unknown to commit criminal damage. Not only are the persons unknown, but when and where these crimes were committed are also apparently unknown.

Simon Russell and Robin Webb, both ALF members, together with four activists from Green Anarchist, have been charged in connection with articles, internal bulletins and leaflets written in connection with their publications. In one case, that of Robin Webb, the evidence against him is based on a press release together with television and radio interviews he participated in.

Charges against other defendants are based largely on the fact that they reported ALF activities without condemning them. In the words of the case summary prepared by the prosecution "there was overt incitement not only through the pages of the publications...but also through the medium of literature encouragingly reviewed by them...and further by other means such as the promotion of T-shirts and videos advocating the use of direct action."

Activists supporting the "Gandalf" campaign are claiming that what is at stake is an attack on free speech. They state that "this case is about the state not wanting the general public..to know about the abuse, corruption and exploitation carried out by them in so many areas of your lives". If convicted the defendants could face prison sentences of up to ten years.

For further information, donations and statements of support contact Gandalf Defendants Campaign, PO Box 66, Stevenage, SG1 2TR

Law - new material

The Crime (Sentences) Bill. *Penal Affairs Consortium* February 1997, pp23. This report analyses the Provisions of the Bill which provides for automatic life sentences on a second conviction for a serious violent or sexual offence, a 7-year minimum sentence for third-time dealing in Class A drugs and a three year minimum for third time burglary. It concludes that mandatory sentences will damage the interest of crime victims.

Time intervals for criminal proceedings in Magistrates' Courts: October 1996. Lord Chancellor's Department. *Information bulletin* 1/97 (March) 1977. Results from the third 'Time intervals Survey (1996)' which covers indictable offences completed in magistrates courts.

Court order, Neil Addison. *Police Review* 28.2.97. pp26-27. This article discusses the "lawless attitude among defendants and their supporters in court" and advocates "a uniformed sheriff officer service based on the British Columbia model, with officers having full police powers" to deal with it.

Public order review, Jo Cooper. *Legal Action* February 1997, pp13-15. This piece reviews trends in public order and arrest cases.

The Law. Issue 9 (January-March) 1997. The latest issue contains articles on the Police Bill, the McLibel trial, the Disability Discrimination Act 1995 and the death penalty in Jamaica.

Parliamentary debates

Criminal Evidence (Amendment) Bill *Lords* 10.2.97. cols. 105-112

Crime and Punishment (Scotland) Bill *Lords* 11.2.97. cols. 187-236

Crime (Sentences) Bill *Lords* 13.2.97. cols. 332-381

Crime (Sentences) Bill *Lords* 13.2.97. cols. 398-446

Jurisdiction Bill *Commons* 14.2.97. cols. 523-573

Crime (Sentences) Bill *Lords* 18.2.97. cols. 555-622

Crime (Sentences) Bill *Lords* 18.2.97. cols. 633-678

Crime (Sentences) Bill *Lords* 20.2.97. cols. 817-842

Crime (Sentences) Bill *Lords* 20.2.97. cols. 864-894

Delay in the Criminal Justice System: Review *Lords* 27.2.97. cols. 1278-1292

Crime (Sentences) Bill *Lords* 27.2.97. cols. 1295-1338

Crime (Sentences) Bill *Lords* 27.2.97. cols. 1354-1408

Crime and Punishment (Scotland) Bill *Lords* 4.3.97. cols. 1706-1772; *Lords* 4.3.97. cols. 1792-1834; *Lords* 6.3.97. cols. 1982-2026; *Lords* 6.3.97. cols. 2043-2086; *Lords* 10.3.97. cols. 25-74; *Lords* 10.3.97. cols. 90-156

SPAIN

Quota system takes effect

On 17 February the immigration quota system took effect, permitting up to 15,000 people to obtain work in Spain. The system was last applied in 1995, when it was fiercely criticised by the Office of the Public Defender, among others, on the basis that some applicants were required to return to their countries of origin before their visa application would be processed, and because it stipulated preferential areas of employment for particular nationalities (domestic service for people from Peru, the Dominican Republic and the Philippines, and agricultural labour for Moroccans). The limit of 15,000 places was described as inadequate by trade unions and voluntary organisations. The government has stated that it will review the quota figure periodically with reference to the demands of the labour market.

Clandestine migrants killed

A lorry transporting clandestine immigrants to Italy crashed at Girona on 16 March, killing 11 Maghrebi migrants. A survivor of the crash testified to the investigating magistrate that he had paid Ptas 620,000 for the journey.

UK

Gay couple can stay together

The UK Home Secretary, Michael Howard, has ruled that a gay couple can stay together by giving Anders Da Silva, originally from Brazil, leave to remain in the UK for 12 months while his application for permanent residency is considered. Supporters of the couple are hailing this as the triumphant end to a three year campaign.

The story first came to national prominence in 1994 when Da Silva's partner, Mark Watson, was found guilty of forging Da Silva's immigration papers and jailed for six months. Da Silva was deported and when Watson was eventually released he set out to find a legal way to be reunited with his partner. Eventually Da Silva re-entered the country through Ireland and the couple applied for leave to remain together.

The Home Office turned down their request and labelled Da Silva an "undesirable". However when they took their case to appeal the immigration adjudicator found in their favour and told the Home Office to re-examine the case.

Although good news for the couple, this case does not appear to set any precedent. A spokeswoman for the Home Office stated: "When the Home Secretary acts with discretion outside immigration rules there must be literally exceptional circumstances. It's not used very often."

Current immigration legislation only allows heterosexual married couples the right to apply to stay in the UK. The newly-elected Labour government is however committed to evaluating all immigration cases without regard to their sexual orientation.

Pink Paper 18.4.97

NORWAY

Church refugees

33 people who have applied for political asylum but who have been denied permission to stay in Norway are still living in church asylums. Several Kosovo-Albanians have spent four years living in churches and cannot leave as they do not have travel documents from their country of origin. Asylum-seekers from nine countries are living in 25 churches around Norway. Former Minister of

Justice, Anne Holt, granted an amnesty to church asylum-seekers on 9 December last year for families with children, which implied the permission to remain in Norway. Three children have taken refuge in churches since then but will not be included in the amnesty.

Dagbladet, 21.4.97.

Immigration - new material

Recent developments in immigration law, Rick Scannel, Jawaid Luqmani & Chris Randall. *Legal Action* March 1997, pp21-28 1997. Latest update includes the effects of the new compulsory application forms scheme for in-country applications and gives details of recent refugee cases, including that of Karamjit Singh Chahal's case in the European Court of Human Rights.

No One Is Illegal. Greater Manchester Immigration Aid Unit No. 20 (Winter) 1997, pp4. This issue of the newsletter contains a feature on "immigration law and the non-nuclear family". Available from GMIAU, 400 Cheetham Hill Road, Manchester M8 9LE.

The Threshold of the Intolerable. Report on the situation of foreigners and asylum seekers in France, International Federation of Human Rights Leagues, November 1996, pp.29.

Sans-papier: Chroniques d'un mouvement, Co-édition IM'média/Reflex, Paris, 1997, pp.128. ISBN 2-9507124-2-8, FF50,-. Reports, background information and analysis of the *sans-papier* movement March-December 1996 in France.

A Migration Policy for the Future. Possibilities and Limitations, Jeroen Doornik, Rinus Pennix, Hans van Amersfort, Migration Policy Group Brussels/University of Amsterdam, 1997, pp89. Analysis of migration policy in the Netherlands in the last two decades.

Parliamentary debate

Asylum Seekers *Commons* 5.3.97. cols. 837-858

more than 100,000 controls every year, that was "an exaggeration" and that: "The system which we have concerns only relatively speaking a small number of posts" (Verbatim record from the Hearing, 10 October 1983, tape 13/5 and 15/1). "Not even the total number of matters concerning appointments (initial personnel checks as well as follow-up checks) per annum and where information is handed out amounts to anywhere near this figure." (Department of Justice in a letter to the Commission, dated April 12 1984, dnr 1319-83). On 20 June 1990 the so-called Sepo commission published the real figures; in 1989 more than 410,000 services were subject to vetting procedure, following the Swedish personnel control ordinance, and more than 120,000 checks were made the same year. In 1991 there were 87,816 checks, in 1992 215,251 and in 1993/94 133,249 (*Governmental Official Reports*, SOU 1990:51 and 1994:149). The figures, the lawyers say are astonishing, not least because the former Minister of Justice claimed in 1985 that there had been extensive work on reducing the number of checks and services subject to the personnel control system (Minister of Justice Wickbom on Swedish Radio news, 1 August 1985). The Government had simply lied about the figures.

The second question on the outcome of the trial was the question of whether the system "was in accordance with law". The main discussion here focused on article no 13 of the personnel control ordinance, regulating the checked person's right to defend themselves. This article was changed, 10 days before the hearing before the European court on 10 October 1983, after the Government had been forced to admit that the former rule had never been applied. Leander's lawyers claimed that the change meant that in practice the new paragraph excluded the communication of any substantive information to the person being checked. The Government said: "Mr Töllborg alleges that the exception from the main rule more or less neutralises the latter. That is certainly not correct." (Department of Justice in a letter to the Commission, dated April 12 1984, dnr 1319-83). Once again this is untrue. The paragraph was studied by the so-called Sepo commission in SOU 1990:51. The commission unanimously stated that: "The fact that this rule in the personnel control ordinance gives the impression that the main rule is that the controlled person is to be given the facts of the case, when the truth is that in practice it's the reverse, must be said to be very questionable" (page 265: "Redan det förhållandet att regeln i PKK ger sken av att kommunikation med den kontrollerade skulle vara huvudregel, nSr det i praktiken Sr nSr mast tvSrtom, Sr Sgnat att inge betSnkligheter.")

On the central facts the Government intentionally lied. Töllborg, for Leander, has written to the court saying: "in view of the fact that Mr Leander lost by four votes against three and the Swedish judge was aware of the lies, we ask for a new trial. I do think - not in the least regarding that the Government's later claim that the European Court and the Commission has said that there are no problems with the Swedish personnel control system - it's necessary that a trial is based on the true merits of the case. The outcome of the case is a great injustice against Mr Leander."

Referral by lawyers, Gothenburg, 4 April 1997; Leander Case 26 March 1987, Series A, Vol 116, Commission application 9248/81.

SPAIN

CESID papers declassified

The Supreme Court on 22 March announced its decision to request the declassification of 13 documents sought by magistrates in connection with the various ongoing investigations into the GAL affair. Only the Socialist Party, the PSOE, has criticised the decision. On receiving the request the recently-installed conservative government supplied not only the specified documents but others which had not even been requested.

SECURITY & INTELLIGENCE

SWEDEN

Leander case referred to court

On 4 April lawyers, Professor Dennis Töllborg and Ek dr Krister Sundin referred the *Leander* vetting case back to the European Court of Human Rights asking for a new trial.

In the *Leander* case - which Mr Leander lost by four votes against three, with the chairman voting for him and the Swedish representative against - the central question was if the Swedish vetting system in its practice was: a) strictly necessary regarding national security and b) in accordance with law. Two factual circumstances, where the Government and Mr Leander diverged in their description of the system in practice, were decisive in deciding the outcome of the dispute.

The first was the extension of the vetting procedure. Mr Leander - who was dismissed as a carpenter from a public museum because he was regarded as a security risk - claimed that the extension of the vetting procedure clearly went beyond the limits of what can fairly be said to be necessary for defending national security. According to Mr Leander the vetting procedure included more than 185,000 different jobs and there were more than 100,000 checks every year, a remarkably high number considering that the total population is just over 8 million citizens. The Government claimed that the real figures had to be kept secret in interest of national security (Verbatim record from the Hearing, 10 October 1983, tape 15/4). However, the Government did say that when Mr Leander said that there were

Security - new material

Sophisticated MI5 operation exposed. *An Phoblacht/Republican News* 20.3.97. p3. Account of British intelligence recruitment of former Armagh Sinn Fein councillor, Seamy Harte.

O'Callaghan - the truth, Brian Campbell. *An Phoblacht/Republican News* 6.3.97. pp10-12. Substantial piece on former IRA member and informer, Sean O'Callaghan, that examines his life before he became a media superstar.

MILITARY

FRANCE

Cost of military action in Africa

According to the Defence Ministry military action in Africa cost France well over Ffr 1 billion (\$180 million) last year or more than 20 per cent of the money which the French laid out for foreign operations. The interventions in the Central African Republic to quell a series of army mutinies and operations in Chad to help the latter revamp its armed forces cost a total of Ffr 985 million. In all 2,590 French soldiers served in operations in the two countries last year.

In addition France supervised a truce between Eritrea and Yemen after it had mediated their dispute over islands in the Red Sea. Acting for the UN, France deployed warships and reconnaissance aircraft around the disputed islands. The outlay for Africa compared with a total of Ffr 4.1 billion expenditure on all of France's overseas operations, a rise of 23 per cent on the 1995. Two thirds of the total went towards operations in former Yugoslavia. Altogether 13,600 French soldiers served abroad under the UN or French flag last year

Jane's Defence Weekly, 2.4.97.

WEU

EU uncertain about NATO enlargement

The results of recent surveys by the US Information Agency show that the public in France, Germany and Britain express increased scepticism about the benefits of NATO enlargement. In 1996 majorities in France (56%), Germany (61%) and Britain (66%) thought enlargement would be beneficial. Now the numbers are 39% for France, 38% for Germany and 42% for Britain. When asked how they should vote in a referendum to include a series of countries in NATO, fewer than half say they would vote in favour of admitting any one country. Majorities in France (60%), Germany (73%) and Britain (66%) think the West "should not move too quickly on expanding NATO because Russia feels threatened by NATO expansion and the West's relations with Russia could worsen as a result."

European Opinion Alert, USIA Office of Research and Media Reaction, 7.2.97.

SPAIN

Congress seeks prohibition of anti-personnel mines

The Congress of Deputies on 25 February voted unanimously to call on the government to prepare a parliamentary bill to prohibit the manufacture and export of anti-personnel mines and similar

weapons. The vote was the outcome of a Campaign for Transparency in the Arms Trade, a coalition involving Amnesty International, Greenpeace, the Catalan human right group Intermon, and Médicos sin Fronteras, the Spanish counterpart of Médecins sans Frontières.

Military - new material

France is determined to play a central role in Europe's defence. J A C Lewis, *Jane's Defence Weekly, 12.2.97.* Nothing in the recent Franco-German military accord is new, but it symbolizes the determination of Paris to improve relations with Bonn.

Ballistic missile defence "should be NATO-wide". Joris Janssen Lok, *Jane's Defence Weekly, 5.3.97.* According to Luftwaffe officers at the Airpower conference in London, an alliance wide missile defence capability is needed to defend NATO against ballistic missiles from its southern and southeastern neighbours.

US Special Ops Forces head for mainstream. Barbara Starr, *Jane's Defence Weekly, 12.3.97.* Documentation about the US Special Operations Command (SOCOM)

Italian Navy steps up its fleet integration. Paolo Valpolini, *Jane's Defence Weekly, 9.4.97.* Briefing about the Italian Navy that has been active during the recent Albanian crisis and supports the NATO Stabilization Force in Bosnia.

Spain - Regular forces at the centre of new policy. David Ing, *Jane's Defence Weekly, 26.2.97.* Overview article about the Spanish armed forces in a process of professionalisation.

Les forces francaises d'outre-mer (2) [French overseas forces]. Yves Debay. *Raids-Magazine, no 129* February 1997. Second part of a dossier about the units of the Southern Indian Ocean.

Le dispositif militaire francais en Afrique [The french military deployment in Africa], Eric Micheletti. *Raids-Magazine, no 130, March 1997.* The military cooperation missions in more than 20 African countries.

Le groupement de commandos parachutistes [The paracommandos group], Eric Micheletti. *Raids-Magazine, no 131, April 1997.* Dossier about this French unit for long distance airborne covert intelligence missions.

Extending the Nuclear Umbrella: Undermining the Nuclear Non-Proliferation Treaty. *BASIC Notes, 7.2.97.* Two proposals currently under discussion, would undermine the NPT if implemented: NATO's current nuclear posture that requires participation by European allies in command, control and consultation arrangements on nuclear weapons, and the French "Eurobomb" proposal.

Much ado about nothing? Martin Butcher. *BASIC Reports, no 56, 11.2.97.* The wording in the Joint Franco-German Security and Defence Concept on common EU defence is vague enough that Bonn and Paris can claim to have moved the other. The single most striking issue addressed in the agreement is that of nuclear deterrence.

Wer bekommt das Kommando? Transatlantisch Streit um **Militarinterventionen von NATO und WEU** [Who gets command? Transatlantic struggle on military interventions of NATO and WEU], Ralf Bendrath. *AMI, 1997/2.*

Daten und Fakten zur Militarisierung der Bundesrepublik Deutschland [Data and facts on the militarization of the German Federal Republic]. *AMI, 1997/3.* Special issue of this German antimilitarist bulletin with articles on out-of-area operations of the Bundeswehr, military procurement, NATO and WEU, the German police, the foreign intelligence service (Bundesnachrichtendienst) and military expenditure.

Das Führungszentrum der Bundeswehr [Operation centre of the federal armed services], Claus Rosenbauer. *Europäische Sicherheit, 1997/2.* Descriptive article on the new headquarters for German foreign military intervention.

Draft Report on the formulation of perspectives for the common security. Rapporteur: Mr. Leo Tindemans, 26.2.97. European

Parliament, Committee on Foreign Affairs, Security and Defence Policy, The draft report stresses that “the inclusion of an economic security clause in the Treaties would give the European Union the means to act when the security of its supplies is threatened.”

Immerwährende NATO-Integration, Neutralitätsbrüche, Militarisierung Europas (Everlasting NATO-Integration, breach of neutrality, Europe's militarisation), ZOOM, no 1/2, 1997, pp98. Special issue on Austria's creeping integration into NATO and WEU, and the resistance against this development, including articles on the EU's Common Foreign and Security Policy, the Baltic and Scandinavian states.

Komt Er Een Europees Atoombom? Karel Koster. *AMOK*, vol 6 no 1, 1997. Dutch language article on the growth of European military structures, including a possible European atomic bomb.

Ministry of Defence Review of Ethnic Minority Initiatives (Final Report). Analysis of existing Equal Opportunity policies in the UK armed forces, together with suggestions for improving policy based on current best practise. It includes reasons given by the services for the under-representation of black people in their ranks. The Royal Navy, for instance, explains the relative absence of Asians in the Navy by claiming that they “don't like water”.

UK gunrunner's gold kills millions, Ron Huzzard & Margaret Paterson. *Voice of the Unions* November 1996, pp4-5. Useful article on the arms trade that calls for a reduction in Britain's military spending and dependence on arms exports.

Parliamentary debates

Royal Air Force *Commons* 6.2.97. cols. 1159-1238

NATO *Commons* 26.2.97. cols. 257-276

Armed Forces: Medical Provision *Lords* 5.3.97. cols. 1937-1960

NATO: Eastward Expansion *Lords* 14.3.97. cols. 619-642

POLICING

IRELAND

Police take to the streets

For the first time in the history of the Irish state, the Garda Síochána mounted a protest march through the streets of Dublin on 17 April. The 700 turnout was poor, however, with participants making it clear that they were “off-duty”. There are about 8,500 Gardai who are split between the Garda Representative Association and the break-away Garda Federation which has around 2,500 members, drawn mainly from the Dublin area. At one stage the dispute with the Department of Justice over pay threatened to escalate into a one-day strike, but two weeks prior to the demonstration, middle management support for the action was withdrawn. The Justice Minister, Nora Owen, has already said that she will not set up a pay commission to examine Garda pay. Instead, she is threatening to introduce legislation dissolving the GRA and Federation, and establishing a new staff association.

Irish Times, 17 & 18.4.97.

NETHERLANDS

Police cooperation formalized

In February 1997, the police forces of Nordhorn (Germany) and Twente (The Netherlands) signed an agreement to formally cooperate in patrolling, providing assistance during emergencies, arresting criminals and exchanging information. In the border towns of Denekamp and Nordhorn, German and Dutch

constables will frequently patrol together. The formal police powers while patrolling “over the border” remain limited however: writing tickets independently is not allowed, and the use of guns is only permitted in real self-defence.

Changes promised in NSIS

Minister of Justice, Mrs Winnie Sorgdrager, has promised parliament that she will introduce significant improvements in the operation of the Dutch part of the Schengen Information System (National SIS). The Algemene Rekenkamer (General Accounting Office) had earlier criticised the system, because the various NSIS users in the country entered their data in many different ways, if at all. At Schiphol national airport, only 65% of the non-Schengen travellers appeared to be checked through the SIS databank, and the situation in the sea harbours was reported to be even worse. New nation-wide guidelines have been introduced to try and ensure uniform data-entry procedures, and a commission has been charged with investigating the situation at the borders.

Schengen rule invoked

The Koninklijke Marechaussee (Kmar, Gendarmerie) “flying squads” operating behind borders under the new Schengen regime stopped 26,110 aliens in 1996 who attempted to enter the Netherlands without valid papers. They were returned to Belgium and Germany. The number of confiscated forged travel documents rose from 2,530 in 1995 to 5,810 in 1996. The flying squads, or *Mobiel Toezicht Vreemdelingen* (MTV, Mobile Monitoring of Aliens) consist of 480 marechaussees who last year checked 767,000 people in cars, trains and ships entering the country. The Kmar expect to increase the effectiveness of border controls at Schiphol airport in 1997 by introducing machines that can automatically read passports and check the Schengen Information System.

On the weekend of 5-6 April (12.00 on Saturday to 17.00 on Sunday) the Dutch police and Koninklijke Marechaussee border guards stopped about 1,500 Turkish and Kurdish people from entering the country. This appears to be related to an unsolved arson attack in The Hague on March 26, in which six members of a Kurdish family died. For the first time the Dutch government used a clause in the Schengen Agreement, Article 2 para 2, which enables it to refuse entry to selected groups of people on grounds of national security or public order. It seems that this is the first time that a country under the Schengen Treaty systematically refused entry to a selected category of people based on nationality. While many of the refused persons did not carry valid ID's, always a ground for refusing entry, Dutch MPs have voiced concern over the closure of the national borders for a selected category of people.

Policeman on corruption charge

The chief of the Dutch Criminele Inlichtingen Dienst (Criminal Intelligence Service, CID), Mr A.D, has been suspended for the last three months following accusations that he leaked highly confidential information concerning the cannabis trade to the chief suspect in a case. This was confirmed to the *NRC Handelsblad* by the Korps Landelijk Politie Diensten (National Police Services Corps, KLPD). A spokesperson told the *NRC Handelsblad* that the accusations date from the end of 1996. The case against A.D. became so serious that the public prosecutor eventually asked the Rijksrecherche (National Detective Agency) to mount a formal investigation.

This is the second time within a couple of months that the KLPD has been embarrassed. Last December it became known

that burglars had been able to spend hours on a break-in without being disturbed, removing a large amount of sensitive information. The lawyer representing A.D. has however denied that there is any link between the two events.

NRC Handelsblad Weekeditie 1.4.97

Fans target of new law

The Dutch Ministry of Justice has announced plans for a new clause in public order legislation that would focus on football "hooligans". The new law would create a new charge of "deliberate participation in an assault or fight". The idea behind this new clause is that it would enable everyone participating in a fight to be arrested and charged, removing the need for more detailed new legislation. This new change is the first consequence of the mass brawl between Ajax and Feyenoord supporters that took place on the 24 March in Beverwijk, which led to the death of an Ajax fan. The government has declared its intention to produce further legislation to deal with football violence.

NRC Handelsblad weekeditie 1.4.97

BELGIUM

Dutroux report condemns police

A parliamentary report into police handling of the Dutroux enquiry has concluded that there were severe errors in the way the Belgian police services carried out their investigations. The report also hints that there may have been a deliberate attempt to hide high-level protection for Dutroux, currently awaiting trial for multiple child murder and sexual abuse (see *Statewatch*, vol 7 no 1).

The parliamentary committee focused on the internal rivalries between the various police services and judicial authorities that led to a failure to share information properly. It claims that at least four children might be alive today if the various authorities had done their job.

The report also highlights the various missed opportunities and misuse of resources and criticises the high-handed manner with which the police and judiciary treated the families of the victims. A section of the report that asserts that "the committee finds it difficult not to conclude... that Dutroux and others might have received high levels of protection".

The report calls for sweeping reforms of the police and judicial establishment, including the creation of one federal police force to replace the multitude of agencies that currently police Belgium as well as the streamlining of the judiciary. These reforms were already being discussed by the Ministry for Home Affairs.

The allegations of high-level corruption and a cover-up are due to be reported upon in September. These will be of more concern both to the police and judiciary as well as an already shaky government reeling from a series of scandals and public unrest.

Independent 17.4.97

Ministry spied on peace activists

The Belgian Ministry of Defence has admitted that its military intelligence section ADIV (Algemene Dienst Inlichtingen en Veiligheid, General Intelligence and Security Service) regularly spies on peace activists. This was revealed in a written answer to Agalev-Ecolo MP Hugo van Dienderen last December.

Van Dienderen wrote to the ministry in November 1996 claiming that ADIV, whose official mandate is to collect

information about activities that constitute a threat to the integrity of national territory, national defence plans and to the execution of national military operations, was devoting an inordinate amount of time to the work of the "Forum voor Vredesactie" (Forum for Peace Action). "Forum Voor Vredesactie", who are linked to "International War Resisters" is a non-violent organisation, all of whose activities are well publicised before they take place. Van Dienderen points out that "it is hard to argue that such an organisation needs to be scrutinised".

In its reply the ministry admits that it "analyses the publications of the "Forum voor Vredesactie"". It also admits that, if any activities are planned by the Forum, these are followed by ADIV. The ministry states that anyone, whether they are a member of a pacifist organisation or not, who has "been noted for their opposition to the military infrastructure" will have ADIV files opened on them. The ministry also states that "all peace organisations who devote their attention to the army will thereby attract the attention of ADIV".

The ministry does however reassure any paranoid peace activist that the national defence plan, which specifically targets all black people living in Belgium as a threat to national security (see *Statewatch*, vol 6 no 4), has "no specific plans in the immediate future with regards to peace movements".

Parliamentary Answer House of Representatives, 4.12.96.

Police "witch hunt" against Moroccan youth

A youth centre in Mechelen, Belgium, has condemned what it describes as a "witch hunt" being carried out by local police and Rijkswacht officers against Moroccan youths after an incident when four Moroccan boys playing on the street were apparently menaced by a police officer waving a gun.

The incident occurred on 12 February when the four boys were walking home after leaving the "Rzoezie" youth centre. According to the youth centre a car pulled up and a policeman got out pointing a gun at the boys and demanded that they stop. Two of the boys ran away into some bushes, where they were found by an employee of the youth centre together with a police officer who was pointing his gun at the bushes where the boys were hiding. Apparently one of the boys had blond hair and the police officer had assumed that he was a Belgian youth who was being attacked by the other three.

"Rzoezie" claim that this is typical of the way Mechelen police officers behave. In a press statement they point out that "too often youths are picked up by the police, who then search and question them. The behaviour of the Mechelen police, who have intensified their patrols in the town centre is typified by a cowboy style as if they wish to intimidate Moroccan youths by their new "get tough" approach to public order.

"Rzoezie" put the blame for the aggressive approach of Mechelen's police services down to what they call "blind racism. They treat all Moroccan youths as violent criminals who must be made aware of who's in charge".

Solidair 16.4.97

SPAIN

Police rivals in armed clash

The ill-feeling between the police agencies of the Spanish State and the Basque Ertzaintza regional police force has intensified after shots were exchanged between patrols from either side in Bilbao on 28 February, shortly after the explosion of a car-bomb. The incident left one Basque officer and two members of the Civil Guard with bullet wounds, one of the latter having been

shot eight times, and it revived the debate about the lack of coordination among the various police forces operating in the Basque Country.

UK

Police blamed for clashes on march

In April nearly 20,000 people joined a march for social justice in support of Liverpool dockers, who were sacked 18 months ago after they refused to cross picket lines. The march, led by the Liverpool Dockers' Support Group and supported by the environmental group Reclaim the Streets, started in carnival fashion when it left south London, on route to the city. In Whitehall the march paused to jeer outside the Prime Minister's residence in Downing Street and a smoke-bomb was thrown, enveloping the area in orange smoke. Two protesters scaled a wall to climb into a Foreign Office building and threw papers to the crowd. This coincided with the intervention of several hundred riot police. The riot officers, some mounted, made repeated forays into the march, dividing it and provoking sporadic clashes before it was corralled into Trafalgar Square. Here, as a sound-system played in the middle of the Square, up to a thousand riot police led baton charges on those on the edges leading to increasingly violent clashes. Around 8pm police sealed off roads into Trafalgar Square and violently herded demonstrators towards Embankment underground station where further skirmishes took place on Waterloo Bridge. After the march Kevin Hargreaves, of the Dockers Support Group, claimed the violence was provoked by the police. He said: "We had an agreement there would be low policing. But on the day I was told that there would be a very, very heavy police presence. It was very, very provocative".

Police test water-propelled CS spray

Less than a year after the issue of CS gas spray canisters to the police a new water propelled spray is set to begin live trials. The new sprays, tested to military specifications by Paines Wessex, and touted as a "safer" product, will be tested in Surrey. Surrey and Hertfordshire police forces pulled out of tests of the sprays currently in use expressing concern over the MIBK chemical agent claiming that it was a "mutagen, a chemical which could possibly cause harm to an unborn foetus and future pregnancies."

Police Review 14.2.97.

Masons should reveal themselves

In March a Home Affairs Committee of MPs recommended that police officers, judges, magistrates, and Crown prosecutors should be required to register their membership of the freemasons or any other secret society. The Committee's recommendation follows an inquiry into freemasonry in the judiciary and the police. The report, which was opposed by three Conservative members of the Committee, is also expected to be opposed by the United Grand Lodge of Freemasons.

For the police the Association of Chief Police Officers (ACPO) has vowed not to sign up to a register condemning it as "an infringement of personal liberty", but the Superintendent's Association has backed it. The Police Federation, which represents 125,000 police officers below the rank superintendent, claimed that the recommendations were "flawed". The Lord Chancellor, Lord Mackay, was opposed to

forcing judges to own up to membership claiming that he did not feel that he had the authority to demand information from them. The report noted that there were nearly 350,000 masons, in 7835 lodges, in England and Wales.

Freemasonry in the police and the judiciary, House of Commons Home Affairs Select Committee (HMSO) 1996.

Policing - new material

PACE ten years on: a review of research, David Brown. *Research and Statistics Directorate* (Home Office) No. 49, 1997, pp4. On the Police and Criminal Evidence Act 1984.

The risk business, Steve O'Reilly. *Policing Today*, vol 3 no 1, March 1997, pp36-39. Detective constable in the Metropolitan Police Special Branch looks at the policing of Euro '96 and the surveillance of football fans.

Protest action, David Rangecroft. *Police Review* 21.3.97. pp22-23. Based on a talk by head of the Met's Public Order Branch, Ch Supt Mike Davies, this article identifies three areas that the police hope to develop in countering environmental protests: i. "greater sharing of information between forces"; ii. "develop[ment] of training and tactics...using technology where possible" and iii. "open[ing] channels to local authority planners, developers and builders".

Freemasonry and the police service. *Police* Vol. XXIX, No. 6 (February) 1997, p23. This article gives the Police Federation's view on freemasons in the police: "...totally committed to maintaining the integrity of the police service". Or to put it another way: "The Police Federation accepts that there is probably a significant number of our members who are freemasons, and we see no good reason why this should be a matter for censure."

Policing the global village, Marcia MacLeod. *Police Review* 7.2.97. pp24-26. Article on Interpol's 177 National Country Bureaux and the programme of modernisation "which will allow even developing countries to access its central database within minutes."

Making an impression. *Police Review* 7.2.97. pp28-29. This piece looks at the implementation of the National Automated Fingerprint Identification System (NAFIS) - "one of the largest information technology programmes in the UK".

Europa der durchlaessigen Grenzen, *Schriftenreihe der Polizei-Fuehrungsakademie* (Journal of the Police Academy), no 1, 1997, pp.147. Articles on internal security in Europe, international police cooperation in eastern and western Europe, Europol, problems of Schengen cooperation, France, Austria and Hungary written by senior official servants from the German and Austrian Interior Ministry, the German Federal Criminal Office and the Europol coordinator Jurgen Storbeck.

"Sie behandeln uns wie Tiere". Rassismus bei Polizei und Justiz in Deutschland ["They treat us like animals". Racism in the police force and the judicial system in Germany], *Forschungsgesellschaft Flucht und Migration Berlin/Antirassismusbuero Bremen*, 1997, pp.329. ISBN 3-924737-32-0, 18,-DM. This book is the result of the work of the anti-racist group in Bremen. Since 1991, members of the group have visited refugee camps in the area. They have documented the daily police harassment and abuse experienced by mainly African refugees. Based on reports by the refugees, the articles analyse this policy of criminalisation.

"Dutch Treat" - Formal Control and Illicit Drug Use in The Netherlands. Dirk Korff. *Thesis Publishers (Amsterdam)* ISBN 90-5170-396-4. Report on drugs use in the Netherlands and Government policy in response to this use. Main text is in English but the introduction and conclusion are in Dutch.

Parliamentary debates

Police Bill *Commons* 12.2.97. cols. 345-440

Police (Health and safety) Bill *Commons* 14.2.97. cols. 574-584

DENMARK

Combat 18 letterbombs reveal nazi network

The arrest of Danish members of the group linked to the neo-nazi Combat 18 in January has revealed a new network behind those responsible for four letterbombs mailed to addresses in the UK. The letterbombs were intercepted by the police which led to the arrest of five people during which one police officer was shot and injured. The five are all still in prison (see *Statewatch* vol. 7 no. 1).

The Danish anti-nazi organisation DEMOS, in a special issue of their magazine, looked behind the news stories to reveal the network which took over after anti-nazi demonstrations in 1994/95 stopped two distribution centres for nazi propaganda in villages close to the Danish-German border.

The new organisation is called NS 88 (National Socialism Heil Hitler - H being the eighth letter of the alphabet). NS 88 was established in spring 1994 and its main organiser is the Danish-German, Marcel Schilf. Along with the arrested members of the Danish Combat 18 group he too was taken in for questioning but released shortly afterwards. NS 88 is linked to the UK nazi music outfit, Blood and Honour, which is controlled by Combat 18. They also work very closely with the Swedish record company Wasakaaren RR/Ragnarock Records in Helsingborg.

According to DEMOS the establishment of NS 88 in Denmark signalled a break from earlier forms of propaganda - where traditional nazi ideas were presented in books, pamphlets and leaflets - to new forms of more youth oriented agitation. Central to the activities of NS 88 is the distribution of nazi music CDs and videos. This development follows on from the expulsion of the older, and more traditional, leadership of the nazi party, Danmarks Nationalsocialistiske Bevaegelse (DNSB) which was kicked out in 1992 after a "youth revolt". It was replaced by a younger generation which is less theoretically oriented, focusing on street actions and confrontations, to attract younger members.

The leader of DNSB, Jonni Hansen, has denied having any part in the Combat 18 letterbombs. DEMOS says, however, that DNSB is only a legitimate facade for the nazis and that "the dirty business" is "commissioned" to outfits working autonomously. A quote from the nazi paper "The Homeland" (no. 5, spring 1994), which echoes the UK Combat 18 policy of "leaderless resistance", shows this dual strategy:

We also need autonomous groups, in which only non-public national socialists can participate. The jobs are defined by the leadership. The most important principal of autonomy is, that one must keep quiet, ask no question and prepare oneself to discipline, sacrifice and perseverance.

NS 88 was established in 1994 - the same year that this was written.

Before the present leadership took over DNSB, the party was oriented towards, and cooperated with, continental European organizations. The previous leader, Riis-Knudsen, held high positions in the international nazi movement. But, according to DEMOS, the party never managed to establish strong relations with the UK. This changed after the youth take-over of the party. Contacts with British organizations such as Combat 18/National Socialist Alliance led to cooperation around demonstrations and participation in nazi concerts. It also led to commercial cooperation within the nazi music movement. The establishment of NS88 was the outcome. On a practical level

relations were strengthened. For instance, during the so-called Hess March, in the city of Roskilde in September 1995, Danish nazis supporting a German anti-antifa group had physical support from British nazis such as William "Wilf the Beast" Browning. NS 88 is central in organizing and financing the activities of nazi groups in both Denmark and other countries. In Germany nazi propaganda is forbidden and the smuggling of such material into the country is, therefore, important. Schilf has played a central role in setting up such activities. The profits from the nazi music scene are also being used to finance related nazi work. NS 88 contributes, for instance, to the Danish nazi Radio Oasen, which is run by DNSB. It has also issued statements supporting the German anti-antifa group.

Demos Nyhedsbrev, no 45, Spring 1997: Theme: The New "Supply line North".

NETHERLANDS

C18 formed - CP'86 split

Ironically, as the UK Combat 18 spirals into chaos a Dutch branch claims to have been set-up in Rotterdam, Holland. The information has been confirmed by Rotterdam councillor and Centrum Partij '86/Nationale Volkspartij (CP'86/NVP) leader, M Freling, who claims that there are close ties between his party and the Dutch C18. Most of the C18 supporters are believed to be located in the greater Rotterdam region. Earlier this year it had been suggested that CP'86, or at least its intelligence group ODIN which collects personal data on opponents, had forged links with German groups who circulated a hit-list of politicians, judges and members of the police and security services.

These developments are believed to be behind a split in CP'86 in which a group of so-called "moderate" members, based around former executive committee members Wim Beaux, M de Boer and M Hoogstra, left to form a new party called Volksnationalisten Nederland. With their new-found "moderate" credentials they plan to stand in local elections in 1998.

The Dutch extreme right has been in fractious mood since the mid-1980s when the Centrum Partij, founded by Hans Janmaat, split into two factions. Janmaat left to form the Centrum Demokraten (CD), which has enjoyed a modest degree of electoral success with a Le Pen style approach to fascism. Nonetheless, scandal has continuously dogged its steps and leading members have had to face criminal charges relating to drugs and violent assault. The second faction to split from the Centrum Partij was CP'86. Further splits led to the formation of smaller groups such as the Nederlands Blok (which is linked to the Belgian Vlaams Blok) and the Nederlands Unie.

CP'86 has taken a more robust approach to its politics and has seen links, and in some instances dual membership, with the overtly nazi Aktiefrent Nationale Socialisten (ANS), as well as being linked to a series of racist attacks. More recently the party has been embroiled in a bitter dispute concerning its relationship with the CD and other far-right groups. Interestingly, during these debates Beaux and De Boer were considered to be on the right of CP'86, which raises questions about their new-found moderation, particularly when one takes into account their leading roles in the now defunct Dutch section of the Klu Klux Klan.

Ravage 7.3.97.

BELGIUM

Attack linked to Vlaams Blok

An attack on the Antwerp offices of the Partij van de Arbeid (PvdA, a left-wing organisation who are active within the Belgian anti-racist/anti-fascist movement) has been linked to the far-right Vlaams Blok (VB). Witnesses claim to have recognised

Rob Verreyken, son of the VB senator Wim Verreyken, among the assailants.

The attack was targeted on a meeting of the PvdA's student wing. Those attending the meeting stated that a group of people who from their manner and dress appeared to fascists rang the front door bell. When the students refused to open the door the assailants continuously rang the bell and banged on windows. It was at this time that a smoke-bomb was detonated, overcoming those present with thick yellow smoke. The fire brigade later identified the smoke bomb as containing highly toxic gas.

Wim Verreyken has been associated with previous attacks on the PvdA. He was initially found guilty of attacking leading PvdA member Kris Merckx, as well being convicted of attacks on two other PvdA members between October 1991 and October 1992. However, both these convictions were overturned on appeal. More recently Verreyken, who has since qualified as a lawyer, was involved in the defence campaign of the revisionist historian Siegfried Verbeke. The PvdA has laid charges against Verreyken with the Antwerp police.

Solidair, 2.4.97.

FRANCE

Inquiry into Le Pen's militia

The French government has launched an inquiry into the Department of Protection-Security (DPS) the so-called security-wing of the French fascist party, the Front National. The DPS, which was formed in 1986, is led by Bernard Courcelle, a former paratrooper, and counts among its number former members of the OAS. The inquiry follows complaints by the CUP-SGP police union who object to the "militia" wearing uniforms that resemble those of the CRS, the French riot police. More significant is the fact that the DPS often pose as police; in March they and stopped and searched demonstrators at the party's national congress in Strasbourg. Last year truncheon-wielding militia members attacked protesters during a Front National rally in Montceau-les Mines in eastern France. In a separate development France's Movement Against Racism has threatened to sue party leader Jean-Marie Le Pen after he repeated that the nazi gas-chambers were a mere detail of the Second World War in an interview with the *New Yorker*.

Times, 18.4.97.

NORWAY

Neo-nazis prepared to shoot

The neo-nazi Tom Kinno Eiternes, leader of the Norwegian fraction of Ku Klux Klan and the national-socialist group "Einsatz", confessed in an interview on the television channel TV2, that neo-nazis in Norway are prepared to shoot people in the event of a "racial war". Like many other national-socialist groups in Europe, Eiternes and his companions believe that there is a Jewish conspiracy that is governing Norway, the ZOG (Zionist Occupation Government). Eiternes and three other neo-nazis were arrested on April 9, and accused of planning to harm society. The police found lists containing names and addresses of leading religious and government figures. Eiternes escaped from custody two days before the interview was shown on television.

UK

Combat 18 arrests herald collapse?

The openly nazi Combat 18 (C18) appears to be on the verge of collapse following splits and the arrest of key members in

February and March. Three top organisers, who cannot be named for legal reasons, but who have been frequently mentioned in previous issues of *Statewatch*, were jailed for one year and seventeen months at the Old Bailey in March. A fourth organiser, Mark Atkinson, has appeared at Southwark Crown Court where he pleaded guilty to producing threatening and abusive material that was likely to incite racial hatred; he will be sentenced in September after his co-accused, Robin Gray, who has pleaded not guilty, has faced trial. In a separate incident one of the organisation's leaders, Martin Cross, is facing murder charges after a man was stabbed to death in Essex.

An incident, stimulated by the feud that is tearing C18 apart, resulted in the stabbing to death of south London Blood & Honour activist, Christopher Castle. Martin Cross, an organiser with Blood and Honour, the music outfit controlled by C18, has been charged with his murder.

Following the Harlow killing three C18 organisers - who cannot be named because they are facing charges for a separate incident - were jailed at the Old Bailey. Two of the men, who come from Harlow, Essex and south London, were jailed for 17 months, the third for one year on charges of possessing threatening, abusive or insulting material. Anti-fascists criticised the shortness of the sentences, pointing out that the material included bomb-making instructions, and noting the letterbombs sent by C18 supporters in Denmark in January (see *Statewatch* Vol.7 no. 1).

It is unclear if the arrests and splits will mark the demise of C18 or whether allies of those arrested, such as Steve Sargent or the Glass brothers, in west London, will attempt to resurrect the organisation. A likely scenario would see the abandonment of the C18 millstone, which had proved so singularly inept and unsuccessful, in favour of the more lucrative Blood and Honour music business. Given the disastrous record of C18 - which threatened to seize control of the streets but was dependent on police protection - any re-emergence of the group will be forced to pursue their "leaderless resistance" strategy through accident rather than design. This strategy is loosely based on the US model, and envisages small unaffiliated gangs carrying out racist attacks on an arbitrary and unattributable basis. C18 have unsuccessfully advocated this strategy for some time.

Harlow Star 13 & 20.2.97.

BNP election broadcast opposed

The British National Party (BNP) had to abandon its pre-election press conference, which was booked into a Victoria hotel under a false name, when it was overrun by anti-fascists in April. The press-conference ended in farce after party leader, John Tyndall, had water poured over him as it was about to start. The conference had been expected to announce that, after a desperate search, the BNP had found the 50 candidates required under the Representation of the People Act to qualify for a five-minute television broadcast and free postal distribution of 2 million leaflets by the Royal Mail. Their broadcast went ahead on April 24 but was dropped by Channel 4.

Although the BNP have been planning their election campaign for the past two years it has been plagued by incompetence and until recently it looked as though they might fail to field enough candidates to qualify for the television broadcast. Among those who are standing for the party, which has been playing the "law and order" card, are a number who have been jailed for illegal possession of firearms and/or explosives and participating in violent racist attacks. While the organisation doesn't have the remotest chance of winning any seats it is hoping to benefit from the publicity to gain new recruits.

In the build-up to the broadcast the British Broadcasting Corporation (BBC) and other channels faced considerable

internal dissent from staff and regular pickets by anti-fascists. The broadcast, which but was dropped by Channel 4 who argued that it was offensive and incited racial hatred, called for the repatriation of all "non-whites". While senior BBC and ITV officials have insisted that they were powerless to do anything more about the broadcast the Media Workers Against the Nazis organisation collected hundreds of signatures from BBC employees angered at the idea of having anything to do with the BNP's Hitlerite views.

Racism & fascism - new material

Racism goes underground. *CARF* 36 (February/March) 1996, pp4-9. The Campaign Against Racism and Fascism compiles an annual report of deaths due to racism in Europe; for 1996 the toll reached 81. But, *CARF* notes the increasing difficulty of monitoring the situation of "Europe's non-people: the de-citizenised, the 'illegals', the 'sans papiers'."

Northern Ireland: past, present and future

Bloody Sunday remembered; Roisin McAliskey; and Drumcree III, Here we go...

Bloody Sunday

I was a 15-year-old schoolboy when I witnessed Bloody Sunday... I was at the corner of Glenfada Park and the rubble barricade on Rossville Street when the 1st Battalion Paratroop Regiment advanced. I have very clear memories of the Paras fanning out across the waste ground to the north of the Rossville flats complex. I can still vividly recall one Para, about 20 metres away, firing a rubber bullet which bounced off the barricade. Another took up a firing position at the corner of the first block of flats diagonally across the road. Behind him I could see three paratroopers viciously raining the butts of their rifles down upon a young man they had caught. Then the unmistakable cracks of high-velocity SLR shooting started.

I distinctly remember a youth clutching his stomach a short distance away, his cry filling the air with despair and disbelief. For a moment we were stunned. People ran to his aid while others, including myself, sheltered behind the barricade.

Suddenly the air was filled with what seemed like a thunderstorm of bullets. The barricade began to spit dust and it seemed to come from every direction... Absolute panic ensued as we turned and ran... I escaped through Glenfada Park but there are several minutes of that afternoon of which I have absolutely no memory. Five young men died at the barricade and four between Glenfada Park and Abbey Park. As many again were wounded in those locations. What I saw is somewhere hidden in my subconscious... A primeval instinct had taken possession of me and I was, unashamedly, running home to safety."

So writes Don Mullan, the compiler of a new book containing a selection of the 500 eyewitness statements collected by the Northern Ireland Civil Rights Association and NCCL (now Liberty), after the British Army murdered thirteen people on 30 January 1972. All of the statements were available to the Widgery Tribunal (see *Statewatch*, vol 5 no 6 pp18-19) but Widgery looked at 15 and in effect dismissed them all.

These events and the way they were covered up by the British authorities remain highly significant for the people of Derry. This was shown by the huge turn-out, estimated between 35,000 and 40,000, at a demonstration to mark the 25th anniversary of Bloody Sunday on 2 February, the largest demonstration ever held in the city.

Mullan's book is already a best seller in Ireland and deserves to be read widely elsewhere. In addition to the eyewitness statements and Mullan's introduction, Jane Winter provides a succinct account of what remains at issue: "New material is still emerging and awaits analysis, but it is already well beyond dispute that those who died were unarmed and that those who killed them have never been brought to justice. Even more serious is the fact that those who planned the operation that led to their deaths have never been held accountable, and no admission of responsibility has been made or apology offered by the British government."

The Bloody Sunday Justice Campaign has called for a new inquiry and a formal apology from the British government. The idea of an apology has even attracted qualified support in unionist circles, but Secretary of State Sir Patrick Mayhew rejected it outright in a manner guaranteed to cause maximum offence to the relatives of those killed on Bloody Sunday. When he met with representatives of the Campaign in mid-February, Mayhew promised to give thoughtful consideration to the evidence presented in the Mullan book. Yet within 24 hours of the meeting, he publicly dismissed the relatives campaign in a BBC interview by saying that an apology was appropriate in cases of "criminal wrong-doing and there is nothing in the Widgery Report to support that". Furthermore, an apology would be "unjust" to those who had taken part in the day's "tragic events". All royalties from Mullan's book go the Bloody Sunday Justice Campaign.

Don Mullan (ed.) Eyewitness Bloody Sunday: The Truth, Dublin: Wolfhound Press (68 Mountjoy Square, Dublin). ISBN 0-86327-586-9 Price £8.99. 288pp with photographs.

Roisin McAliskey

The Britain and Ireland Human Rights Centre has produced a comprehensive briefing paper about the arrest and detention of Roisin McAliskey who remains in Holloway prison while she fights extradition to Germany. Although it appears that her detention in November of last year was more to do with the British than the German authorities, the German government continues to pursue her extradition which is likely to be formally heard in May. She is wanted for questioning in relation to an IRA mortar attack on the British Army base in Osnabruck which took place on 28 June 1996.

McAliskey has appealed to the House of Lords for Habeas Corpus, a case which will be decided in early May. She faces the prospect of being taken to Germany at the same time that her baby is due. The fact of her pregnancy and the mental and physical stress she has been placed under during interrogation in Belfast and imprisonment in England, have swelled the international campaign of support for her release on bail. After five days of interrogation, which included being confronted by an RUC officer whom she had last seen at the age of 9, when he came to her house after loyalists shot her mother (the former MP Bernadette McAliskey) fifteen years ago, the RUC announced that an extradition warrant had arrived from Germany. She was taken to Holloway (London) but then moved to Belmarsh prison which is a male prison with no facilities for women. After a week of solitary confinement in a filthy cell, which had not been cleaned since it was occupied by a republican prisoner on a "no wash" protest, McAliskey was transferred to Holloway where she has been isolated and treated as a "high risk" category A prisoner. Although subject to "closed" visits, she has been strip searched on more than 90 occasions. Again after considerable

international pressure her security rating was lowered to allow her to keep her baby with her in prison. McAliskey's partner became an "approved" visitor at the end of February, allowing prisons Director Richard Tilt to write to the Guardian, saying that closed visits no longer applied.

The German warrant is based on very little evidence. The claim is that a fingerprint of McAliskey's has been discovered on a piece of cigarette packet foil, found at the holiday home in Lower Saxony alleged to have been used by the IRA unit. Secondly, the warrant names the landlord of the house and states he identified her as being at the house. According to a TV programme broadcast in Germany 27 March, however, the landlord, Manfred Schmidt, said that he has not been shown any photographs of her and did not recognise her on the basis of photographs shown to him by the television programme.

Throughout the case, the German authorities have presented contradictory arguments concerning their interests. Diplomatic sources have denied that they are opposed to bail and yet the federal authorities support the British assessment of risk that McAliskey requires category A imprisonment. While the identification evidence now appears to be fabricated, there are, says McAliskey's partner, strong indications that the authorities are changing their minds about the "fingerprint evidence".

Originally this was associated with the house: now it is being said that the moveable object was found near the lorry used in the IRA attack. McAliskey's solicitor, Gareth Pierce, is now seeking to have the extradition warrant quashed in Germany on the grounds that it is based on false evidence. It has also been claimed that the RUC sent a detective to Germany during McAliskey's detention and interrogation in Belfast to "assist" in the extradition bid.

Britain & Ireland Human Rights Centre, *Roisin McAliskey: A Briefing Paper*, available from BM Box Papportuer, London WC1N 3XX. See also website: <http://larkspirit.com/roisin/>

Drumcree III, Here we go...

The North Commission, set up to review parades and marches following the Drumcree stand-off in July 1996 (see *Statewatch* vol 6 no 4), published its report in January. The Commission's terms of reference included examining the "adequacy of current legal provisions", "the powers and responsibilities of the Secretary of State, police and others," the possible introduction of codes of practice for organisers and participants in open-air meetings, parades and demonstrations, and finally, "the possible need for new machinery, both formal and informal, to play a part in determining whether and how" parades etc should take place.

The North Report runs to 256 A4 pages and involved a major attitudes survey and written submissions from over 300 organisations and individuals, including 28 branches of "loyal institutions" (Orange Order, Apprentice Boys, Royal Black Institution). Although there were complaints that the Commission failed to talk to people in the areas most effected by the "marching season", it held 93 meetings involving 270 people, and the general view was that the Commission consulted widely in the time available.

The North Report recommends the establishment of a five-person Parades Commission which would seek to resolve marching disputes locally and between the relevant parties. In the absence of agreement, the Parades Commission itself would "issue a determination". This suggests shifting the parades problem away from "public order" decisions by the RUC. However, the North Report recommends that new legislation provides for the Chief Constable to go to the Secretary of State and challenge a decision of the Parades Commission on public order grounds. Similarly, the RUC should retain the power to intervene on public order grounds in the case of a defiance of a Parades Commission decision.

While the North Report rejects the idea of making parade

organisers financially responsible/liable for a parade's conduct (including the costs of policing), it recommends a code of conduct, suggests the RUC monitor parades more precisely and advocates the registration of parade bands.

Under existing public order legislation, the RUC can impose conditions on parades if there is a possibility of serious damage to property, serious disorder, substantial disruption to the life of the community, and if intimidation is the purpose of a parade. Similarly, the Secretary of State has the power to close roads and to prohibit meetings and processions, with the added criterion of "undue demands on police and military forces".

Although march/parade organisers are required to give 7 days' notice, the RUC often waits until the very last minute before deciding whether to re-route a parade or not. This, as the Committee on the Administration of Justice argued in its submission to the North Commission, means that parade decisions (at best) rest on a police judgement as to which party is likely to cause the most disruption, leading to an escalation of tension and threat. One of the most significant recommendations in the North Report is that the 7 day notice should be extended to 21 days. This is presented as a tension-reducing proposal, giving the Parades Commission time to mediate and decide.

Secretary of State Mayhew responded to the North Report as follows: "the government recognise that the proposal that an independent body should as part of its duties take over the RUC's decision-making power in respect of parades is a radical and far-reaching one." He went on to argue that because different views on this issue had been expressed to North, a further period of consultation was required.

On 26 March, Mayhew appointed five people to a Parades Commission (Alistair Graham, former General Secretary of the Civil and Public Services Association; solicitor David Hewitt who has served as the Independent Assessor for Military Complaints Procedures; Francis Guckian, the Commissioner for Planning Appeals; Rev. Roy Magee, a Presbyterian minister; and chair of the SDLP in Derry, Brigid McIvor). He pointed out that the government had already amended the public order legislation to require 21 days notice for a parade and to give the police new powers "to demand the surrender of alcohol from people in the vicinity of or on their way to parades" and that the consultation period would cease at the end of March. The Commission has been given the limited role of education, promoting mediation and the development of a code of conduct.

By mid-April, Mayhew was able to report that his consultation exercise had produced "well over 100 written submissions" expressing "widely differing views". No decision could therefore be made regarding the North Report's main recommendation that the Parades Commission makes decisions about parades.

Mayhew's handling of the North recommendations has been widely criticised in view of the high level of tension remaining from last year's marching season which effectively never ended. Loyalists still hold their weekly protests at Harryville Catholic Church, Ballymena, on the basis that they will continue to try to prevent Catholics going to church because the residents of Dunloy village blocked an Orange Parade. Recent weeks have seen a spate of church burnings - 44 churches and 71 schools have been attacked since July 1995, most of them Catholic premises. Recent attacks on Protestant churches and business premises have been attributed by the RUC and loyalist groups to dissident loyalist followers of Portadown-based Billy Wright, now in prison for threatening to kill a woman. These dissidents call themselves the Loyalist Volunteer Force and, the RUC suggest, they are seeking to stimulate support for retaliatory attacks on Catholic targets by accusing Catholics of arson against Protestant property.

Meanwhile other unclaimed, unattributed Loyalist attacks continue, including the killing of a Catholic man and the planting

of bombs at Sinn Fein centres in Derry and across the border in Monahan.

Efforts to mediate on parades have as yet produced no result. The 1997 marching season begins with hardening attitudes, rising tensions and with the RUC taking on the same

role as before. If Chief Constable Flanagan is determined to avoid Drumcree III, he is likely to do so not by confronting the Orange Order but by forcing Orange parades through Catholic areas. He now has 21 days to prepare instead of 7.

Ireland and freedom of information

Examines the new Freedom of Information Act and its limitations

The Irish Freedom of Information Act (1997) was passed by the parliament on 10 April 1997 after considerable lobbying from the Irish Council of the National Union of Journalists. It is largely based on legislation in Australia and New Zealand which, like Ireland, observes British-style common law judicial practices. It has received a fairly warm welcome from the NUJ. However journalists stress that it is only the first step towards openness in one of Europe's most bureaucratic states and that there is still one serious flaw in the Act.

Principle of openness

The Act states that its purpose is to enable individuals to obtain access, to the greatest extent possible consistent with the public interest and the right of privacy, to information in the possession of public bodies. It states that every person has a right to and shall, on request therefore be offered access to any record held by a public body, subject to certain exceptions. It imposes a responsibility on public bodies to give reasonable access to those seeking information and to provide a reference book explaining how to obtain records.

In the case of a refusal to grant information, the Act provides an independent review process which is weighted in favour of openness. This process will be overseen by an Information Commissioner, who may annul a decision to refuse access. Such a decision shall be presumed not to have been justified unless the head [of the government department] concerned shows to the satisfaction of the Commissioner that the decision was justified.

When reviewing a decision to refuse access, all relevant information must be provided to the Commissioner by the body concerned. The Commissioner has the authority to require information from any person, to enter any premises occupied by a public body and to examine any record found there.

The Commissioner has additional powers to review openness procedures in public bodies, and must provide a yearly report and may publish a report on any investigation in the public interest or in the interest of any person. The Commissioner also has powers to regulate fees charged for providing information and to refuse frivolous or vexatious requests for information.

A head of department who receives a request for information must decide whether to divulge it as soon as possible but not more than four weeks after the request.

Exemptions

There are specific restrictions on access to information about the decisions of the government [i.e. the senior ministers acting together in cabinet].

Statements made at government meetings must be exempted from the openness procedures, according to the Act. Ministerial proposals and advice to the government in recorded form may be released or withheld. But these restrictions do not apply to factual information, technical advice or reports on the performance of public bodies. In any case, all government [cabinet] information (except statements made during government meetings) is open for release after five years.

As long as the restrictions apply, the government is permitted to refuse to disclose whether the document exists or

not. When the request is for information about state security, defence, international relations or Northern Ireland and concerns intelligence, military tactics or operations, subversion or confidential diplomatic matters; the minister responsible may issue an exemption certificate preventing access. In this case, the review process involving the Information Commissioner is short-circuited. The Commissioner is not permitted to view the document concerned or rule upon the matter. In such cases the government is also permitted to refuse to disclose whether the document exists or not.

However, there remains a means by which the requester can challenge such secrecy certificates in the High Court. The Act states that they may only be issued when the matter is of sufficient sensitivity or seriousness to justify [the minister] doing so. The initial draft of this legislation did not contain the requirement of sensitivity and seriousness. This test was only included after intense pressure from the NUJ.

The Act also gives protection for confidential and sensitive commercial or financial information obtained by the government or by its departments but this lapses in cases where the public interest is in disclosure.

The Act does not apply to the courts or state tribunals, to the President, the Ombudsman or the Information Commissioner, or to the private papers of members of the parliament. It also permits ministers to defer access for a reasonable period so that the information may be announced first to the legislature.

Concerns

The Act covers all major public bodies with one glaring exception: the Irish police force. It covers the military, the navy, the Director of Public Prosecutions and the Prime Minister's office for example. But the police will only come under its provisions when regulations to that effect are announced by the government. No further legislation is required to extend the Freedom of Information Act to the police. But governments may, in theory at least, defer that decision *sine die*.

Irish journalists have two other concerns in the general area of freedom of information. The FoI Act amends the Irish Official Secrets Act (OSA). This was one of the most all-embracing of its kind, enabling ministers to label any information a state secret. Despite the amendments, the very fact that some of the Official Secrets Act remains on the statute-books remains a problem for Irish civil servants and journalists. The FoIA and the OSA point in opposite directions. A senior parliamentary committee, with the support of all the main parliamentary parties, has recommended the repeal of the OSA and its replacement by new espionage legislation. But this task will probably have to wait until the next election.

The Irish Supreme Court has ruled that, in the public interest all cabinet discussions must be kept secret. This decision prevents even parliamentary tribunals from inquiring into such matters and there is widespread opposition to it. The Irish government has promised that a referendum to overturn this decision will be held at the same time as the next election which will have to occur before November this year.

Briefing Document on Ireland and Freedom of Information, prepared for the European Federation of Journalists Conference in Brussels, 25/26 April

Statewatch case: Ombudsman tackles Council

The Council of Ministers refuses to answer Statewatch's complaints - the Ombudsman asks again

The European Ombudsman has told the EU Council of Ministers to reply to his request for a response to six complaints lodged by Statewatch (see Statewatch, vol 6 no 6). The Council's first response was to tell the Ombudsman that he had no powers to send them complaints about "third pillar" issues (justice and home affairs) - the Ombudsman says he has and hints that unless they reply to his second letter he will have to refer the matter to the European Parliament who in turn may take the issue to the European Court of Justice. The Ombudsman, Mr Söderman, said he would fight this case "to the bitter end".

The European Ombudsman declared the six complaints of maladministration, lodged by Statewatch in November and December 1996, to be "admissible" on 15 January 1997. At the same time the Ombudsman sent copies of the complaints (together with the relevant correspondence) to the Secretary General of the Council in Brussels. The Ombudsman asked the Council to "submit comments" on the complaints by the end of March.

The job of drafting a response from the Council to the Ombudsman was given to the General Affairs Group, referred to by the unfortunate acronym as the "GAG Group". GAG met on 24 February and 3 March only to find the 15 EU governments split three ways. The record of the meeting on 3 March shows that five governments said the Ombudsman could not send them complaints about "third pillar" issues:

Five delegations are of the opinion that the Ombudsman is not permitted to examine the application of decision 93/731/EG, concerning the applications for access to documents under Title VI.

Five governments said the Council should comply and give its comments on each of the complaints:

Another group of five delegations defends the opposite opinion, that is that the Ombudsman is permitted to investigate the legitimacy of the complaints in question and that the Ombudsman should get a factual answer on the matter.

Four governments wanted to wait until the European Court of Justice has given its verdict on the case brought by the *Tidningen Journalisten*, the paper of the Swedish Journalists Union:

A third group of four delegations tends to choose a transitional solution, that is to wait for a final decision from the Council until the verdict in the case Tidningen Journalisten (T-174/95), where the problem is if ECJ has the competence or not in cases of the same kind.

The *Journalisten* case is unlikely to be finished before the autumn at the earliest. One delegation did not take a position. The GAG Group therefore referred the issue to COREPER (the committee of permanent representatives of each of the 15 EU governments) for decision.

At the COREPER meeting on 6 March the record says:

the Chairman noted a majority of Delegations were in favour of the view that the Ombudsman is not competent to examine the substance of the complaints in question. The Committee asked the General Affairs Group to draft a new letter taking into account their discussion.

The GAG Group met again on 18 March and COREPER on 19 March and the reply to the Ombudsman was adopted at the meeting of the General Affairs Council on 24 March.

Now a 9-6 split emerged in the Council. Nine countries

backed telling the Ombudsman he could not send them complaints about justice and home affairs, six took a completely opposite view and published a Declaration to this effect:

While the Ombudsman is not competent to deal with matters falling under Titles V and VI of the TEU, these Delegations consider that this case concerns an inquiry into alleged maladministration in the application of Council Decision 93/371 on Public Access to Council documents, for which the Ombudsman is competent.

The six governments in favour of responding to the Ombudsman were: **Austria, Belgium, Denmark, Finland, Netherlands and Sweden.** The nine governments against were: **France, Germany, UK, Ireland, Italy, Spain, Portugal, Greece and Luxembourg.**

The Council's reply to the Ombudsman argues that because the complaints concern:

documents relating to justice and home affairs cooperation, which is covered by Title VI of the Treaty of European Union (TEU)..

which is intergovernmental the Ombudsman is not competent to put the complaints to them. Under Title VI, they argue the Council is "acting not as a Community institution, but as an institution of the Union". They go on to argue that "a comparable but not identical question is currently pending before the Court of First Instance (of the ECJ)" in the *Journalisten* case. As if to prove they are in favour of openness their letter says: "So far, a total of 405 documents have been issued" to Tony Bunyan. It should be noted that although the six complaints are lodged with the Ombudsman in the name of Statewatch the Council continues to refer to "Mr Tony Bunyan".

The Council's decision to confront the Ombudsman is quite deliberate:

Given that these complaints are inadmissible, their substance cannot be considered.

The Ombudsman's response

The Council letter of 26 March was responded to by the Ombudsman on 9 April. Mr Söderman's letter is firm, it reminds the Council that the right of complaint to the Ombudsman is established under Article 8d of the Treaty establishing the European Community (TEC) and that:

According to Article 3(2) of the Statute of the Ombudsman, Community institutions and bodies are required to supply the Ombudsman with any information he has requested of them. In its reply to the Ombudsman dated 26 March 1997, the Council has not supplied the information requested by the Ombudsman, but has contested his competence to deal with the complaints.

The Ombudsman then tells the Council they cannot tell him how to do his job:

Under the scheme established by the Treaty and the Statute, the admissibility of complaints is determined by the European Ombudsman in accordance with Community law, on which the highest authority is the Court of Justice.

The Ombudsman says the Council's argument that he does not have competence to put complaints to them is based on two propositions. First that his competence does not extend to Title VI of the TEU and second, that "the subject matter of the complaints is action taken by the Council under Title VI..". The Ombudsman says that:

the second of these propositions is mistaken. It is therefore unnecessary for him to take a position on the first proposition. The subject matter of the complaints concerns the Council's response to requests for access to documents.

He then cites the judgements the Court of justice in *Netherlands v. Council* and the Court of First Instance in *Carvel and Guardian Newspapers v. Council* to show the precedents decided by the ECJ both on the Council Decision on public access to documents and on access to documents concerning justice and home affairs (Title VI).

The Ombudsman therefore concludes that the Council Decision on public access to documents is a matter of "Community law" and therefore judiciable by the ECJ. He has now given the Council until 31 May to reply. If the Council still refuses to respond to the six complaints, or only responds to the three administrative complaints, the Ombudsman will have little option but to refer the case to the European Parliament.

The Council's lack of response

The position taken by the Council, or rather by the majority of nine governments, question the competence and role of the European Ombudsman. The Ombudsman office was set up under the Treaty of European Union, the Statute was adopted as community law, and he was appointed by the European Parliament.

The Council's argument that the complaints are "inadmissible" because they concern the "third pillar" and are intergovernmental (not under community competence) is indefensible and will be shown to be so if the case ends up in the ECJ. All the complaints concern the Council's practical application of its own Decision on access to documents.

The Council has never refused to supply documents to *Statewatch* on the grounds that the Decision on public access to documents does not cover Title VI (justice and home affairs). Indeed in the three substantive complaints which concern decisions taken by the Council of Ministers the letters received by *Statewatch* clearly state that:

Your attention is drawn to the provisions of Article 138 E and 173 of the EC Treaty, relating respectively to the conditions for referral to the Ombudsman by natural persons and for review by the Court of Justice on the legality of Council acts."

The Council itself therefore draws attention to refused applicants their right of appeal to the Ombudsman.

The Council's reference to the *Journalisten* case is interesting because their letter makes no reference to the *Carvel and Guardian Newspapers v. Council* (19.1.95) case where the ECJ ordered the Council to hand over documents from the Council of Justice and Home Affairs Ministers. In the *Journalisten* case the Council, backed by the UK and France, is trying to argue on exactly the same grounds as they have to the Ombudsman - that the ECJ is not competent to deal with access to documents on Title VI issues. The resolution of the *Journalisten* and *Statewatch* cases will establish, one way or the other, the right of appeal against Council decisions on justice and home affairs documents.

IGC proposals

The context of these two cases is the proposed amendments to EU treaties being considered by the IGC (intergovernmental conference) to be adopted in June in Amsterdam. The Swedish government has led the campaign for establishing a right of access to documents, including the second (Title V, foreign affairs and security policy) and the third pillar (Title VI). The current IGC proposals put forward at the Dublin Summit in December are shown in the next column.

As they presently stand the proposal would only insert into the Treaty of European Union (TEU, which established Titles V and VI) that: "decisions are taken as openly as possible." The

other two amendments refer to the Treaty of the European Communities (TEC, the Treaty of Rome amended by the Single European Act and in turn amended by the TEU). These two amendments have many flaws not the least of which is that they are limited to access to documents where the Council is "acting in its legislative capacity". This excludes the many other documents which concern the adoption and use of practices or policy decisions which do not have a legislative status - between a half and two-thirds of justice and home affairs decisions are not "legislative". But on top of this TEC provisions do not apply to TEU matters.

A representative of the Swedish Interior Ministry told a conference held by the European Federation of Journalists in Brussels on 25-26 April that no further changes from the Dublin draft would be made unless the governments working for establishing the right of access to documents, like Sweden, Finland and Denmark, made far-reaching concessions in their voting rights.

APPENDIX 1

Proposed IGC amendments on openness and transparency

Amend the second paragraph of Article A of the TEU

This Treaty marks a new stage in the process of creating an ever closer Union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

New Article 192a in the TEC

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to conditions which shall be laid down by each of these institutions under its, own rules of procedure.

General principles and limits; governing the exercise of that right may be determined by the Council, acting in accordance with the-procedure referred to in Article 189b.

Addition to Article 151(3) of the TEC concerning the Rules of Procedure of the Council

The Council shall lay down in these Rules the conditions under which the public shall have access to Council documents. For the purpose of this paragraph the Council shall define the cases in which it is to be regarded as acting in its legislative capacity with a view to allowing greater access to documents in those cases, while at the same time preserving the effectiveness of its decision-making process. In any event, when the Council acts in its legislative capacity, the results of votes and explanations of vote as well as statements in the minutes shall be made public.

APPENDIX 2

The six complaints lodged by Statewatch with the European Ombudsman

The six complaints:

1. the decision of the Council to supply only 5 of 14 copies of the Minutes of the K4 Committee (see *Statewatch*, vol 6 no 3).
2. three instances where the Council appears to have destroyed - "not conserved" - documents which are of "historical value".
3. the failure of the Council to maintain, and make publicly available, a list of the decisions taken under the "third pillar" (justice and home affairs).

4. the Council's assertion that the Presidency of the European Union is a separate "body" from the Council of the European Union.

5. Concerns the Council's failure to give specific reasons for denying access to each document, using arguments which have no basis in the rules, and refusing documents "very recently adopted."

6. The final complaints concerns the decision of the Council to treat **four** separate requests as one request and to reject the first three *en bloc* not even "considering" them. On 19 November the Council of Ministers (Budget) voted by 8 votes to 5 to confirm this decision. The 8 votes for secrecy were: Austria, Belgian, France, Germany, Italy, Luxembourg, Portugal and Spain. The 5 votes for openness were: Denmark, Ireland, Netherlands, Sweden and the UK. Finland and Greece abstained.

The 8 governments voting for secrecy also issued a statement saying that the applications "abuse the good faith of the Council in its willingness to be transparent."

Copies of the dossier of complaints against the Council can be obtained from *Statewatch*.

Letter from the European Ombudsman to Statewatch, 15.1.97; Letter from the Council of Ministers to the European Ombudsman, 26.3.97; Letter from the European Ombudsman to the Council, 9.4.97; Answer to the Ombudsman concerning Tony Bunyan's complaints, General Affairs Group to COREPER II, ref: 6441/97, OMBUDS 2, 4.3.97; Draft letter to the European Ombudsman concerning complaints made by Mr Tony Bunyan, General Affairs Group to COREPER, ref: 6762/97, OMBUDS 3, Limite, 18.3.97; Draft letter to the European Ombudsman concerning complaints made by Mr Tony Bunyan, Permanent Representatives Committee (Second Part) to the Council, ref: 6857/97, OMBUDS 4, Limite, 19.3.97.

The "nuclear state" as "security state"

A German lawyer and writer reflects on the investigation of the anti-nuclear movement by the secret service and police enforcement of nuclear waste movements ("Castor-Transport")

In March 1997, the "nuclear state" took a further step in the Wendland (Lower Saxony). Against the long-standing resistance of the region, against the fears of the majority of the population, and against the advice of many experts, radioactive waste has been transported through the Republic for years to be deposited near Gorleben in Lower Saxony. This has been enforced by expensive police deployment to "protect" the transportation - a 30,000 strong police force (twice that in 1996 at a cost of about 100m DM).

Basic rights on freedom of expression and demonstration have suffered in the process. Meetings have been forbidden in large areas and non-violent sit-ins have - particularly in the latest phase - been brutally moved. Police attacked a television crew, protesters had their noses broken and fingers poked into their eyes in order to force them to stand, heads were trampled on, and ambulance men behind the police cordon were attacked. High pressure water canons targeted individual protesters, injuring some seriously. Altogether, over hundred people have been injured, thirty of them seriously with concussion, eye injuries, and broken noses, jaws, and cervical vertebrae. One police group from Lower Saxony came out of a helicopter with drawn knives, and dozens of tractors tyres, whose owners had wedged them together to block a road, were stabbed and punctured.

The nuclear programme of the German government only appears to work if it is backed by "military" force. The Social Democratic government of Lower Saxony has not protested against the demands of the federal government, although it would have good reasons for doing so. For example, the constitutional argument that "Castor-Transport" is, in the end, only enforceable through disproportionate means and disproportionate use of police violence. This, however, violates the principle that the means have to be proportional to the objectives (*Verhältnismäßigkeit*) which is laid down in the German constitution. A "nuclear state", predicted Robert Jungk 15 years ago, in the end leads to a "police state" since governments believe the security of society cannot otherwise be guaranteed.

The secret service's Gorleben dossier

The Office for the Protection of the Constitution (BfV) was active in Wendland in the run-up to the transportation of the nuclear waste by checking out the local anti-nuclear movement. At the end of last year, the secret service issued a confidential dossier entitled "Left- extreme/militant efforts in the framework

of the anti-Castor campaign". The tenor of the 30-page long dossier is that whoever opposes the transport is a violent and dangerous criminal. Activities of civil disobedience, for example sit-ins, are mixed up with criminal offences and protests are labelled as "left-extreme militant". Whoever talks about the fight against the nuclear state is termed as "left-extremist". The "tactical objective of the anti-nuclear protestors" to force up costs is highlighted as a warning - this constitutes "coercion" of the responsible decision makers in politics and economy.

The treatment of groups which allegedly "practice, propagate or tolerate violence" is covered extensively in the report. These groups include "autonomous", "anarchist" and "revolutionary-marxist" groups but also the Party of Democratic Socialism (PDS) and citizen initiatives in the Wendland. Even the "Federation of non-violent action groups" and other non-violent associations are regarded by the BfV as militant. The most sensitive passages of the report deal with so-called "*Szeneobjekten* in the Wendland" - flat-sharing communities, associations, community centres - including photos, addresses, structural characteristics and activities. In personal dossiers, data on occupants and members of citizens initiatives have been summarized. The citizen initiative at Lüchow Danneberg is presented as the logistical centre of a "left extreme" network, with incorrect statements that some of its members have been associated with militant groups, and even with terrorism by using contacts with imprisoned members of the Red Army Fraction. Interior Minister Glogowski of Lower Saxony stated in parliament: "The BfV does not observe any groups in Lüchow-Danneberg. The BfV observes terrorists...".

The "confidential" secret service dossier was leaked to some newspapers, among others Spiegel, Die Welt and Süddeutsche Zeitung who presented its content uncritically. In this way, a negative propaganda could be run against the anti-nuclear protest which is by large parts of the population regarded as legitimate. The "enemy" image produced through such disinformation could de-legitimise the anti-nuclear movement, and make the participants feel insecure. The gigantic and violent police operation which enforced the nuclear waste transport through the *Wendland*, could thereby be publicly justified. The police were "in the mood" for combating allegedly "violent" resistance which contributed to the disproportionate action, to the escalation, and to numerous infringements by the police.

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Web database

Statewatch has a searchable database on the World Wide Web. The url is: <http://www.poptel.org.uk/statewatch/>

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